



# A Displaced Cost of War: The Statelessness of Vietnamese Amerasians

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A Displaced Cost of War: The Statelessness of Vietnamese-Americans

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## Abstract

This thesis focuses on the plight of Vietnamese-Amerasians, the mixed-race children of American soldiers born during the United States' active involvement with Vietnam from 1954 until the fall of Saigon in 1975. As children, they were labeled "Dust of Life" and "half-breed" in Vietnam. As adults, Vietnamese-Amerasians who made it to the U.S. in search of a future and the possibility of finding their American fathers continue to struggle for belonging and acceptance. These mixed-race children of the Vietnam War are caught between the politics of the country they were born in, their motherland, and the country they now call home, their fatherland.

This thesis points to a pattern of legal displacement faced by mixed-race children of foreign military personnel and exposes a lasting human cost of war. Specifically, it brings attention to Vietnamese-Amerasian individuals currently facing deportation from the U.S. after coming into contact with the U.S. criminal justice system. Unable to prove their nationality as Vietnamese or American, now, these adult children of the Vietnam War are effectively stateless. This thesis also explores the current discussions and research that touch upon the fundamental issues of birthright citizenship, punishment, and effective statelessness concerning Vietnamese-Amerasians in the U.S. It demonstrates that the detention and deportation of Vietnamese-Amerasians by U.S. Immigration and Customs Enforcement (ICE) contradicts the conditions under which Vietnamese-Amerasian individuals were welcomed into the U.S., their fatherland. Operation Babylift in April of 1975, the Orderly Departure Program (ODP) of 1979, and the Amerasian Homecoming Act of 1987 were different measures taken by the U.S. government

to provide safe passage for Vietnamese-Americans for the reason that they were considered persons of particular humanitarian concern. Presently, Vietnamese-Americans with final removal orders by ICE are neither protected by the U.S. nor wanted by Vietnam. Vietnamese-Americans under ICE supervision experience statelessness within the border of the U.S. because they are no longer considered Lawful Permanent Residents of the U.S. Despite the claim that deporting Vietnamese-Americans on the basis of criminal conviction is simply immigration regulation, this thesis will show that the deportation of this particular population unfolds the complicated and mixed attitude America has towards the foreign offspring of its soldiers. This research is significant because it explores and sheds light on residual damage of the Vietnam War

## Dedication

*To Vietnamese-Americans on both sides of the Pacific*

## Acknowledgments

I am very grateful to all who participated in this research study. Without their generosity and willingness in sharing their stories and experiences with me, this thesis would not exist. Although the individuals interviewed are not mentioned by name, I hope that their contribution to this important and timely topic will help bring awareness to this lingering damage of war.

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## Acronyms, Definition of Terms

**Alien:** any person not a naturalized citizen or national.

**Amerasians:** children of mixed American and Asian parentage. The term is generally referred to those born in Asia of Asian mothers and American fathers.

***Bui Doi:*** “dust of life,” often used by Vietnamese to label mixed-race children of American servicemen and Vietnamese women.

**Detainer:** a request that the receiving law enforcement agency notify Department of Homeland Security (DHS) before a removable alien is released from criminal custody to allow DHS to assume custody for removal purposes (ICE).

**Deportation:** the formal removal of an alien from a country on the basis of having committed a crime or for illegal immigration status.

**Green Card:** officially known as a Permanent Resident Card, allows a person to live and work in the U.S. permanently.

**Effective Statelessness:** to be without the nationality and protection of any state despite having a legal status.

ICE: U.S. Immigration and Customs Enforcement.

*Jus Sanguinis*: (Latin: right of blood) the principle that the citizenship of a child is that of the country of nationality of the parents.

Lawful Permanent Residents (LPRs): Green Card holders, aliens admitted for permanent residence purposes and who is also subjected to obligations such as taxes and military draft, comparable to those imposed on citizens. However, they are not immune to deportation (Martin, 2001).

Mandatory Immigration Detention: when a person is held in custody in an immigration facility until completion of the removal proceedings.

ODP: Orderly Departure Program, established in 1979 by the United Nation High Commissioners for Refugees and the Vietnamese government to provide a legal means for people to leave Vietnam.

Plea bargain: a way of resolving criminal cases without going to trial before a judge or a jury. In order to accept the plea, the court has to determine that the defendant is pleading guilty “knowingly” and “voluntarily” with a full understanding of both the direct and collateral consequences (Alien Rights Notice, G.L.C.278, §29D, MASS. R. CRIM. P.12).

Removal: the compulsory and confirmed movement of an inadmissible or deportable alien out of the United States based on an order of removal (ICE).

*Pro se*: representing oneself in a court proceeding without a lawyer.

Refugee: the U.N. definition was incorporated into U.S. law with the Refugee Act of 1980. A refugee is any person who, “owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who not having a nationality and being outside of the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it” (Haines 2010).

Stateless: having no nationality.

## Chapter I

### Introduction

Identities “matter to people. And they matter, first, because having an identity can give you a sense of how you fit into the social world. Every identity makes it possible, that is, for you to speak as one “I” among some “us”: to belong to some “we.” (Appiah, 9)

In 1997, on my first assignment as a Vietnamese Court Interpreter in a Boston courthouse, I scanned the audience in the courtroom, searching for the person needing my assistance. I saw no other Asians in the courtroom, or certainly no one I recognized as Vietnamese-looking. The clerk called out the Vietnamese name and a tall black man stood up. A court officer exclaimed: “He needs a Vietnamese interpreter?” Murmurs and laughter erupted from both sides of the bar. This man did not understand English. He only spoke Vietnamese.

Ten years prior, in 1987, my father and I, along with a hundred and one others boarded a small wooden fishing boat in Can Tho, Vietnam, and headed for the South China Sea. As a child, I did not understand my parents’ reasons for leaving their home nor did I sense the danger involved. Only that this was something my family did since my father came home from roughly seven years of reeducation camp. My father was a lieutenant in the South Vietnamese navy trained at the U.S. Naval Base Guam. After the fall of Saigon in April 1975, my father was among the thousands rounded up into hard-labor prisons called reeducation camp. At the time, my mother was pregnant with me, my parents’ first child. My first memory of meeting my father was of him in shackles, strung to a line of men, all gaunt and malnourished. After his release in 1982, faced with



the chaos and retribution of the new Vietnamese government, my father was determined to leave. Despite living on the brink of poverty, my parents managed to get by as my father relentlessly pursued a way out of Vietnam. I was sent to school most days of the week and I was often absent for days as my parents took me on clandestine trips to the Vietnamese countryside during our different attempts to leave. At times, my parents and I stayed in some stranger's house or on little wooden boats that were home to many Vietnamese living on the river. At times, we walked for what seemed like days through jungle of unfamiliar sights and sounds. And, at times there were other people with us – young, old, babies, family – all traveling lightly yet holding on to everything they had. One particular escape attempt stands out in my mind. We were hiding and waiting silently on a boat in the dead of night when chaos erupted as law enforcement announced their presence. I watched as my father lowered himself into the river unnoticed and swam silently toward the opposite shore. That night, we lost a family friend. He was not a strong swimmer and drowned. Like many others, my family had been separated time and time again in numerous failed attempts at escaping from Vietnam. With each failed attempt, the result was hard labor prisons for men and criminal correctional facilities for women and children. Subsequent to numerous tries and two more years of incarceration for my father, in May of 1987, my father and I made the journey without my mother and then three-year-old twin sisters. I did not know how my parents had planned to find each other if and when we made it to a refugee camp. After four days at sea, cramped on a small wooden fishing boat, out of food and water, raided by Thai pirates and afloat on dead engines, my father and I, along with the other one hundred and one were rescued by France's *Médecins du Monde*, (Doctors of the World). *Médecins du Monde* was a group

of volunteer doctors and humanitarian activists who provided aid to boatpeople on the South China Sea in the years following the Vietnam War. We were eventually brought to a Refugee Processing Center in Palawan, Philippines. My father and I were part of “Group 103” among hundreds of other groups at the refugee camp, labeled by the number of people arriving on each boat.

1987 was also the year the U.S. Congress passed the Amerasian Homecoming Act signed by President Ronald Reagan. Under this law, Vietnamese-Amerasians could apply for immigration to the U.S. along with their close relatives. It was during this time that I met a number of Vietnamese-Amerasians at the refugees processing center in the Philippines. They were mostly young adults. As a child, I had gazed at them unashamedly. Some arrived at the refugee processing center without family and some were with their Vietnamese mothers and half-siblings. And, some arrived with parents and siblings not related to them at all. Despite the living condition at the refugee camp, often lacking food and proper healthcare, there was the certainty that we would go to America someday.

In late 1988, my father and I were admitted to the U.S. and resettled in Boston, Massachusetts. Although we had no family in the U.S., my father’s veteran status made it possible for us to gain asylum here. We became Legal Permanent Residents (LPRs) with Green Card, which allows for living and working in the U.S. permanently and eventually, we became U.S. citizens. For many Vietnamese-Amerasians, however, the path to U.S. resettlement and citizenship was anything but straightforward. Many Vietnamese-Amerasians living in the U.S. are not American citizens although they were

admitted into the U.S. because of their presumed U.S. parentage based on their physical looks and approximate year of birth.

Over the past twenty years, I have worked as a Vietnamese court interpreter for the Trial Court of Massachusetts. It was in this capacity that I encountered the plight of Vietnamese-Amerasians, learned of the deprivation and detriments they had had to face since birth and continued to be confronted with as adults. It is their stories that prompted this research.

### Background

The deportation of Vietnamese-Amerasians from the U.S. is not often examined as a residual damage of the Vietnam War. It is significant, however, to talk about the two phenomena together. Little attention has been paid to these children of war, the legacies of the U.S.' tumultuous encounter with Vietnam. Presently, as U.S. Immigration and Customs Enforcement (ICE) sought to detain and deport Vietnamese-Amerasians who are deemed to be criminals, a closer examination of this special group of immigrants is critical in order to cease the cycle of neglect.

On January 22, 2008, the government of Vietnam entered into a repatriation agreement with the government of the United States. This agreement immediately affected thousands of Vietnamese individuals in deportation proceedings with orders of removal from the U.S. Among these individuals were scores of Vietnamese-Amerasians who had become entangled with U.S. immigration authorities after their involvement with the criminal justice system. In 1995, when diplomatic ties were established between the U.S. and Vietnam, there was a provision in the repatriation agreement between the

two countries that no pre-1995 refugees were to be deported back to Vietnam. Despite this provision, ICE has deported pre-1995 and post-1995 non-citizen criminals back to Vietnam, including a number of Vietnamese-Amerasians. These individuals were sent straight from the custody of the criminal justice system into the custody of the immigration system. This immigration consequence of criminal activity presents a contradiction in U.S. immigration policy towards Vietnamese-Amerasians who were considered “persons of particular humanitarian concern to the United States” (Robear, 1989, p. 131). Although ICE claims that the deportation of Vietnamese-Amerasians who are considered criminals is simply immigration regulation, as this thesis will show, the deportation of this particular population unfolds a complicated and lasting impact of the Vietnam War.

There have been generations of Amerasians born with little American public awareness (Senate Hearing 1982: 69). Before the U.S.’s active engagement with Vietnam in 1954, there was the Korean War in 1950, and long before then there was the Spanish American War in the Philippines dating back to 1898. It was not until 1982 that the U.S. Senate considered a proposal requesting amendment to the Immigration and Nationality Act to give Amerasian children of U.S. forces some preferential treatment in immigration (Senate Hearing 1982). A letter of adoptive parents of Korean-Amerasians, presented as part of the Amerasian Immigration Proposals by Senator Carl Levin (D – Mich.), during the hearing before the Subcommittee on Immigration and Refugee Policy of the Committee on the Judiciary before the U.S. Senate on June 21, 1982, stated:

Amerasians are shunned and excluded from full participation in education, marriage and employment opportunities. Because of this rejection, an Amerasian person comes to feel that he is a freak of nature, the punishment for his parent’s disregard for social norms. He learns that he

has no right to expect the basic things in life that other purer Asians take for granted. Cruel as this is, we cannot be too quick to blame his mother's world for their insensitivity to the Amerasians without also looking at ourselves, and our own responsibility to our children born in other countries (Senate Hearing 1982: 20).

Included in the Amerasian Immigration Proposals was a hand-written letter in fragmented English by a group of Vietnamese mothers with Amerasian children. The letter was dated in Ho Chi Minh City on December 20, 1981 entitled "Application for Immigration at Refugees, an American half-breed children to asking permit entry into U.S.A." (Senate Hearing 1982: 60). Attached to this letter were photographs of Vietnamese-Amerasian children along with their mothers' names and addresses. Here is an excerpt from the letter:

All we have an American half breed children, and on theys face, theys had still abandoned now here, and also we are feeble women, we did not have physical ability for everyday labour as the VN government policy required ... in the present time, all we have been living a desperate life full of a great death and hardships, but sometimes we are have a little hope and waiting for the U.S. government assistance to save us out of the present miserable living in VN...(Senate Hearing 1982: 60).

In the years that followed the date of this letter, some Vietnamese-Amerasian children found safe passage through the Orderly Departure Program and acceptance in the Amerasian Homecoming Act. Some fled as boatpeople together with hundreds of thousands of Vietnamese, vulnerable to the elements, pirates, hunger and thirst in trying to reach the nearest refugee camp in Thailand, Malaysia, Indonesia or the Philippines. Many thought they had escaped Communist rule and statelessness in their motherland once they were admitted in the U.S. However, for Vietnamese-Amerasians who come into contact with the U.S. criminal system, whose removal is then sought by U.S.

immigration authorities, the consequence of being deported back to the country they escaped from is practically inevitable.

The types of criminal cases these individuals are often involved with were at one time not considered aggravated felonies and would not have carried the consequence of deportation. The implementation of the 1996 immigration laws, however, had a wide sweeping effect and include the category of “miscellaneous crimes” (Harvard Law Review 2002). (See Table 2, page 55, for a list of removable offenses). Once faced with final orders of removal, these individuals are under the supervision of ICE or detained by ICE until they can be deported.

Under the repatriation agreement with Vietnam in 2008, the U.S. government pays for the cost of repatriation and the Vietnamese government issues travel documents authorizing return. Logistically, however, the U.S. cannot actually carry out a removal order for several reasons. One reason is determining whether the deportee is a national of Vietnam proves to be a challenge. In the case of some Vietnamese-Amerasians, determining their nationality becomes a bureaucratic nightmare. According to the Vietnamese government, these individuals were considered American for purposes of immigration. According to the U.S. government, however, Vietnamese-Amerasians were considered refugees and therefore not immune to deportation.

Vietnamese-Amerasians faced with deportation from the U.S. are confronted with the very issues they struggled for as children: a legal identity and a nationality. This thesis will examine the following questions: How does current U.S. immigration detention and removal of Vietnamese-Amerasians reveal a significant hidden cost of the

Vietnam War? And, why, nearly half a century since the withdrawal of U.S. forces from Vietnam, do these children of American military personnel continue to be stateless?

### Literature Review

There are many books and studies on the Vietnam War. Libraries, bookstores and online sources have vast sections dedicated to the discussion of American involvement in this unpopular war. There are not many studies, however, that focus on the approximately 30,000 mixed-race children left to confront Vietnam's homogenous society when the Vietnam War ended in 1975 (Trautfield 1984). Robert S. McKelvey's *The Dust of Life: America's Children Abandoned in Vietnam* (1999) is an important resource on the study of Amerasian children in Vietnam. McKelvey's research on the mental health adjustment of Vietnamese-Amerasians is one of the very few books on oral histories of this vulnerable population. Two other interview-based books on Vietnamese-Amerasians are Steven Dubonis's *Children of the Enemy: Oral Histories of Vietnamese Amerasians and Their Mother* (1995), and Thomas A. Bass's *Vietnamerica: The War Comes Home* (1996). McKelvey, Dubonis, and Bass, all focus on the psychological health of Vietnamese-Amerasians as children and young adults (McKelvey 1999, Dubonis 1995, and Bass 1996). Their accounts clearly demonstrate the need to advocate for the protection of children of war. Likewise, Betty Jean Lifton and Thomas C. Fox's 1972 book, *The Children of Vietnam*, provides an overview on children of war with different backgrounds in Vietnam.

Vietnam has a Confucian, patriarchal family system, where a person's identity is derived more from the family group, including both the living members and ancestors, than from the individual self. Therefore, an

Amerasian child lacks not only a father, but also a father's family and ancestors. A child in Vietnam without a supporting familial group is seen as something less than a full person, which increases the Amerasians' lack of identity (Levi 1992: 470).

The Vietnamese culture, however, is not unfamiliar with the existence of mixed-race children. A territory of the French colonial empire throughout the 19<sup>th</sup> century until the decisive battle of Dien Bien Phu in 1954, Vietnam was home to thousands of Eurasians, mixed-race children of French and Vietnamese descent.

In this thesis, I argue that current U.S. immigration detention and removal of Vietnamese-Amerasians perpetuate a cycle of neglect by the American government to its foreign offspring. I rely on a number of scholarly debates for this research, in particular, those that define the concept of deportation. Specifically, Daniel Kanstroom's article: "Deportation, Social Control, and Punishment: Some Thoughts about Why Hard Laws Make Bad Cases" (Kanstroom 2000). Kanstroom's analysis on deportation provides a framework for discussing immigration detention of Vietnamese-Amerasians after criminal conviction as a form of social control.

U.S. immigration authority relies on two justifications for the detention of noncitizens: (1) preventing the risk of flight from removal proceedings; and, (2) protecting the community from harm. However, this power of immigration control blends "the difference between those who come into this country for a temporary or special purpose, and those who come to this country with the intention to settle here permanently and become a part of our community" (Boudin 1951: 269). The 1996 deportation laws, as interpreted by ICE, subject Vietnamese-Amerasians who have lived most of their lives in the U.S. to mandatory detention and removal.



Kanstroom argues that deportation of lawful permanent residents to justify crime control and maintain the credibility of U.S. immigration laws raise both conceptual and doctrinal problems (Kanstroom 2000). Drawing on models developed by Louis Boudin, “The Settler Within our Gates” (Boudin 1951) and Siegfried Hess, “The Constitutional Status of the Lawfully Admitted Permanent Resident Alien: The Inherent Limits of the Power to Expel” (Hess 1959), Kanstroom explores two different types of deportation laws based on the “border control” model and the “social control” model. Specifically, the “social control” model suggests that deportation is used as a way to control individual behavior, thus, a form of punishment (Kanstroom 2000). Whereas, the “border control” model is more contractual and uses deportation as a consequence of a violation of conditions imposed at the time of entry into the U.S. In particular, his focus on the convergence of deportation and crime control calls for a “rethinking of the foundational principles underlying the constitutional status of deportation” (Kanstroom 2000: 1907). The assumption that a criminal defendant has basic constitutional rights when facing punishment questions the legitimacy of deportation proceedings. Kanstroom argues that if deportation of a lawful permanent resident functions as a way to control movement of a person based on criminal conduct and to deter others, then deportation is a form of punishment (Kanstroom 2000). For many Vietnamese-Americans, the choices made in contact with the criminal system lead to additional detention by immigration and eventual deportation, a consequence they never bargained for.

On statelessness and the politics of immigration, *Children without a state: A global human rights challenge*, edited by Jacqueline Bhabha (2014), provides a comprehensive investigation on stateless children in the twenty-first century. I draw

references from the different essays on immigration restrictions and marginalization of children (Bhabha; Di Martino; Kerber; and Vandenabeele 2014). The particular analyses that helped drive this thesis are discussions on legal identity, birth registration, birthright citizenship and effective statelessness.

### Post-Arrival Adaptation

For a brief review on refugees and post-arrival adjustments in the U.S., I rely on David W. Haines's thoroughly researched book *Safe Haven? A History of Refugees in America* (Haines 2010). Drawing on his personal experience with U.S. refugee resettlement program, Haines examines the complex American experience of refugee denial and acceptance. Tracing historical analysis to the largest U.S settlement of refugees after the Vietnam War, Haines takes us to the relocation of these refugees in the U.S. Their circumstances and post-arrival adaptation are central to his evaluation of U.S. commitment to refugees.

Issues of race, religion, and nationality also serve as markers for Haines to discuss the sense of maintained cultural identity. Haines' comparison of socio-historical data on refugees among the regional Southeast Asian groups is specific. These observations pose the question of belonging and how refugees fit in with the American sense of race and ethnicity? Addressing the problems faced by refugees as they try to fulfill American expectations, Haines' findings, according to public opinion data indicate a general ambivalence that Americans have about refugees and where they belong. Of significance is his discussion on the moral commitment to those placed in harm's way because of American involvement in Vietnam.

Haines focuses on the distinctive Vietnamese refugee experience. Of particular relevance is his analysis of the Vietnamese case on marriage and the family as refugee networks and adaptation. Haines's analysis supports my findings that the lack of family and community support is a hindrance on self-sufficiency for Vietnamese-Americans in the U.S. Haines argues that refugee adaptation is affected as well as conditioned by household dynamics and resources. Being a refugee in the U.S. comes with expectations and requirements. Of focus are the goals of English language competence and economic self-sufficiency. Again, this correlation between language competence and its effect on economic self-sufficiency puts Vietnamese-Americans at a disadvantage.

Further, the notion that refugee resettlement will become permanent settlement means that refugees are expected to adjust. Haines's observation on the ebb and flow commitment to refugees by the U.S. provides a context and foundation for my discussion on the Vietnamese-Americans' experience in the U.S.

### Birthright citizenship

In this thesis, I examine the correlation between birthright citizenship and statelessness by establishing the root of displacement of Vietnamese-Americans since birth in order to show that Vietnamese-Americans should have a claim to birthright citizenship through their American fathers. Specifically, the thesis draws on Kristin Collins's analysis in her article: "Illegitimate borders: jus sanguinis citizenship and the legal construction of family, race and nation" (2014). Collins contrasts the United States' response and treatment of children born to European mothers and American soldiers during World War II to Asian mothers and American soldiers during the Korean War and

the Vietnam War (Collins 2014). Her analysis of the Nationality Act and the War Brides Act indicates “the limitations on father-child *jus sanguinis* citizenship for non-marital children continued to be used to exclude nonwhite children from citizenship” (Collins 2014: 2158). The War Brides Act of 1945 waived certain visa requirements for the admission of European wives and children of American citizens, however, these rights were not extended to include Asian spouses until 1953 (Thornton 1992). Amerasian children were excluded from citizenship because of the restrictive immigration policy towards Asian war brides. By 1967, interracial marriage was no longer illegal in the U.S., but the marriage requirement for *jus sanguinis* citizenship remained. Therefore, out-of-wedlock children born to relationships between American soldiers and Vietnamese women during the Vietnam War were excluded from American citizenship by marriage and by right of blood.

Demonstrative on the issue of *jus sanguinis* citizenship is Linda Kerber’s essay on “Birthright Citizenship: The Vulnerability and Resilience of an American Constitutional Principle” (2011). Kerber has researched and written extensively on U.S. legal history and women’s history. She is the author of *No Constitutional Right to be Ladies: Women and the Obligations of Citizenship* (1998), which was awarded best book in U.S. legal history by the American Historical Society (Bhabha et al 2011). Kerber’s paper “The Stateless as Citizen’s Other: A View from the United States,” provides the backdrop for this thesis. Specifically, her analysis on *jus sanguinis* citizenship pinpoints how men and women are distinctly situated under the U.S. constitution when it comes to their children’s citizenship (Kerber 2007).

“In the U.S., non-marital children born overseas to American citizen fathers are not citizens until the father legitimizes them” (Kerber, 2007). Under U.S. law, if the birth parents had been married and the American father fulfilled the requirement of years lived in the U.S. then the child born abroad would have been considered an American citizen. Also, if the parents were not married but the mother was an American citizen then the child is automatically an American citizen. Historically, however, the majority of American forces in foreign wars were male citizens. U.S. Supreme Court Justice Ruth Bader Ginsburg commented during oral argument on the Vietnamese-Amerasian case Nguyen v. INS: “I expect very few of these are the children of female service personnel...” (Kerber 2007: 6). Further, with very few exceptions, the majority of Vietnamese-Amerasians were non-marital children of non-American mothers. Thus, these mixed-race children were not considered U.S. citizens since birth.

In order to secure an American citizenship for the foreign-born child, an American father must formally establish his paternity (Kerber 2011). Kerber examines this gender-based practice for determining *jus sanguinis* citizenship in the case of Nguyen v. INS (2001). This particular case touches upon the key issues in this thesis: (1) *jus sanguinis* citizenship of Amerasians, (2) immigration consequences for criminal activity, and (3) effective statelessness. Tuan Anh Nguyen is an Amerasian born in 1969 to a non-marital relationship between Joseph Boulais, an American citizen and a Vietnamese woman. In 1975, at the end of the Vietnam War, Nguyen came to the U.S. with his father. In 1992, Nguyen was convicted of a felony and served an eight-year sentence. Immigration and Naturalization Service (INS) then placed Nguyen in immigration detention after his criminal sentence pending a final removal order. Had his parents been

married or his father formally established paternity, Nguyen would have been recognized as an American citizen and immune to deportation. However, Nguyen was considered a legal permanent resident for the purpose of deportation as a result of criminal activity. Nguyen's circumstances clearly demonstrate the plight of Vietnamese Amerasians facing deportation and effective statelessness in the U.S.

#### The Illegal Immigration Reform and Immigrant Responsibility Act

Implemented in 1996, the The Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) had an immense impact on the status of Vietnamese-Amerasians in the U.S., who were considered Legal Permanent Residents (LPRs). Historically, LPRs with criminal convictions were at risk for deportation, however, the 1996 law makes deportation a mandatory consequence for a long list of crimes. Nevertheless, the justification that LPRs are not being punished but simply regulated is contradictory. Signed by President Bill Clinton on September 30, 1996, the "IIRIRA represented a massive overhaul of United States immigration law, and radically altered the landscape for long-term Legal Permanent Residents (LPRs) with criminal convictions. Prior to the passage of IIRIRA, a LPR of the United States in deportation proceedings was entitled to a hearing regarding rehabilitation, family ties, length of residency, work history, community service, and other equities" (Lyons 2005: 232).

The drafting of these new immigration provisions was a response to national security concerns following the 1995 terrorist attack in Oklahoma City. An American citizen had carried out this attack. Nevertheless, Congress enacted the 1996 deportation laws to appease public fear of alien terrorists. The IIRIRA expands the list of crimes of

moral turpitude and subject lawful permanent residents with certain criminal convictions to mandatory detention until repatriation (Harvard Law Review 2002: 1920).

## Methods

I took a mixed-method approach in collecting data for my research. Specifically, I took a qualitative approach through the storytelling of participants' lived experiences to identify a pattern of legal displacement. My primary data came from interviews of Vietnamese-Amerasians living in the greater Boston area with experiences involving both the immigration system and the justice system. Participant interview is chosen as a research method because a majority of Vietnamese-Amerasians is illiterate in both Vietnamese and English due to the lack of a basic education. It is significant to elicit the participants' stories in their own words. I developed a questionnaire which consisted of ten specific questions about the circumstances that brought these particular individuals to the U.S., their childhood, their education in Vietnam and the U.S., and their understanding of their U.S. immigration status (See Appendix for questionnaire). Although the questions were drafted in English, my fluency in Vietnamese and my cultural experiences in both Vietnam and the U.S. allowed me to capture the nuances of the responses. In addition to participant interviews, I also relied on a number of secondary sources on deportation and statelessness.

For document analysis, I examined two relevant legal documents:

(1) The Trial Court of Massachusetts Tender of Plea or Admission and Waiver of Rights Form. This particular form is used in plea-bargaining when significant constitutional rights are waived. It is used by defendants, whether citizens or noncitizens, in the criminal justice system to tender a plea. The section on the Alien Rights Waiver

used by the Massachusetts Trial Court demonstrates the involvement of U.S. Immigration Authority in the criminal justice system. It is relevant to the discussion of disproportionate treatment post-conviction.

(2) The 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. This agreement indicates the terms and logistics of removing Vietnamese residents from the U.S.

In addition, I made a concerted effort to investigate how other foreign powers addressed the issue of abandoned children of their military personnel. Specifically, I examined the measures taken by the French government as they withdrew from Indochina. France's provisions for the Eurasian children born during its occupation of Vietnam give a sharp contrast to the U.S.'s provisions for Vietnamese-Americans after the Vietnam War.

## Recruitment

As part of this research I interviewed a number of Vietnamese-Americans who are involved with the criminal justice system and U.S. immigration. The timeframe for this recruitment took place during April through June of 2019. Recognizing that the courthouse setting would allow me to locate the population I want to interview, I started out at the Dorchester Courthouse in Boston, Massachusetts where a majority of Vietnamese cases take place daily. Identifying an individual as Amerasian, however, is not always self-evident. Although I have some familiarity with Vietnamese-Americans from my refugee camp experience at two different refugee processing centers in the



Philippines, coupled with my current professional experience as a court interpreter in Massachusetts, I was cautious and tactful during recruitment.

I have a specific population profile of Vietnamese-Amerasians with past and/or pending involvement with the criminal justice system. Of particular interest for this study are Vietnamese-Amerasians who had chosen to resolve their criminal charges by plea-bargaining. This specific detail allows me to demonstrate the false belief that if an individual is Amerasian then there is automatic protection from removal by U.S. immigration authority. Many believe that as Vietnamese-Amerasians they would not be deported because they have entered the U.S. under the Amerasian Homecoming Act and the Orderly Departure Program. Further, addressing this unquestioned belief will demonstrate that if a Vietnamese-Amerasian had known and understood the collateral consequences of being detained or removed by U.S. Immigration, the individual may have chosen to resolve the criminal matter differently. Removal from the U.S. as a collateral consequence of criminal activity presents a contradiction in U.S. immigration policy towards Vietnamese-Amerasians who were considered individuals of humanitarian concern to the U.S.

Because many Vietnamese-Amerasians are illiterate in both Vietnamese and English due to the lack of basic education, I approached participants with an oral script and asked for verbal consent to an interview. I was met with openness and an urgency to talk, or rather, to be heard. Some of the interviews happened spontaneously outside of the courthouse. Specifically, an interview with two different Amerasian individuals, a black Vietnamese-Amerasian and a white Vietnamese-Amerasian took place in Quincy in the courthouse parking lot. I was aware that there was not going to be follow-up interviews

because most of the respondents did not have telephone numbers or a steady address for me to maintain contact. Two of the respondents gave me telephone numbers of people they were staying with sporadically, but in order to protect their privacy and confidentiality I properly disposed of those records. My cultural knowledge and fluency in Vietnamese allowed me to explain the purpose of the interview and to obtain consent from the participants with sensitivity. My profession as a Vietnamese court interpreter as well as my training in mediation also allowed me to conduct the interviews in an efficient and respectful manner.

### Limitations

This small-scale study presents interviews of a few Vietnamese-Amerasian respondents living in the greater Boston area with cases involving both the criminal justice system and U.S. immigration. Although I do not discuss the details and nature of the crimes leading to the respondents' immigration detention and deportation, I argue that removal to Vietnam should not be an option for this vulnerable population. In particular, the Vietnamese-Amerasian respondents in this study were involved in criminal cases that resulted in minimal committed jail time.

Some constraints that may have an impact on my research topic are the lack of in-depth discussion of *jus sanguinis* citizenship and data on birth records for Vietnamese-Amerasians who were legitimized by their American citizen fathers. I addressed a specific population, namely, noncitizen Vietnamese-Amerasians, within the criminal and immigration framework of the U.S. I also identified the analogous deportation issues faced by non-citizen criminal Cambodians and Vietnamese-Amerasians. However, I did not attempt to engage the political rationale, which had an impact on the removal of

Cambodian nationals and is distinguishable from the Vietnamese-Amerasian experience. Vietnamese-Amerasians are a unique group, with specific immigration requirements dictated by the U.S. government upon their entry and acceptance.

In addition, this study did not have Vietnamese-Amerasian women participants. This does not mean that Vietnamese-Amerasian women are not involved with the U.S. justice system. It only means that the recruitment for this study took place where cases involving Vietnamese-Amerasian women did not result in criminal conviction or trigger a removal order by immigration. Despite these limitations, this study is demonstrative of the current statelessness of Vietnamese-Amerasians living in the U.S. and facing deportation to Vietnam.

## Overview

Chapter II of the thesis gives a description of the events that shaped the Vietnamese-Amerasian identity and Vietnamese and American government's responses to the mixed-race children of the Vietnam War. This chapter begins with the fall of the American-supported South Vietnamese government and focuses on the rejection and marginalization of Vietnamese-Amerasian children in Vietnam. It discusses the circumstances of their departure from Vietnam through the Orderly Departure Program (ODP) and Amerasian Homecoming Act. Further, it examines the inadequate preparation for life in America for Vietnamese-Amerasians during their transit at the Philippines Refugee Processing Center. It also takes a look at measures provided by the French-Vietnamese Convention in Nationality in 1955 on question of nationality faced by Eurasian children when France left Indochina.

Chapter III examines the collateral consequences and disproportionate post-conviction treatment towards U.S. Lawful Permanent Residents, specifically, Vietnamese- Amerasians. I discuss the way in which defendants are notified of the immigration consequences of tendering a guilty plea. Central to the discussion is the Vietnamese-Amerasian defendant's ability to fully understand the potential immigration risk after the disposition of the criminal case. The responses I received from interviews with different Vietnamese-Amerasians indicate the belief that Vietnamese-Amerasians living in the U.S. are protected and immune from deportation. This mistaken belief led some Vietnamese-Amerasians to resolve their criminal cases by admitting guilt instead of challenging the charges or exploring other options that may protect them from deportation. Once a criminal conviction triggers ICE detention and removal, these individuals become deportable, excluded from admission into the U.S. and denied naturalization. I also compared the Cambodian experience to demonstrate how a dormant removal order can shift into an active process without notice to individuals determined deportable by ICE. Vietnamese-Amerasians under ICE supervision experience statelessness within the border of the U.S. because they are no longer considered Lawful Permanent Residents. For those deported back to Vietnam, where they were not wanted as mixed-race children, they stand out as painful reminders of American involvement in the Vietnam War.

## Chapter II

### Dust of Life

Meanwhile, the last Americans returned home ashamed that amid the shambles of the evacuation, so many of their allies had been abandoned to face communist retribution. Frank Snepp told an August 1975 audience at Washington's Foreign Service Institute, "We left behind on the tarmac or outside the embassy walls four to five hundred of the Saigon special police force whom we'd trained, ... about twelve hundred members of Saigon's central intelligence organization, ... and thirty cadres of our Phoenix counterterror program." He highlighted the comprehensive failure to destroy files containing tens of thousands of names of Vietnamese who had served the Americans or the regime, and estimated that only about one-third of the most vulnerable had escaped. Snepp's audience, drawn from the political establishment, listened in stunned silence (Hastings 2018: 727).

As the last helicopter took off from the rooftop of the U.S. Embassy in Saigon, Vietnam in April of 1975, among the most vulnerable left behind were the mixed-children of American servicemen with Vietnamese women. Born during the decades of U.S. involvement in the Vietnam, these children of the war are marked by adverse circumstances, "including the fact that they lead a life of poverty, are forced into a life on the streets, are subjected to persecution because of their American fathers, are denied access to school and healthcare, experience victimization because of anti-American sentiments..." (Bemak & Chung 1998: 453). They are known as Amerasians, a term attributed to the American author Pearl S. Buck in her 1930 novel *East Wind; West Wind* (Levi 1992: 460). The term Amerasian is generally used to refer to those born in Asia of

Asian mothers and American fathers. In Vietnam, Amerasians are labeled as *Bụi Đời* (Dust of Life) and *Con Lai* (half-breed). Their Vietnamese-Amerasian identity is perpetually defined by Vietnamese and American attitudes toward them.

In 1975, hundreds of thousands Vietnamese fled under panic conditions as the American supported government of South Vietnam fell. This event was captured in a photograph of people desperate to get on the last helicopter out of Saigon. For the world, this iconic image has been reproduced on the different stage sets of the Broadway musical *Miss Saigon*. The musical also introduced the term “*Dust of Life*” through a song of the same title. *Miss Saigon* is a love story of a young Vietnamese bargirl and an American serviceman based on Puccini’s opera *Madame Butterfly*, which tells of a relationship between a Japanese woman and an American naval officer (Kerber 2007). The untold focus in both narratives is the plight of the mixed-race children born from these encounters.

Figure 1. Last Helicopter out of Saigon

Photograph: Hugh Van Es, 1975.



Figure 2. *Miss Saigon* Helicopter scene

Source: Touring production of *Miss Saigon*



Vietnamese-Amerasians, the mixed-race children of Vietnamese women and American servicemen, are referred to as *Bụi Đời* (Dust of Life) and *Con Lai* (half-breed). The Vietnamese term *Bụi Đời* is used to refer to anyone who lives a wandering life on the street. Often, it applies to abandoned children left to move through life like dust.

The U.S. government's first major effort in acknowledging its obligation to these children was not established until 1982 with the Orderly Departure Program (ODP) and in 1987 with the Amerasian Homecoming Act. There was no mention of these unfortunate children in the flurry of media attention after the fall of Saigon in 1975. The world heard of the frantic evacuation of Americans and saw images of desperate Vietnamese boatpeople fleeing Vietnam, while the fate of these mixed-race children was of no significance. This study aims to demonstrate the arbitrary and complicated relationship that the U.S. have toward its foreign offspring. Today, as adults, a number of Vietnamese-Amerasians living in the U.S. are once again caught between the politics of their motherland and their fatherland: from disregard to acceptance then denial.

While the focus of this thesis is on American offspring of the Vietnam War currently living in the U.S., it calls attention to the magnitude of the Amerasian problem. Since World War II, the U.S. had had a significant military presence in Asia, specifically, in Vietnam, South Korea, and the Philippines.

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Table 1.

U.S. troops presence by country from 1960 - 1970

Country	Vietnam	South Korea	Philippines (Bases)
1960	794	55,864	A steady level of 15,000 per year
1961	959	57,694	
1962	8498	60,947	
1963	15,620	56,910	
1964	17,280	62,956	
1965	129,611	58,636	
1966	317,007	47,076	
1967	451,752	55,057	
1968	537,377	62,263	
1969	510,054	66,531	
1970	390,278	52,197	

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*Source: The Heritage Center for Data Analysis*

During this time, the U.S. military facilitated U.S. servicemen's relationship with Asian women in these countries. Brothels were set up within the perimeter of several U.S. base camps in Vietnam under the direct control of military commanders (Levi 1992: 467).

“as the American presence in Vietnam multiplied, the unspoken military theory of women's bodies not only as a reward of war but as a necessary provision like soda pop and ice cream to keep our boys healthy and happy, turned into routine practice” (Brownmiller 1975: 96).

Thousands of mixed-race children were born during the U.S.'s military presence in the Philippines during the Spanish American War, the Korean War, and the Vietnam War. These children are dubbed as “throw-away” children in the Philippines; *twi ki* (half breed) in Korea; and as *Bụi Đời* (Dust of Life) in Vietnam (Levi 1992: 460).



This legacy of neglect is by no means restricted to the U.S. alone. Children of other foreign powers' military personnel are also confronted with abandonment. When foreign troops withdraw, it is often the case that the father returned to his country without his foreign offspring. In addition to the confusion of the withdrawal of forces, bureaucracy and military regulations can make it difficult for foreign soldiers to bring their mixed-race children and the children's mothers to their home country (Levi 1992: 467 – 468). Some Vietnamese-Amerasians were born from long-term relationship between American servicemen and Vietnamese women (Levi 1992). Certainly, some U.S. servicemen left without knowing that they had children in Vietnam. The fact remained that tens of thousands of Vietnamese-Amerasian children were left in Vietnam after the withdrawal of U.S. forces.

What steps should be taken to mitigate the predicament faced by foreign offspring of U.S. military personnel? Especially instructive were measures taken by French government as they withdrew from Indochina (Cambodia, Laos and Vietnam). As French forces withdrew from Vietnam by 1954, Eurasian children called "*métis*" (mixed-race), were evacuated to France and provided French citizenship rights whether or not recognized by their French fathers (Grover 1995). However, the French child protection society's effort in bringing "*métis*" children to France was not without criticism. Although "*métis*" children were provided French citizenship, the French government "made no provision for Vietnamese parents to accompany their Eurasian child to France, so that election of resettlement in France meant a long and often permanent separation of a child from its parents" (Grover 1995: 252). Other critics found that "metis removal were motivated not only by colonial benevolence but also by colonial self-interest" (Firpo

2016: 5). Nevertheless, “*métis*” children were recognized as French nationals and afforded the autonomy to elect Vietnamese nationality pass the age of eighteen as provided in the French – Vietnamese Convention of Nationality of 1955:

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Table 2.

Source: The French – Vietnamese Convention of Nationality of 1955, Article 6.

<p>Persons more than eighteen years of age as of the effective date hereof and of legitimate or illegitimate descent shall have French nationality with the right to elect Vietnamese nationality if:</p> <ol style="list-style-type: none"><li>1. born of a native Vietnamese father and a French mother;</li><li>2. born of a French father and a Vietnamese mother;</li><li>3. born of parents both issue either of a native Vietnamese father and a French mother or of a French father and a Vietnamese mother;</li><li>4. born in Vietnam of an unknown father and a native Vietnamese mother, who are presumed to be of French extraction or nationality and who are recognized by the tribunals as being of French nationality.</li></ol>
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The displacement of colonial mixed-race children such as the “*métis*” children of French Indochina, although distinguishable from the plight of Vietnamese-Amerasian children of the Vietnam War, provides a model for citizenship rights and support for the children in their country of resettlement (Trautfield 1985: 69).

The media's portrayal of foreign-born Amerasians also alludes to the responsibility American government should take for these children. The popular television show M\*A\*S\*H (Mobile Army Surgical Hospital), based on a novel by Richard Hooker, about a team of doctors and staff stationed in South Korea during the Korean War, did an episode on this matter (CBS 1979). In episode 184, "Yessir, That's Our Baby," which aired on December 31, 1979, a depicted Korean official commented:

Americans are not the only ones fathering such children but ... they are the only ones who ignore them. France, Great Britain, the Netherlands ... acknowledge responsibility for the unfortunate babies of their military. They will support and help them, offer them citizenship. But the United States, where all men are created equal refuses to do this. You reject the children of your own people (Trautfield 1984: 59 note 23).

Foreign children of American fathers are not citizens until their fathers legitimize them. Most Vietnamese-Amerasians came to the U.S. as adults, so in order for them to become U.S. citizens they themselves must apply for naturalization. There are several basic requirements that make the U.S. naturalization process difficult for many Vietnamese-Amerasians, such as the requirement of basic knowledge of U.S. government and the ability to read, write, and speak basic English ([www.uscis.gov/sites](http://www.uscis.gov/sites) 2019). The lack of a basic education from Vietnam and in the U.S. prevents many Vietnamese-Amerasians to successfully comply with U.S. naturalization requirements. Therefore, many Vietnamese-Amerasians lived and worked in the U.S. for many years without ever becoming American citizens.

### Departure

"The care and welfare of these unfortunate children...has never been and is not now considered an area of government responsibility" (Lamb 2009, ¶ 2). This statement

made by the U.S. Department of Defense in 1970 is just as true today as it was made then. There is no verifiable record of how many Vietnamese-Amerasians were born during U.S. active involvement with Vietnam from 1954 until the withdrawal of U.S. forces in 1973. Many of these mixed-race children were abandoned and even discarded. The stigma of having mixed-race children deterred many Vietnamese mothers from registering the birth of their Amerasian children. These children were in essence, stateless since birth. In addition, many Vietnamese mothers of Amerasian children do not keep any information or link to the American fathers of their children for fear of persecution from the new Vietnamese regime. In April of 1975, as North Vietnamese troops advanced into a chaotic South Vietnam, President Gerald Ford planned for the evacuation of some 2,000 South Vietnamese children and orphans, among them were a number of Amerasians. As desperate Vietnamese pushed and shoved their kids into Westerners' hands and hoped for a better future for their children, Operation Babylift took off with the fatal crash of its first official flight (*Daughter of Danang* 2002).

"I remember that flight, the one that crashed," says Nguyen Thi Phuong Thuy. "I was about 6, and I'd been playing in the trash near the orphanage. I remember holding the nun's hand and crying when we heard. It was like we were all born under a dark star" (Lamb 2009, ¶ 3).

U.S.'s more successful efforts in bringing Vietnamese-Amerasians to their fatherland began with the passage of the Orderly Departure Program (ODP) in 1982 and Amerasian Homecoming Act signed by President Ronald Reagan in 1987. By that time, many Vietnamese-Amerasians were no longer children. A majority of them had endured a life of poverty, discrimination, and been deprived of a basic education in Vietnam. Although immigration programs like ODP were established to provide safe passage for

Vietnamese Amerasians to leave Vietnam, their transition to life in the U.S. was full of impediment.

### Orderly Departure Program

The Orderly Departure Program (ODP) was established in 1979 by the United Nation High Commissioners for Refugees and the Vietnamese government to provide a legal and safer means for people to leave Vietnam. There was a specific selection process determined by the U.S. as the receiving country and Vietnam as the exiting country. According to the United States General Accounting Office (GAO), Vietnamese-Amerasians were listed under Category III: “Other persons closely associated or identified with the United States’ presence in Vietnam before 1975, including children of American citizens in Vietnam (Amerasians) and their immediate family members” (GAO 1990). A majority of Vietnamese-Amerasians who left Vietnam with their qualifying family members under ODP also became eligible for refugee benefits with the enactment of the Amerasian Homecoming Act in December of 1987.

### Amerasian Homecoming Act

“Amerasian children from Vietnam...are likely to have fragmented family relations in Vietnam and subsequently in the United States. A special program was eventually instituted under the Amerasian Homecoming Act...that provided support because of their special connection to the United States...to create a special flight path for those least able to flee on their own” (Haines 2010: 115-116).

The story of the Amerasian Homecoming Act began with a photograph taken by photojournalist Audrey Tiernan in October of 1985. While on assignment in Ho Chi Minh City, Vietnam, Tiernan “felt a tug on her pant leg. “I thought it was a dog or a cat,”

she recalled. "I looked down and there was Minh. It broke my heart." Minh, with long lashes, hazel eyes, a few freckles and a handsome Caucasian face, moved like a crab on all four limbs, likely the result of polio" (Lamb 2009, ¶ 13).

Figure 3.

Le Van Minh



Source: <https://www.smithsonianmag.com/travel/children-of-the-vietnam-war>.

This photograph was printed in the newspaper and four students from Huntington High School in Long Island, New York went to their Congressman, Robert Mrazek, with a petition to bring Minh to the U.S. for medical attention. Mrazek was able to get a U.S. visa for Minh after reaching out to a senior Vietnamese official and his colleagues in the House of Representatives (Levi 1992: 31 note 184). In May of 1987, Mrazek went to Vietnam to bring Minh to the U.S. He recalled: "It just hit me. We weren't talking about the one boy. There were lots of these kids, and they were painful reminders to the Vietnamese of the war and all it cost them" (Lamb 2009, ¶ 17).

Figure 4.

Congressman, Robert Mrazek and Le Van Minh's arrival in New York – May 1987.



Source: <https://www.apnews.com>

Mrazek later authored the Amerasian Homecoming Act, bringing approximately nineteen thousand children of American military personnel to the U.S. ([robertjmrazek.com](http://robertjmrazek.com)).

The requirements for Vietnamese-Amerasians admission to the U.S. were as outlined in Table 3:

Table 3.

Source: U.S. Embassy and Consulate in Vietnam

In order to qualify for immigration under the Amerasian Homecoming Act, applicants must have been born in Vietnam after January 1, 1962 and before January 1, 1976 and have been fathered by a U.S. Citizen. Individuals who believe they meet this definition and who wish to be considered for immigration into the United States should submit the following items to the Consulate, including an English translation of each document.

1. A typed letter to our office stating the full name of the prospective Amerasians; the date and place of birth of the prospective Amerasian; the permanent address and contact information, including phone number of the prospective Amerasian; and a detailed explanation explaining why the applicant believes he/she is an Amerasian (Please also include copies of any evidence, if applicable).
2. Copies of birth certificate and ID card
3. A visa photo (5cm x 5cm) taken within the last six months.

The Amerasian Homecoming Act's requirements for proof such as birth certificates and identification cards presented a challenge for Vietnamese-Amerasians. In *Children of the Enemy: Oral Histories of Vietnamese Amerasians and Their Mother*, Steven Dubonis wrote:

In April of 1975, as the communists marched southward, women with American ties frantically disposed of evidence that might link them to the United States. Photos, documents, U.S. military base IDs, all went into bonfires. A minority severed their most tangible connection to the enemy, abandoning their own Amerasian children...Many mothers hid their kids. Others cut off or dyed their children's hair and rubbed them with dirt to darken white skin in an attempt to disguise their parentage (Dubonis 1995: 9).

Many births of Vietnamese-Amerasians were not registered because Vietnamese women with mixed-race children feared persecution by the Vietnamese government. In addition, many Vietnamese-Amerasians did not have information on their American fathers. This lack of documentation resulted in physical examination for American features as part of the immigration selection process. In order to establish an individual's U.S. parentage, the "Amerasian's face is his passport." (Levi 1992: 33). A respondent,



whose father was African-American, recounted his interview at the ODP office in Ho Chi Minh city in 1992:

They interviewed me. They took one look at me, and said: “okay, you get to go to America” (Lowell, MA, April 2019).

Another respondent describes his interaction with an officer during his interview in Vietnam:

This northern Vietnamese officer told me: “You motherfucker, even your father I could kick out of this country, you are nothing” (Boston, MA, April 2019).

Using physical features to establish whether an individual was Amerasian was problematic, especially, when the American father was not of Caucasian or African descent. The use of this method in determining whether an individual was Vietnamese-Amerasian also gave rise to instances of fraud whereby Vietnamese families searching for a way out of Vietnam forged fake documents and claimed to be related to Vietnamese- Amerasian individuals. Some Vietnamese-Amerasians even “sold themselves as a “ticket” to the U.S.” (Levi 1992: 33).

This issue of fraud was brought up at the hearing before the Subcommittee on Immigration and Refugee Policy on June 21, 1982. Then Commissioner of Immigration and Naturalization Services, Alan Nelson had stated:

...with respect to the State Department’s reservations concerning the questionable reliability of many of the foreign documents...I must say that any administrative problems caused by the possibility of fraud are far outweighed by this country’s moral obligation to Amerasian children. Furthermore, the possibility of fraud exists in many of the application and petitions adjudicated by the service (Senate Hearing 1982: 39).

As the Amerasian Homecoming Act took effect, Vietnamese-Amerasian children became known as “*con vàng*” in Vietnam, literally translated into English as “gold children” (Valverde 1992: 153). This bewildering cycle of acceptance and denial that Vietnamese-

Amerasians must confront with both in Vietnam and the U.S is exemplified in a respondent's answers to question 3 and 4 of this study:

HP: How and when did you come to the U.S.?

Respondent: "It took a long time to do the paperwork, I started in 1988 but didn't go to the Philippines until almost five years later, in 1992. I took ten people with me."

HP: So, you were able to come to the U.S. with your family?

Respondent: "No, I was raised by so many different people. I was told that I was only a few hours old when my mother abandoned me at the hospital. Other people raised me. I was always beat up and bullied in Vietnam. I didn't go to school. I had to work so I don't know how to read. Each year I was given two sets of clothes."

HP: As a child, what did you do for work?

Respondent: "I looked after the cows and ducks, and people gave me food."

HP: Did you leave Vietnam with the people who raised you?

Respondent: "The woman I called my mother was like a foster mother in Vietnam. I joined documents with ten other people. They now live in California. Once we got to America, we each went our own way" (Boston, MA, May 2019).

## In transit

Those who were accepted for resettlement in the U.S. must first go to the Philippines Refugees Processing Center (PRPC). This requirement applies to refugees and immigrants alike. Whether an individual was a boatperson or someone who had gone through the Orderly Departure Program, PRPC was the transit center before America. Located on the Bataan peninsula and separated from the capital city of Manila by the Manila Bay, PRPC was a large, sprawling facility. It had rows of tight living quarters to accommodate tens of thousands of refugees. In 1988, my father and I were accepted for resettlement in the U.S. and transferred from our first refugee camp on the island of Palawan to the transit center in Bataan. We stayed at the PRPC for another six months for cultural and education orientation in order to prepare for life in America. For me, there was noticeably many more Vietnamese-Amerasians at PRPC than in Palawan. People in transit at the PRPC were those already accepted for resettlement in a host country, such as the U.S. During this time, in 1988, the number of Vietnamese as well as Vietnamese-Amerasians leaving Vietnam through ODP and Amerasian Homecoming Act increased greatly. Once, Vietnamese-Amerasians and their qualifying family members had been interviewed and fulfilled their requirements for leaving Vietnam, they came to the Philippines.

During the six months at the PRPC in 1988, I was a student at the Preparation for American Secondary School (PASS) program for children up to 17 years of age. The PASS program focused on English as a Second Language (ESL) and cultural orientation in preparation for resettlement in the U.S.

Figure 5.

The author's certificate from the PASS Program, Philippines.



At PASS, I learned to speak English alongside fellow Vietnamese, Chinese-Vietnamese, Cambodian and Laotian refugee classmates of different age groups. However, I did not have Vietnamese-Amerasian classmates. Instead, a majority of Vietnamese-Amerasians went to cultural orientation and job training like other adults. They were too old to be part of PASS. For those Vietnamese-Amerasians who were shy of seventeen years of age, not having basic schooling in Vietnam contributed to the difficulty of learning to read and write English. Some studies pointed out that sending Vietnamese-Amerasians to the PRPC for six months or more of orientation before America was problematic because it delayed their arrival and the chance for an education in the U.S. (Valverde 1992). Thus, most Vietnamese-Amerasians arrived without

adequate pre-orientation to life in America. Nevertheless, these Vietnamese mixed-race offspring of U.S. servicemen were given the chance to go to their fatherland.

In contrast, Filipino-Amerasians, whose number far exceeds other groups of Amerasians, were not given preferential treatment in immigration (Montes 1995: 1624-1627). Located just north of the PRPC in Bataan, Philippines was Subic Bay Naval Base and a little further north was Clark Air Base, where the U.S. had a steady level of 15,000 troops per year providing logistical support to U.S. forces since World War II (Kane 2004: 5). Further, Subic Bay Naval Base and Clark Air Base were critical links for U.S. forces during the Korean War and the Vietnam War. Near both bases were the cities of Olongapo and Angeles, two major rest and recreation centers catered to U.S. servicemen. The result was the birth of thousands of Filipino-Amerasians, estimated up to 50,000 nationwide (Montes 1995: 1624).

The majority of these children have been abandoned by their fathers. Most continue to live with their mothers or their mother's extended families in extreme poverty. Some are orphans. Many hope to emigrate to the United States in search of their fathers and a better life (Montes 1995: 1624).

In 1993, *Acebedo v. United States*, a class action lawsuit against the U.S. Navy was filed on behalf of Filipino-Amerasians and their mothers from Olongapo for their financial support, however, it was unsuccessful due to procedural technicality (Montes 1995: 1625).

## Displacement and Adaptation

After leaving the PRPC, Vietnamese-Amerasians resettled in different cluster sites across the U.S. Some of the respondents in this study went to a reception site in Utica, New York where they received three months of training on English as a Second Language (ESL), cultural orientation and some vocational training with opportunities for job placements. However, like most Vietnamese refugees, they moved away from their initial settlement to places where there was a large Vietnamese community. In Massachusetts, the Vietnamese population congregates around three major cities: Boston, Worcester and Springfield. The Dorchester area of Boston has the largest settlement of Vietnamese. It was in Dorchester, that I met most of the Vietnamese-Amerasian respondents for this study.

Within the Vietnamese-American community, however, the preconceived notions and stereotype of Vietnamese-Amerasians remained apparent. Vietnamese-Amerasians have always faced discrimination and mistreatment from the largely homogeneous Vietnamese population. As children, many were bullied and were discouraged to go to school in Vietnam. A majority found themselves exposed to abuse, violence, homelessness and poverty. A respondent in this study was visibly emotional, when I asked about his childhood in Vietnam, he said:

I don't know my father. My mother was looked down on and insulted. She later remarried to a Vietnamese man. I felt discriminated against. I was bullied and teased. I only had two to three years of schooling in Vietnam. I was bullied.

When I asked this same respondent of his experience living in the Vietnamese community after his arrival in the U.S., he said:

[Other Vietnamese see us] half-breeds are no good, just trouble, and no jobs. But I feel abandoned by my Vietnamese family. No support. I was too old for high school by the time we got to the U.S. I believe that if I felt cared for, I would have a better foundation to be self-sufficient, less resentful, but a majority of us sink into resentment because we feel pushed-down and dumb. I thought that when I arrived in my fatherland it will be like heaven, but I spiraled further in my disappointments. I have no one, no father, and no mother (Dorchester, MA, April, 2019).

After resettling in the U.S. a number of Vietnamese-Amerasians managed to adapt and assimilate to life in their new homeland. Nevertheless, the number of those suffering from addiction and mental health problems also become more evident (Bemak & Chung 1998, McKelvey 1999). As Haines suggested in his book, *Safe Haven? A History of Refugees in America*, household structure is an important adaptation tool for refugees because it is a continuity that remained across dislocation (Haines, 2010). Stereotyping and lack of support for Vietnamese-Amerasians within the Vietnamese-American communities across the U.S. made it much more difficult for Vietnamese-Amerasians to find their footing. Their painful childhood coupled with the aftereffects of leaving Vietnam and refugee camp experiences compounded their struggle to adjust to life in America. Now, at the age of 40s and 50s, some Vietnamese-Amerasians are facing removal from the U.S after they become involved with the criminal justice system. This research focuses on this particular group of individuals - the ones entangled with U.S. immigration authority after their involvement with the U.S. criminal justice system. Even though Vietnamese-Amerasians were granted lawful permanent residents (LPR) status, U.S. Immigration and Customs Enforcement (ICE) could seek removal. LPRs with criminal convictions are considered deportable. In 1996, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) made deportation a mandatory consequence

for a long list of crimes. Here, we see the disproportionate nature of deportation and criminal punishment for individuals who have entered the U.S. legally and been granted permanent resident status, such as Vietnamese-Americans. They should be entitled to the same procedural protections as citizens when faced with criminal charges (Morawetz 1998). Nevertheless, a major impact of a criminal conviction for many Vietnamese-Americans is the collateral consequence of immigration detention and deportation.



### Chapter III

#### Detention and Deportation

To me, it is very tragic and very un-American, that we would treat people in this way, people who sided with us in the war and the children of our soldiers.

Ted Osius, former ambassador to Vietnam (2017).

On March 19, 2019, the U.S. Supreme Court sided with the Trump administration in a 5-4 ruling on the issue of immigration detention. Delivering the dissent for the court's liberals from the bench, Associate Justice Stephen Breyer said in his summary:

The greater importance of the case lies in the powers that the majority's interpretation grants the government... It is the power to detain persons who committed minor crimes many years before. And it is a power to hold those persons, perhaps for many months, without any opportunity to obtain bail (U.S. Supreme Court Decision 2019).

As of January and February of 2017, President Trump's Executive Order and implementation directives expanded ICE's reach to include aliens who: (1) have been convicted of any criminal offense; (2) have been charged with any criminal offense that has not been resolved; (3) have committed acts which constitute a chargeable offense (ICE report, FY 2018). Among those who fall within the categories mentioned are a number of Vietnamese-Amerasians.

The Vietnamese-Amerasian individuals I interviewed for this study have either been convicted of a criminal offense or have pending charges that have not been resolved. Yet, many are unaware of the immigration consequences of crime and believe that they are immune to deportation because they were granted admission into the U.S. as

children of American citizens. The different respondents' answers to question 7 were indicative of this belief:

HP: "What is your understanding of your current immigration status in the U.S.?"

Respondent 1: "I am American, half breed, you see? I am not afraid of getting deported" (Dorchester, MA, April 2019).

Respondent 2: "I was in jail for already three months. One day, there were a bunch of immigration officers there. I was playing a ball game with some other friends at the jail. They came over and gave me a piece of paper to sign. It was in English. I couldn't read it. I just signed where they told me to ... Later, there was a group of volunteer lawyers who came. They asked if I knew what paper I had signed. I had no idea. I signed that removal order in 2010. I thought that because I am Amerasian, I have my father's name, I will be protected" (Dorchester, MA, April 2019).

Respondent 3: "If they already accept the fact that we are half-American, then why don't they let us become citizen" (Quincy, MA, April 2019).

Respondent 4: "My old-man was American, it is not going to be a problem. They can't deport me, but they took my Green Card for good. I spent so much money

on immigration lawyers but there is no way they can get the green card back for me” (Dorchester, MA, June 2019).

It is reasonable for Vietnamese-Amerasians who came to the U.S. through the Orderly Departure Program and the Amerasian Homecoming Act to believe that they are protected from deportation. For previous immigration purposes, Vietnamese-Amerasians were deemed to be American by both U.S. and Vietnamese governments. In fact, by January of 1986, the Vietnamese government put a stop to the Orderly Departure Program (ODP) because under ODP Vietnamese-Amerasians were being processed as refugees. The Vietnamese government “argued that the term refugee implied that the Amerasians were being persecuted by their government” (Valverde 1992: 151). Yet, a former Vietnamese official of the Department of Social Welfare openly stated: “Our society does not need these bad elements” (Trautfield, 1984: 61). Presently, Vietnamese-Amerasians with criminal involvement, no matter how minor or how long ago they had committed the criminal offense, are facing deportation to Vietnam.

#### ICE Detention

“It was a prison.” A respondent recalled, “I served three months for the criminal case, and then seven months of immigration detention, why?” (West Roxbury, MA, April 2019).

“ICE detention was a little better than the regular jail, but why was I still handcuffed?” (Boston, MA, April 2019).

Table 4.

Fiscal-Year 2017 Total Enforcement and Removal Operations (ERO)

Administrative Arrests Criminal Charges and Convictions

Criminal Charge Category	Criminal Charges	Criminal Convictions	Total
Traffic Offenses - DUI	20,562	59,985	80,547
Dangerous Drugs	19,065	57,438	76,503
Immigration	10,389	52,128	62,517
Traffic Offenses	24,438	43,908	68,346
Assault	16,535	31,919	48,454
Larceny	4,438	15,918	20,356
Obstructing Judiciary, Congress, Legislature, Etc.	9,623	11,655	21,278
General Crimes	6,623	10,702	17,325
Burglary	2,574	10,262	12,836
Obstructing the Police	4,640	9,976	14,616
Fraudulent Activities	3,476	8,922	12,398
Weapon Offenses	2,913	8,260	11,173
Public Peace	3,592	7,336	10,928
Sex Offenses (Not Involving Assault or Commercialized Sex)	1,631	5,033	6,664
Invasion of Privacy	1,904	4,830	6,734
Stolen Vehicle	1,496	4,678	6,174
Robbery	1,020	4,595	5,615
Family Offenses	1,985	3,934	5,919
Forgery	1,442	3,768	5,210
Sexual Assault	1,413	3,705	5,118
Stolen Property	1,168	3,176	4,344
Damage Property	1,421	2,681	4,102
Flight / Escape	937	2,319	3,256
Liquor	1,675	2,313	3,988
Health / Safety	539	1,548	2,087
Homicide	355	1,531	1,886
Kidnapping	710	1,317	2,027
Commercialized Sexual Offenses	577	995	1,572
Threat	495	847	1,342

*Source: Fiscal-Year 2017 ICE Enforcement and Removal Operations Report*

By situating the immigration problems faced by Vietnamese-Americans in the established debates on deportation and punishment, we can see that ICE detention of

members of this special group is questionable. Specifically, the legitimacy of immigration detention in cases where a Vietnamese-Amerasian individual enters a plea bargain, which results in a criminal conviction which in turn carries immigration consequences. For non-citizen defendants to be moved from the custody of the criminal justice system straight into the custody of the immigration system is further punishment.

When an individual is accused of a crime and formally charged in the criminal justice system, there are several ways in which the charges could be resolved. In cases where the criminal offense is punishable by imprisonment, the court will appoint an attorney to represent indigent defendants. For a majority of Vietnamese-Amerasians involved with the criminal justice system, it is often the case that they cannot afford to hire their own attorney due to financial hardships. Therefore, in a criminal case, the accused is provided with a court appointed lawyer. However, the right to be represented by a lawyer is not guaranteed in immigration removal proceedings.

#### Right to counsel

More than fifty years ago, a unanimous U.S. Supreme Court held that the Constitution guarantees the right to counsel as a protection of due process in the landmark case, *Gideon v. Wainwright* (1963). The Court recognized that a criminal defendant could not be expected to have a fair trial without the assistance of counsel, and stated:

reason and reflection require us to recognize that in our adversary system of criminal justice, any person haled into court, who is too poor to hire a lawyer, cannot be assured a fair trial unless counsel is provided for him. This seems to us to be an obvious truth... that government hires lawyers to prosecute and defendants who have the money hire

lawyers to defend are the strongest indications of the widespread belief that lawyers in criminal courts are necessities, not luxuries. *Gideon v. Wainwright*, 372 U.S. 335, 344 (1963).

In present time, there is a recognition that the immigration system is at the turning point where state criminal courts were in *Gideon*'s time (Eagly 2013). After *Gideon*, indigent criminal defendants were entitled to court appointed counsels. Indigent defendants in immigration proceedings, on the other hand, have to represent themselves or obtain counsel at their own expense. The argument that deportation is distinguishable from punishment means that there is no guaranteed right to counsel. The pressure then falls on the individual to challenge removal proceedings. In addition, without legal representation detained individuals are unable to exercise their right to be bailed while awaiting deportation proceedings. As a result, a majority of criminal defendants faced with removal orders are discouraged in contesting deportation and accept the order to be removed to avoid further mandatory immigration detention.

For Vietnamese-Americans detained by ICE, without family support and the ability to hire an immigration lawyer, they are confronted with the decision to (1) accept the removal order to avoid prolonged immigration detention, or, (2) contest the order and face mandatory detention awaiting removal proceedings. Either option results in effective statelessness within the border of the U.S.

Again, we see the disproportionate criminal punishment for individuals who have entered the U.S. legally and been granted LPR status. Most Vietnamese-Americans living in the U.S. become LPRs shortly after their resettlement. An LPR is entitled to the same procedural protection like a U.S. citizen when faced with criminal charges

(Morawetz, 1998). Nevertheless, a major impact of a criminal conviction for Vietnamese-Amerasians who are LPRs, is to become effectively stateless while living in the U.S. After completing their criminal sentence, these individuals are under the surveillance of ICE. Whether they are released with conditions or detained by ICE, they are confronted with eventual deportation to Vietnam.

These points of tension and convergence of the immigration system and the justice system is often referred to as crimmigration law (Stumpf, 2011). In her critique of the exclusionary power of crimmigration law, “Doing Time: Crimmigration Law and the Perils of Haste” (2011), Juliet Stumpf wrote:

Crimmigration law narrows the decision whether to exclude or expel the noncitizen from the nation to a single moment in time: the moment of the crime that makes the noncitizen eligible for deportation... This extraordinary focus on the moment of the crime conflicts with the fundamental notion of the individual as a collection of many moments composing our experiences, relationships and circumstances (Stumpf 2011: Abstract).

For many noncitizen criminal defendants, the moment determining their precarious status within the U.S. immigration system is almost exact. Specific to the Vietnamese-Amerasians I interviewed, this latent punitive measure takes effect the moment these individuals pleaded guilty to the criminal charges.

### **Alien Status**

The respondents in this study resolved their criminal matters through plea-bargaining by pleading guilty in exchange for a more favorable outcome. When an individual is accused of a crime in the U.S. criminal justice system, there are several ways in which the case can be resolved. One of which is to negotiate a plea with the

prosecution. Plea-bargaining allows for the opportunity to recommend a specific sentence to the judge. It may involve a reduction of the charges or provide for alternatives to incarceration, such as probation or requirements to seek mental health or substance abuse treatment. However, to plead guilty means that the individual is convicted of the crime charged.

During the plea colloquy, a judge asks the defendant a series of questions to establish that the plea is voluntary and that the defendant understands the consequences of pleading guilty. From questions such as: “What’s your name?” “How old are you?” and “How far have you gone in school?” to “Are you currently under the influence of drug or alcohol that may impair your ability to understand what you are pleading guilty to?” and “Do you understand the rights you are giving up by pleading guilty?” These questions may seem straightforward but for individuals like the Vietnamese-Americans interviewed in this study, the answers often involved an Anglicized name spelled phonetically in Vietnamese with the attached suffix *Jr.*, an approximate year of birth, and no schooling.

The judge is also required to inform the defendant of the potential immigration consequences of his plea if he is not a U.S. citizen:



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Table 5.

Alien warnings

I understand that if I am not a citizen of the United States, the acceptance by this court of my plea of guilty, plea of nolo contendere, or admission to sufficient facts may have consequences of deportation, exclusion from admission to the United States, or denial of naturalization, pursuant to the laws of the United States. If the offense to which I am pleading guilty, nolo contendere, or admitting to sufficient facts is under federal law one that presumptively mandates removal from the United States and federal officials decide to seek removal, it is practically inevitable that this disposition would result in deportation, exclusion from admission, or denial of naturalization under the laws of the United States

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Source: Alien Rights Notice, G.L. c. 278, §29D, MASS. R. CRIM. P. 12.

What I had learned from the respondents in this study indicate that they had no concern for immigration consequences at the time of the plea because they firmly believed that as children of American fathers they were not at risk of deportation. Plea-bargaining may have given these Vietnamese-Amerasians an alternative to harsher sentences or incarceration in the criminal justice system but they have all been detained by ICE at one time or another. Contrary to the U.S. government's assertion that immigration detention is temporary confinement, this process involves elements that constitute punishment: (1) it serves an incapacitating function; (2) it deters others; and, (3) it is a form of punishment.

Figure 6.

### U.S. Immigration and Customs Enforcement Operations



*Source: Photo released by ICE on February 7, 2017.*

### Deportation

Deporting Vietnamese-Amerasians who are LPRs of the U.S. because of criminal activity poses a challenge to the U.S. criminal justice system and immigration system. Vietnam is classified by the U.S. government as “recalcitrant” for its unwillingness to accept the deported nationals back ([ice.gov](http://ice.gov)). This issue is further compounded for Vietnamese-Amerasians facing deportation. Under the agreement, the U.S. government pays the cost of repatriation and the Vietnamese government issues travel documents authorizing the return of Vietnamese nationals. However, determining whether an Amerasian is a national of Vietnam proves to be a challenge. Since birth, many Vietnamese-Amerasians were ostracized and denied “basic rights to a name, a nationality, and an education, cast into an impoverished class of society, and robbed of a

solid sense of self” (Demonaco 1989: 648). To deport these individuals back to Vietnam is to render them stateless. Vietnam refuses to take them back and they no longer have a secure immigration status in the U.S. Even if in some cases where the U.S. is unable to deport a person for reasons other than disputed nationality, the result is still effective statelessness.

upon release from detention, the person is effectively stateless, with no U.S. immigration status awarded. In most respects the stateless deportee remains excluded from U.S. society (Price 2013: 482).

Statelessness is a reality for those Vietnamese-Amerasians facing removal from the U.S. Several respondents in this study openly expressed their concerns for leaving the borders of the U.S. They are afraid of not being able to reenter the U.S. while also not being accepted by any other country. The U.S. State Department, however, maintained that “the U.S. does not contribute to the problem of statelessness, and U.S. law does not treat stateless individuals differently from other aliens” (Price 2013: 453). Arguably, being detained while awaiting removal proceedings is a state of statelessness within the borders of the U.S. To be sure, the U.S. government has an absolute interest to exercise control over its borders, however, the justification that these Vietnamese-Amerasians are not being punished but simply regulated is contradictory.

There are numerous discussions on immigration detention and deportation that intersect and touch upon the fundamental issues of punishment, families, and the violation of due process for legal permanent residents who live, work and have their families in the U.S. and consider this country their home. Is it simply that if these individuals are to be removed from the U.S., they become someone else’s problem?

“When you commit crimes, it’s not up to you anymore,” a comment made by the executive director of the Center for Immigration Studies in an interview, “It’s an unfortunate situation, but that’s the way it is. They’ve violated the deal we made with them when we let them in” (NPR, December 18, 2018).

Before the U.S. entered into a bilateral agreement with Vietnam in 2008 on the issue of deporting non-citizen criminals, there was the Cambodian experience.

### The Cambodian Precedent

In 2001, the United States and Cambodia entered into a diplomatic agreement governing deportation, setting the stage for the deportation of some Cambodians, many of whom had arrived in the United States as refugees. In the case of *Ma v. Reno* (2000), a former Cambodian refugee was deported after serving his criminal sentence. *Ma* fled his country with his family at the age of two during the genocide, known as the “Killing Fields” massacre, which took the lives of over two millions Cambodians (Cheng 2005). He was admitted to the United States at age seven after spending several years in the refugee camps of Thailand and the Philippines. At seventeen, he had his first conviction for a gang-related shooting in the state of Washington. This conviction qualified as an aggravated felony and he was ordered removed by immigration authority after his prison sentence.

Prior to the repatriation agreement between the U.S. and Cambodia in March 2002, individuals with removal order could nevertheless be detained past the committed time of their criminal sentence until deported. Some courts have made the analogy that detention while awaiting removal proceedings is similar to the criminal context when an

individual is held temporarily pending resolution of a criminal charge. Two justifications relied on by the U.S. immigration authority are: (1) preventing the risk of flight from removal proceedings; and, (2) protecting the community from harm. After the impact of September 11, 2001, however, the Bush administration reinforces the effort to establish repatriation agreement with countries like Cambodia, Laos and Vietnam. In 2002, after a repatriation agreement had been established with Cambodia, Ma was released from immigration custody only to be deported to a Cambodia he had no familiarity or connection with. Many Cambodian deportees like *Ma* have lived in the U.S. most of their lives and do not know the language or the culture they are being returned to besides the knowledge of the trauma they fled from. This Cambodian precedent suggests that a dormant removal order can suddenly shift into an active process.

For Vietnamese-Amerasians with prior criminal convictions who have been able to remain in the U.S under ICE supervision, this shift has taken place. Ted Osius, former ambassador to Vietnam, wrote in April 2018 after his resignation:

I was asked to press the government in Hanoi to receive from the United States more than 8,000 people, most of whom had fled South Vietnam on boats and through the jungle in the years immediately following the war.

The majority targeted for deportation—sometimes for minor infractions—were war refugees who had sided with the United States, whose loyalty was to the flag of a nation that no longer exists. And they were to be “returned” decades later to a nation ruled by a communist regime with which they had never reconciled. I feared many would become human rights cases, and our government would be culpable (Osius 2018: 2).

Presently, there are cases of Vietnamese-Amerasians being deported back to Vietnam after spending a majority of their life in the U.S. Although they did not become American citizens, many have lived and worked in the U.S. longer than they had Vietnam. As LPRs, coupled with their Amerasian status, many Vietnamese-Amerasians

believe that they are immune to deportation. In addition, they had been admitted into the U.S. before the IIRIRA was implemented in 1996. To their surprise, however, ICE took them into custody years after their criminal cases had been resolved and they were sent back to Vietnam. On the plane, “they spent the 17-hour flight in enforced silence, their hands and legs in restraints” (Pearson 2019: ¶ 3). Once back in Vietnam, they struggle to adjust to life in Vietnam. Despite being a child of an American and some with children of their own children in the U.S., currently, there is no possibility for these Vietnamese-Amerasians deportees to return to their family and life in the U.S.

Some Vietnamese-Amerasians, however, are willing to face the risk of deportation because contesting a removal order means mandatory detention with ICE. A respondent in this study explained that he decided to plead guilty on his criminal matter and risk deportation because he has been in custody for a long time while awaiting trial for his criminal case. He wanted to get out and work to support his family. He was not worried that a conviction would trigger an ICE detainer and eventually lead to him being deported. He said: “Back in Vietnam, when you have money people like you. Back then they beat me up but now they like me when I go back” (Boston, MA, May 2019). This particular respondent indicated his belief that as an Amerasian it was unlikely that he will be deported. Although, the true story of a Vietnamese-Amerasian deportee who never expected to be returned to Vietnam indicated differently: “There was one reason Vietnam didn’t want me, and that’s because my father is American, and they hate that. I don’t understand why they took me back now. I feel very bad. My blood is still American” (Tatarski 2018: ¶ 19).

Immigration detention and removal of Vietnamese-Amerasians after they have completed their criminal sentence has a punitive purpose and results in effective statelessness within the borders of the U.S. Vietnamese-Amerasians need to be protected against statelessness and exclusion in order to exercise their claim to citizenship and belonging.

### Effective Statelessness

Vietnamese-Amerasians faced with removal from the U.S. are effectively stateless whether they are moving about within the U.S. border or sent back to Vietnam. What does it mean to be effectively stateless? It is when “people whose birth, family affiliation, or connection to society is not registered or otherwise provable. They may, despite their possession of nationality and a legal status, find themselves effectively stateless” (Bhabha 2011: 2). Many Vietnamese-Amerasians do not have the ability to prove their formal nationality because their births were not registered. Further, the lawful permanent resident status Vietnamese-Amerasians had gained from resettling in the U.S. is anything but permanent. For these individuals, involvement with the U.S. criminal justice system often leads to immigration detention then deportation which then leads to effective statelessness. In short, they have no legal identity.

Legal identity does not guarantee a good life, but its absence is a serious impediment to it. An absence of legal identity interferes with many fundamental encounters between the individual and the state. It affects the individual’s capacity to make claims on the state, and it disrupts the state’s ability to plan and provide resources and services to the individual (Bhabha 2011: 2).

The Vietnamese-Amerasians respondents in this study are caught between the U.S. criminal justice system and the immigration system without a legal identity. As adults, they

found themselves exposed to the same legal issues they were confronted with as mixed-race children in Vietnam. As deportees, they have no legal status, no proper identification, no government assistance and no recovery services.

The story of a Vietnamese-Amerasian in this study describes this vicious cycle:

This particular respondent disclosed that he has been homeless for six years after losing his job in construction. He also told me that he has no family. That he had learned about ODP from other Vietnamese-Amerasians in Vietnam and came to the U.S. in 1991. He said that he suffers from depression and drinks heavily. This led him to be involved with the different district courts in the Greater Boston area. He faced charges of drinking in public, disorderly conduct, resisting arrest and mutual assault with fellow homeless persons. His handsome features distorted from missing teeth, and a misshapen nose from being repeatedly hit and multiple drunken falls. I recalled that he was animated and lively as we talked. His hands shook violently at times from alcohol withdrawal. His light-brown eyes and broken smile almost seemed mischievous when he told me of his bouts in and out of the hospital:

I get pissed drunk and passed out on the street and sometimes they bring me to the hospital. Last March, I was brought in three times because they didn't want me to freeze to death (Dorchester, MA, April 2019).

He explained that he had resolved all his criminal matters by pleading guilty and was placed on probation. However, he struggled with staying sober and could not fulfill his probation terms and conditions of staying alcohol free, attending Alcohol Anonymous (AA) meeting daily, and counseling. He could not benefit from AA because of his illiteracy and limited English. And, without any form of health insurance, he could not obtain services such as substance abuse counseling. In turn, he was repeatedly found in violation of his terms of release and was put in custody. While in custody, he came to the attention of ICE and they



issued a detainer on him. He was eventually released from immigration detention after accepting the order for final removal.

He is still without a job but could not apply for government benefits because he has no legal identification. He needs to have documentation in order to apply for food stamp and free healthcare. And, to obtain a proper identification card such as a State ID Card, he must provide proof of identity and pay a fee. For this particular respondent, his U.S. alien registration card, often referred to as the Green Card, had been his only form of identification. He never applied for naturalization because he could not study the English test and the Civics test to prepare for the citizenship interview. His Green Card is also no longer valid. He is now required to report to ICE supervision regularly until his physical removal takes effect (Dorchester, MA, April 2019).

So, what becomes of deportees after repatriation to their country of origin? Removal orders and specifically, the actual deportation of Vietnamese-Amerasians for criminal conduct come as a shock for Vietnamese communities across the U.S. The first few reported cases of Vietnamese-Amerasians deportees demonstrate 1) a contradiction to the bilateral agreement that the U.S. government has had with Vietnam since 2008 with the provision that no refugees and immigrants admitted prior to diplomatic ties between the U.S. and Vietnam in 1995 were to be returned to Vietnam; and, 2) the effective statelessness of Vietnamese-Amerasians after repatriation. Despite the term “repatriation”, deported Vietnamese-Amerasians do not feel that they were being sent back to their own country after living in the U.S., as commented by two Vietnamese-Amerasians:

“Over here, I have no job, no one to support me, no house to live in”

(Pearson 2019: ¶ 22).

“I’ve looked for any jobs, I’ve told them that I have experience as a mechanic, a chef, and a server...but when they ask for my background, they see that I was deported and lived in America, and they say they don’t want me” (Tatarski 2018: ¶ 20).

Currently, the focus on the removal of noncitizens for criminal activity is in full force. ICE agents are waiting in courtrooms, by the hallways and doorways of local courthouses ready to transport noncitizen defendants of criminal cases straight into immigration detention centers. Vietnamese-Amerasians vulnerable to deportation are caught in a limbo zone. They can be: (1) detained by ICE while awaiting actual removal; (2) released from ICE detention, but lose their LPR status; and (3) removed from the U.S. at any given time. When a Vietnamese-Amerasian individual is deported back to Vietnam, he will essentially face the same issues of statelessness there. The presumption is that being deported back to Vietnam means that the deportee is considered a Vietnamese national. Nevertheless, for Vietnamese-Amerasian individuals, their existence is no different than when they left Vietnam: discriminated against, suspected by the authority, and shamed for not being accepted by their fathers’ country. Deportation of Vietnamese-Amerasians from the U.S. is a backward “homecoming” that exposes a residual damage of the Vietnam War nearly fifty years later.

## Chapter IV

### Conclusion

This thesis provided a glimpse into the complicated relationship that the U.S. has towards the foreign offspring of its soldiers. The Vietnamese-Amerasians who shared their stories and lived experiences on the pages above shed lights on a residual damage of the Vietnam War. Their experiences with the U.S. criminal justice system and the U.S. immigration authorities connect two seemingly independent phenomena: the current deportation of U.S. noncitizens and the Vietnam War, which ended in 1975.

The key issues examined in this thesis are: (1) the right to citizenship of Vietnamese-Amerasians, (2) immigration consequences on the basis of criminal convictions, and (3) effective statelessness.

First of all, on the issue of birthright citizenship, Vietnamese-Amerasian children born to relationships between American soldiers and Vietnamese women during the Vietnam War were excluded from American citizenship by marriage and by right of blood. Out-of-wedlock children born overseas to American citizen fathers do not automatically become citizen of the U.S. Even if the American father and the Vietnamese mother were married, the American father must formally establish paternity to secure an American citizenship for his foreign-born child. When U.S. forces withdrew from Vietnam, many soldiers returned home without their foreign offspring and many soldiers left without knowing that they had children in Vietnam. Tens of thousands of

these mixed-race children experienced marginalization in Vietnam and grew up unacknowledged by the United States.

Secondly, many Vietnamese-Amerasians came to the U.S. after a specific selection process with immigration programs such as the Orderly Departure Program and the Amerasian Homecoming Act. However, they were not adequately prepared for transition to life in the U.S. They were no longer children when these immigration programs took effect. As adults, many struggled to be self-sufficient without family or community support in the U.S. As a result, a number of these Vietnamese-Amerasians become involved with the criminal justice system. Specifically, the Vietnamese-Amerasians interviewed for this study were those who had either been convicted of a criminal offense or have pending charges that have not been resolved. Their stories demonstrate that they were unaware of the immigration consequences of crime and truly believed that they were immune to deportation because they had been granted admission into the U.S. as children of American citizens.

Finally, for these individuals, involvement with the U.S. criminal justice system exposes them to immigration detention and eventual deportation. They must make the decision to (1) accept the removal order to avoid further mandatory immigration detention or (2) contest the order and face mandatory detention awaiting removal proceedings. Either option results in effective statelessness within the border of the U.S. As adults, these Vietnamese-Amerasian individuals find themselves vulnerable to the same legal issues they were confronted with as mixed-race children growing up in Vietnam.

With this thesis, I hope to contribute to the discussion of the current immigration issues faced by Vietnamese-Amerasians in the U.S. Further, the aim is to call attention to the magnitude of the problem faced by the mixed-race children of foreign powers with overseas troops. What mitigating measures could and should be taken to avoid this legacy of neglect? The French – Vietnamese Convention of Nationality of 1955 offers some instructive measures. Mixed-race children of French descent were recognized as French nationals with the right to choose Vietnamese nationality as adults. The French – Vietnamese example also provides a model for citizenship rights and support for the children when they resettle in their fatherland. Thus, these mixed-race children were not confronted with statelessness.

Vietnamese-Amerasians currently facing deportation from the U.S. on the basis of criminal convictions are vulnerable to statelessness. As argued, immigration detention and deportation of Vietnamese-Amerasian individuals after they had been held accountable for their criminal actions is further punishment without acknowledging their humanity. Their current circumstances reveal a significant hidden cost of the Vietnam War nearly half a century after the withdrawal of U.S. forces.

### *Epilogue*

In May of 2019, during a lunchtime walk in downtown Boston, I recognized a pale figure curled up by the corner of a storefront. He was a respondent I had an opportunity to talk with just weeks ago in front of the Dorchester Courthouse. When we met in April of 2019, he had looked much older for someone his age and weary. He had been animated and talkative. Now, he was in a stupor of drunkenness. For a moment, I

stopped and tried to catch his eyes, but he stared back blankly as if I was not there, then he curled up and closed his eyes. I walked away and glanced back every few steps before I crossed the street to head back to the courthouse. At the intersection, a bus turning in front of me displayed a full side panel advertisement for Miss Saigon opening at the Opera House in Boston, June 2019.

## Appendix

### Interview questionnaire

The data is collected through direct observation, conversations and informal interviews with Vietnamese-Amerasians. This research is in compliance with Harvard's IRB (Institutional Review Board) required protocols for human subjects. No identifying information is shared in order to preserve anonymity of the respondents.

1. Do you know your birthday? This question is asked to demonstrate that most Vietnamese Amerasians do not know their actual birthday due to abandonment and unregistered birth.
2. How did you learn about your American father? I ask this question to explore whether the individual's ability to identify an American father has provided a path to legal identity and citizenship. A number of American military personnel did have long-term relationship with Vietnamese women and yet, their offspring is deprived of a nationality by both Vietnam and the U.S.
3. How/When did you come to the U.S.? This question is an attempt to capture some quantifiable data to correlate the impact of the Amerasian Homecoming Act of 1982.
4. Did you come to the U.S. with family? This question is asked to draw out the individual stories of Vietnamese Amerasians and to find out their current support system in the U.S.

5. Did you go to school in Vietnam? I ask this question to demonstrate that Vietnamese Amerasians were deprived of basic education in Vietnam.
6. Did you go to school in the U.S.? This is a follow up of question number 5 in an attempt to show the detrimental impact of lacking a formative education in Vietnam. Many Vietnamese Amerasians arriving in the U.S. after the Amerasian Homecoming Act of 1982 were already in their teens or older. To be placed in American secondary schools without a basic education compound their struggle to adapt to life in the U.S. I expect that a majority of respondents in this research, Vietnamese Amerasians facing removal from this country because of criminal activity, will attribute their unemployment, homelessness, addictions and mental health problems to their lack of education and support.
7. What is your understanding of your immigration status in the U.S.? This question is an attempt to show that despite their lack of American citizenship, a high percentage of Vietnamese Amerasians believe that they are immune to deportation because they were granted admission as children of American citizens.
8. Do you have any information on your American father? This question is asked to show that a majority of Vietnamese mothers destroyed evidence of their relationship with American fathers for fear of persecution.
9. Have you ever attempted to apply for naturalization in the U.S? I believe that the different answers to this question will amplify the misconstrued view Vietnamese Amerasians have regarding their immigration status in



the U.S. And, it will also demonstrate that the deprivation of a basic education in Vietnam make the path to gaining an American citizenship impossible for these individuals. Their ability to pass the U.S. naturalization test is severely compromised.

10. Do you see Vietnam or the U.S. as your homeland? Many Vietnamese Amerasians believe that they will find acceptance once in the U.S., however, many still experience rejection within the Vietnamese community. They are also confronted with the alienation and difficulties of adjusting to a new society. Although these difficulties are faced by different groups of refugees and immigrants in the U.S. for Vietnamese Amerasians, their unique tie to the U.S. presents a different set of problems.

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