

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS**

HIEN DUY VU,

Petitioner,

v.

PAMELA BONDI, in her official capacity as
U.S. Attorney General;

KRISTI NOEM, Secretary, Department of
Homeland Security,

TODD LYONS, Director, United States
Immigration and Customs Enforcement,

MARY DE ANDA-YBARRA, Field Office
Director, El Paso Field Office, United States
Immigration and Customs Enforcement,

WARDEN, ERO El Paso Camp East Montana
Detention Center,

Respondents.

Docket No: 3:25-cv-00678

Agency Case No.

A# 

**VERIFIED PETITION FOR WRIT OF HABEAS CORPUS AND
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. Petitioner Hien Duy Vu, by and through undersigned counsel, respectfully submits this Emergency Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. § 2241, challenging his continued detention by United States Immigration and Customs Enforcement.

2. This petition presents questions that federal courts across the country are confronting with increasing frequency. Can ICE indefinitely detain a pre-1995 Vietnamese refugee when the sole conviction underlying his removal order has been vacated on constitutional grounds? When detention has already exceeded the presumptively reasonable period recognized by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001)? When the government cannot demonstrate any significant likelihood of removal in the reasonably foreseeable future? When ICE has failed to conduct any of the mandatory custody reviews required by its own regulations? When the detainee has been denied essential medications for life-threatening chronic conditions? The answer to each question is no.

3. Hien Duy Vu is a 52-year-old Vietnamese national who entered the United States as a child refugee before July 12, 1995, and was granted lawful permanent resident status while still a minor. He has lived in this country for over 35 years. He was ordered removed on January 11, 2002, based solely on a 1999 California conviction for assault with a deadly weapon. That conviction no

longer exists. On October 30, 2025, the Superior Court of California, County of Santa Clara, vacated the conviction on constitutional grounds pursuant to California Penal Code Section 1473.7(a)(1), with the People's concession that Mr. Vu's plea was not knowing, intelligent, and voluntary in violation of the Due Process Clause of the Fifth and Fourteenth Amendments to the United States Constitution.

4. Mr. Vu has been detained by ICE since May 29, 2025, a period now exceeding six and one-half months. The government has not removed Mr. Vu and cannot demonstrate any significant likelihood of removal in the reasonably foreseeable future. He is a pre-1995 Vietnamese immigrant, a category for which Vietnam historically refused repatriation and for which ICE maintained, until June 9, 2025, a policy finding no significant likelihood of removal.

5. While detained, Mr. Vu has been denied essential medications for serious chronic conditions including hypertension, diabetes, hyperlipidemia, and chronic obstructive pulmonary disease. The denial of medication places him at imminent risk of stroke, heart attack, diabetic emergency, and accelerated kidney damage.

6. Petitioner asserts four independent grounds for relief, any one of which warrants the relief requested. First, Mr. Vu's detention violates 8 U.S.C. §

1231(a)(6) as construed by *Zadvydas v. Davis* because it exceeds a reasonable period and there is no significant likelihood of removal in the reasonably foreseeable future. Second, continued detention without a bond hearing before an impartial adjudicator violates the Fifth Amendment's guarantee of due process. Third, the deliberate indifference to Mr. Vu's serious medical needs violates the Fifth Amendment and independently warrants release or, at minimum, emergency injunctive relief. Fourth, ICE's systemic failure to conduct any of the mandatory custody determinations required by 8 C.F.R. § 241.4 renders Mr. Vu's detention unlawful and warrants immediate release.

7. Petitioner respectfully requests that this Court issue a writ of habeas corpus ordering his immediate release pursuant to 28 U.S.C. § 2241(c)(3); alternatively, order Respondents to provide a bond hearing within seven days at which the government bears the burden of demonstrating by clear and convincing evidence that detention is warranted; issue a temporary restraining order and preliminary injunction requiring immediate provision of adequate medical care; and grant such other relief as the Court deems just and proper.

JURISDICTION AND VENUE

14. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 2241, which provides that writs of habeas corpus may be granted by district courts within their respective jurisdictions. This petition challenges the lawfulness of Mr. Vu's continued detention by Immigration and Customs Enforcement.

15. The Supreme Court has confirmed that habeas corpus under 28 U.S.C. § 2241 is the appropriate vehicle to challenge indefinite immigration detention. *Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001).

16. Recent federal court decisions confirm this Court's jurisdiction to grant habeas relief where ICE has failed to abide by its own regulations in making custody decisions, rendering detention unlawful. *See e.g. Zhuliang Ye v. Bondi*, No. CIV-25-1230-D (W.D. Okla. Dec. 4, 2025) (granting habeas relief under 28 U.S.C. § 2241(c)(3) where ICE failed to abide by its regulations).

17. Venue is proper in the Western District of Texas, El Paso Division, because Petitioner is currently detained at the ERO El Paso Camp East Montana Detention Center, located within this judicial district. *See* 28 U.S.C. § 2241(a).

18. Exhaustion of administrative remedies is not required for habeas petitions challenging the lawfulness of detention under *Zadvydas*. *See Zadvydas*, 533 U.S. at 699.

19. Mr. Vu has filed a Motion to Reopen with the Immigration Court in Eloy, Arizona. That motion was filed November 7, 2025, received by the court on December 4, 2025, and remains pending. The Motion to Reopen does not provide a vehicle to challenge the lawfulness of his detention pending resolution of the motion.

20. Mr. Vu has exhausted all administrative remedies available as there are no other venues or avenues with the jurisdiction and authority over ICE where he can challenge his continued detention and denial of medical care.

PARTIES

8. Petitioner Hien Duy Vu is a 52-year-old native and citizen of Vietnam. His Alien Registration Number is A#  He is currently detained at the ERO El Paso Camp East Montana Detention Center in El Paso, Texas, within the jurisdiction of this Court.

9. Respondent Pamela Jo Bondi is the Attorney General of the United States of America. The Attorney General has supervisory authority over immigration enforcement. The Attorney General is sued in her official capacity.

10. Respondent Kristi Noem is the Secretary of the Department of Homeland Security. DHS has authority over immigration detention facilities and enforcement. The Secretary is sued in her official capacity.

11. Respondent Todd Lyons is the Director of United States Immigration and Customs Enforcement. ICE is responsible for enforcing immigration laws and operating immigration detention facilities. Director Lyons is sued in his official capacity.

12. Respondent Mary De Anda-Ybarra is the Field Office Director of the El Paso Field Office of United States Immigration and Customs Enforcement. The Field Office Director has direct supervisory authority over detention operations in the El Paso area, including the facility where Petitioner is detained. Director De Anda-Ybarra is sued in her official capacity.

13. Respondent Warden is the warden of the ERO El Paso Camp East Montana Detention Center, the facility where Petitioner is currently detained. The Warden has immediate custody of Petitioner. The Warden is sued in his or her official capacity.

FACTUAL AND PROCEDURAL BACKGROUND

I. Personal Background

21. Hien Duy Vu was born on  in Vietnam. He is currently 52 years old. He is a citizen of Vietnam by birth.

22. Upon information and belief, Mr. Vu entered the United States as a refugee before his eighteenth birthday. The entry occurred before 1991, when

Mr. Vu was still a minor. His father, Hoan Vu, also a refugee from Vietnam, had previously obtained refugee status in the United States and petitioned for Mr. Vu and other family members to join him. Upon arrival in the United States, Mr. Vu was granted lawful permanent resident status while still under the age of eighteen.

23. Upon information and belief, Mr. Vu has extensive family ties in the United States. His father, Hoan Vu, has naturalized as a United States citizen. His father is now 86 years old and has been diagnosed with bladder cancer. Mr. Vu's mother was also diagnosed with bladder cancer and passed away approximately eight years ago.

24. Upon information and belief, Mr. Vu has three sisters who are also United States citizens. Mai Vu, the eldest sister, resides in San Jose, California. Ngoc Han Vu resides in San Jose, California. Another sister resides elsewhere in the United States.

25. On August 3, 2012, Mr. Vu married Lisa Phuong Nguyen, a United States citizen. Upon information and belief, the couple has lived together continuously since their marriage, residing in Germantown, Maryland. Ms. Nguyen became a naturalized citizen on October 17, 1996. Upon information and belief, she has been employed by the Smithsonian Institution

since 2001 and previously worked for the U.S. State Department from 1997 to 2001.

26. Upon information and belief, Mr. Vu and his wife share their home with Ms. Nguyen's sister, Nga Kim Thi Nguyen, who requires assistance due to limited English proficiency and age-related needs. Mr. Vu has served as an integral part of the household, helping with errands, repairs, chores, and meal preparation.

27. Mr. Vu has maintained consistent employment. After his marriage and move to Maryland, he obtained employment as a computer programmer at Zentech Manufacturing Company in Baltimore, Maryland, where he has worked since 2012. Tax returns from 2022, 2023, and 2024 document his continued employment and payment of federal and state taxes. Upon information and belief, his employer has indicated that Mr. Vu is an essential employee who holds unique skills and knowledge crucial to the company's core operations.

28. Upon information and belief, Mr. Vu attends church regularly. He and his wife attend Mother Seton Catholic Church in Germantown, Maryland. Ms. Nguyen converted to Catholicism so that she and Mr. Vu could share their faith together. Father Natz, the pastor of Mother Seton Catholic Church, has written in support of Mr. Vu.

II. The 1999 Criminal Conviction

29. On July 7, 1998, an incident occurred in Santa Clara County, California, resulting in criminal charges against Mr. Vu. The incident involved an altercation in which Mr. Vu assaulted another individual.

30. On June 18, 1999, Mr. Vu entered a plea of no contest to California Penal Code Section 245(a)(1), assault with a deadly weapon, with an enhancement under Penal Code Section 12022.7(a) for personally inflicting great bodily injury. The case number was C9801662 in the Superior Court of California, County of Santa Clara.

31. Mr. Vu was represented by private attorney Wesley Schroeder. Upon information and belief, his attorney did not advise him that the conviction would result in the loss of his lawful permanent resident status, make him inadmissible to the United States, or render him deportable. Mr. Vu did not understand that the conviction would have these immigration consequences when he entered his plea.

32. On August 6, 1999, Mr. Vu was sentenced to four years in state prison. He served his sentence and was released from criminal custody.

33. This 1999 conviction was the sole criminal conviction in Mr. Vu's history. He has not been convicted of any other criminal offenses in the 26 years since the 1998 incident.

III. Immigration Proceedings and Removal Order

34. Following his release from state prison, the Immigration and Naturalization Service initiated removal proceedings against Mr. Vu based on the 1999 conviction.

35. On January 11, 2002, an Immigration Judge in Eloy, Arizona, ordered Mr. Vu removed from the United States. The removal order was based solely on the 1999 conviction for assault with a deadly weapon, which the Immigration Judge determined rendered Mr. Vu removable.

36. Mr. Vu filed an appeal to the Board of Immigration Appeals. On March 19, 2002, Mr. Vu withdrew his appeal before the Board of Immigration Appeals rendered a decision. Under 8 C.F.R. § 1003.4, the withdrawal of an appeal before the BIA issues a decision makes the Immigration Judge's decision final to the same extent as if no appeal had been taken. The Immigration Judge, not the Board of Immigration Appeals, is therefore the proper adjudicator for any motion to reopen.

IV. Life in the United States Following the Removal Order (2002-2025)

37. Upon information and belief, Mr. Vu was not physically deported following the issuance of the January 11, 2002 removal order. The removal order could not be executed because Vietnam refused to accept deportees who had left before normalization of diplomatic relations between the United States and Vietnam. Mr. Vu remained in the United States where he has lived and worked continuously since his entry as a child refugee.

38. Upon information and belief, following the removal order, Mr. Vu was required to report to ICE annually as a condition for remaining out of custody. From 2002 until May 2025, a period of over twenty-three years, Mr. Vu reported annually to ICE without incident. He never failed to appear for a check-in. He never violated the conditions of his release.

39. During this period, Mr. Vu built a productive life in the United States. He married his wife in 2012, maintained consistent employment, paid taxes, attended church regularly, and contributed to his community.

IV. Mr. Vu's Serious Medical Conditions

40. Mr. Vu suffers from multiple serious chronic medical conditions that require daily medication and regular monitoring by healthcare providers. These conditions include hypertension (high blood pressure), Type 2 diabetes

mellitus, mixed hyperlipidemia (high cholesterol), chronic obstructive pulmonary disease (COPD), proteinuria with declining kidney function, a kidney cyst, and a lung nodule requiring monitoring.

41. On March 7, 2025, Mr. Vu attended a routine follow-up medical appointment at [REDACTED] in Germantown, Maryland. Medical records from this visit document his chronic conditions and concerning trends in his laboratory results. [REDACTED]

[REDACTED]

42. Mr. Vu's medical provider specifically advised him to remain compliant with his medication regimen due to these concerning changes, to engage in at least 30 minutes of cardio exercise five times a week, and to carefully monitor his carbohydrate and sugar intake.

43. Each of Mr. Vu's chronic conditions, if untreated, poses life-threatening risks. Uncontrolled hypertension can lead to stroke, heart attack, or kidney failure. Uncontrolled diabetes can lead to diabetic ketoacidosis, coma, or

death. COPD increases vulnerability to respiratory illness. The combination of these conditions with declining kidney function creates compounding risks.

V. Detention by ICE (May 2025 to Present)

44. On May 29, 2025, Mr. Vu went to ICE for his routine annual check-in, as he had done without incident for over twenty years. At this check-in, ICE took Mr. Vu into custody. He has remained detained since this date, a period now exceeding six and one-half months.

45. Mr. Vu was initially detained at Moshannon Valley Detention Center in Pennsylvania.

46. Upon information and belief, on November 19, 2025, an ICE officer at the Moshannon Valley Detention Center transferred Mr. Vu by bus to a facility in Ohio. On November 20, 2025, Mr. Vu was transferred by airplane from Ohio to Port Isabel, Texas. During the flight, ICE officers provided him with his prescribed medications, including medication for high blood pressure, high cholesterol, and diabetes. He arrived at the Port Isabel Detention Center and remained there for one day.

47. Upon information and belief, on November 21, 2025, an ICE officer at Port Isabel transferred Mr. Vu to the El Paso East Montana Detention

Center in Texas. Upon arrival at El Paso, he did not receive any of his required medications.

48. Upon information and belief, on November 23, 2025, an ICE officer at the El Paso facility told Mr. Vu that he would only stay there a few days before being transferred back to Moshannon Valley in Pennsylvania because his case was being reopened. As of the filing of this petition, no transfer has occurred.

VI. Denial of Medical Care in Detention

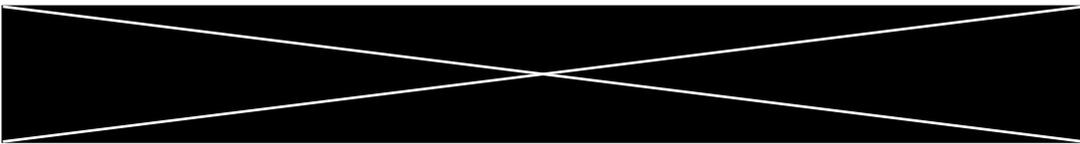
49. Upon information and belief, Mr. Vu has experienced significant medical care issues while detained at the El Paso East Montana facility. Given the severity and complexity of his multiple medical conditions, the denial of proper medical care places him at heightened risk of serious harm.

50. Upon information and belief, upon arriving at El Paso on November 21, 2025, Mr. Vu was denied all medication for several days. When he asked a lieutenant about the missing medication, he was told that because he was in “staging” (temporary transfer status), he was not allowed to receive his medications. This denial was particularly dangerous given that Mr. Vu requires daily medication for hypertension, diabetes, high cholesterol, and chronic obstructive pulmonary disease.

51. Upon information and belief, Mr. Vu became seriously ill with flu symptoms and submitted a sick-call request. He was never called for medical evaluation and did not receive any flu medication. Despite informing staff of his worsening condition, he was not treated. For a patient with COPD and other chronic conditions, respiratory illness poses heightened risks.

52. Upon information and belief, after briefly being placed on a medication schedule, the facility ran out of his medication after five days and stopped administering it. As of December 6, 2025, Mr. Vu had been without his essential medications for hypertension, high cholesterol, and diabetes for four consecutive days.

53. Given his documented medical history showing worsening



the denial of medication places him at serious risk of stroke, hypertension crisis, diabetic emergencies, and accelerated kidney damage.

54. Upon information and belief, when Mr. Vu did receive medication, it was provided from a ziplock plastic bag with loose pills from many small bags

inside without labels, causing him uncertainty about whether the medication was old, expired, or appropriate for his conditions.

55. Upon information and belief, Mr. Vu has been served rotten or low-quality food and has had access only to unclean or foul-tasting water. For a diabetic patient who has been advised to carefully monitor his carbohydrate and sugar intake, the inability to control his diet poses additional health risks.

56. Upon information and belief, although the facility lists a daily recreation schedule, detainees are not consistently permitted to attend. In more than two weeks at El Paso, Mr. Vu was allowed recreation only once. Mr. Vu's medical provider had specifically advised him to engage in at least 30 minutes of cardio exercise five times a week to help manage his diabetes, hypertension, and hyperlipidemia.

57. Upon information and belief, the inadequate medical care, poor food quality, and living conditions have caused Mr. Vu significant stress, anxiety, and psychological trauma. His health is declining.

VII. Vacatur of the 1999 Conviction

58. California Penal Code Section 1473.7 became effective on January 1, 2017. This statute permits a person who is no longer in criminal custody to file a motion to vacate a conviction or sentence that is legally invalid due to

prejudicial error damaging the moving party's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of a conviction or sentence.

59. In early June 2025, shortly after Mr. Vu's detention by ICE, his family sought legal advice. Attorney Sergio H. Benavides of the Law Office of Sergio H. Benavides was retained to seek post-conviction relief.

60. On June 24, 2025, Attorney Benavides filed a Motion to Withdraw Plea and Vacate Judgment pursuant to California Penal Code Section 1473.7(a)(1). The motion was electronically filed with the Superior Court of California, County of Santa Clara, on September 18, 2025.

61. The motion argued that Mr. Vu's 1999 plea was constitutionally invalid because his defense attorney failed to advise him of the immigration consequences of the plea, constituting ineffective assistance of counsel regarding immigration consequences.

62. The Santa Clara County District Attorney's Office, through Deputy District Attorney Stacie Lawson, reviewed the motion. The People conceded that the conviction and judgment were legally and constitutionally invalid due to a prejudicial error damaging Mr. Vu's ability to meaningfully understand, defend

against, or knowingly accept the actual or potential adverse immigration consequences of his plea.

63. On October 30, 2025, the Superior Court of California, County of Santa Clara, entered a Stipulation and Order in Case Number C9801662. The Order was signed by Mr. Vu, his attorney Sergio H. Benavides, Deputy District Attorney Stacie Lawson, and the presiding judge.

64. The Order provided that the defendant's Penal Code Section 1473.7(a)(1) motion was granted based on the People's concession that the conviction and judgment were legally and constitutionally invalid due to a prejudicial error damaging the defendant's ability to meaningfully understand, defend against, or knowingly accept the actual or potential adverse immigration consequences of his plea. The Court found that the defendant did not knowingly, intelligently, and voluntarily enter his plea, in violation of the Due Process Clause in the Fifth and Fourteenth Amendments to the United States Constitution.

65. The Order further provided that the guilty or no contest plea to Count One, California Penal Code Section 245(a)(1), was withdrawn; that the judgment of conviction entered June 18, 1999, was vacated in its entirety; that the original complaint was reinstated; that the People's motion to add Count Two

was granted, charging California Penal Code Section 136.1(b)(1), Attempting to Dissuade a Victim or Witness; that the defendant pleaded no contest to Count Two; that the defendant was sentenced on Count Two to three years formal probation and 364 days in county jail, deemed served, with probation terminated; and that Count One was dismissed pursuant to California Penal Code Section 1385 in the furtherance of justice.

66. The October 30, 2025 vacatur eliminated the sole criminal conviction that formed the basis for Mr. Vu's January 11, 2002 removal order. The vacatur was granted on substantive constitutional grounds, specifically a due process violation resulting from ineffective assistance of counsel regarding immigration consequences. This was not a vacatur for rehabilitative purposes or solely to avoid immigration consequences; it was a vacatur based on a finding that the original conviction was constitutionally invalid due to prejudicial error.

67. Under Ninth Circuit precedent, which would govern any appeal from the Immigration Court, vacaturs under California Penal Code Section 1473.7(a)(1) are substantive, not rehabilitative, because the statute requires a showing of actual prejudicial error affecting the defendant's understanding of immigration consequences. *Bent v. Garland*, 115 F.4th 934, 940-42 (9th Cir. 2024).

VIII. Motion to Reopen Immigration Proceedings

68. On November 7, 2025, counsel for Mr. Vu filed a Motion to Reopen Removal Proceedings Based Upon Respondent's Vacated Conviction on Substantive/Due Process Grounds with the Executive Office for Immigration Review, Immigration Court in Eloy, Arizona.

69. The motion was served by electronic service to the ICE Field Office Location at Eloy Detention Center.

70. According to the EOIR Automated Case Information system, a Motion to Reopen IJ Jurisdiction was received on December 4, 2025. The case information confirms that the immigration judge ordered removal on January 11, 2002, and that the appeal was withdrawn on March 19, 2002.

71. The Motion to Reopen remains pending as of the date of this petition. No decision has been issued by the Immigration Judge on the motion.

IX. ICE's Failure to Conduct Required Custody Reviews

72. Upon information and belief based on the absence of any documentation or notice to Mr. Vu or his counsel, ICE did not provide Mr. Vu with written notice approximately 30 days in advance of any pending custody records review as required by 8 C.F.R. § 241.4(h)(2).

73. ICE did not conduct an initial custody review consisting of a records review prior to the expiration of the 90-day removal period as required by 8 C.F.R. § 241.4(h)(1) and (k)(1)(i).

74. ICE did not notify Mr. Vu in writing that he was to be released from custody or that he would be continued in detention pending removal or further review as required by 8 C.F.R. § 241.4(h)(4).

75. ICE did not conduct a custody review at the expiration of the 90-day removal period as required by 8 C.F.R. § 241.4(k)(1)(i).

76. ICE did not conduct a custody review at the expiration of the three-month period following the removal period (approximately six months from detention) as required by 8 C.F.R. § 241.4(k)(2)(ii).

77. The 90-day removal period, calculated from Mr. Vu's detention on May 29, 2025, expired approximately August 27, 2025.

78. The three-month period following the removal period expired approximately November 27, 2025.

79. As of the filing of this petition, Mr. Vu has received no written communication from ICE regarding any custody determination, has not been

provided any opportunity to submit information in support of release, and has not been given any explanation of the reasons for his continued detention.

LEGAL ARGUMENT

**COUNT ONE: PETITIONER'S DETENTION
VIOLATES *ZADVYDAS v. DAVIS***

80. Mr. Vu's continued detention violates 8 U.S.C. § 1231(a)(6) as construed by the Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), because his detention has exceeded the presumptively reasonable period of six months and there is no significant likelihood of his removal in the reasonably foreseeable future.

81. Section 1231(a)(6) of Title 8 authorizes the detention of certain aliens beyond the 90-day removal period. However, the Supreme Court in *Zadvydas* construed this provision to contain an implicit limitation: detention is permissible only for "a period reasonably necessary to bring about that alien's removal from the United States" and "does not permit indefinite detention." *Zadvydas*, 533 U.S. at 689.

82. The *Zadvydas* Court recognized that "once removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute." *Id.* at 699. The Court established that "for the sake of uniform administration in the federal courts," six months is a "presumptively reasonable period of

detention.” *Id.* at 701. After this period, “once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing.” *Id.*

83. In assessing whether removal is significantly likely in the reasonably foreseeable future, courts consider factors including the receiving country’s historical acceptance of deportees, the existence of diplomatic relations, any repatriation agreement, and the individual circumstances of the detainee’s case. *See Zadvydas*, 533 U.S. at 701.

84. Mr. Vu has been detained since May 29, 2025. As of December 12, 2025, his detention has exceeded 197 days, or approximately six and one-half months. This period exceeds the six-month presumptively reasonable period established by *Zadvydas*.

85. The burden has therefore shifted to Mr. Vu to provide good reason to believe there is no significant likelihood of removal in the reasonably foreseeable future. If he meets this burden, the government must respond with evidence sufficient to rebut his showing.

86. Mr. Vu provides good reason to believe there is no significant likelihood of his removal in the reasonably foreseeable future based on multiple independent grounds.

87. First, Mr. Vu is a pre-July 12, 1995 Vietnamese immigrant. Vietnam has historically refused to accept the repatriation of Vietnamese nationals who departed Vietnam before July 12, 1995, the date of normalization of diplomatic relations between the United States and Vietnam. This longstanding policy has made removal of pre-1995 Vietnamese nationals practically impossible. Indeed, Mr. Vu was ordered removed in 2002, over twenty-three years ago, and has never been removed precisely because Vietnam refused to accept him.

88. Second, ICE itself previously recognized that there was no significant likelihood of removal for pre-1995 Vietnamese nationals. Until June 9, 2025, ICE maintained a policy finding no significant likelihood of removal for this exact population, which is why individuals like Mr. Vu were released on Orders of Supervision rather than detained indefinitely.

89. Third, the sole conviction underlying Mr. Vu's removal order has been vacated on constitutional grounds. The October 30, 2025 order of the Superior Court of California eliminated the conviction that formed the predicate

for the January 11, 2002 removal order. Mr. Vu has a pending Motion to Reopen his immigration proceedings, which, if granted, could result in termination of the removal order. The pendency of this motion and the vacatur of the underlying conviction create significant uncertainty about whether any valid basis for removal exists.

90. Fourth, any attempt to remove Mr. Vu to a third country faces substantial obstacles. While a June 24, 2025 Supreme Court decision may permit deportation to third countries in certain circumstances, the government has not identified any third country willing to accept Mr. Vu. Mr. Vu has no ties to any country other than Vietnam and the United States. He left Vietnam as a child and has lived in the United States for over 35 years.

91. Fifth, Mr. Vu's 23-year history of perfect compliance with ICE reporting requirements demonstrates that he poses no flight risk and does not require detention to effectuate his removal.

92. Given Mr. Vu's status as a pre-1995 Vietnamese national, Vietnam's historical refusal to accept such individuals for repatriation, the vacatur of the conviction underlying his removal order, and the pending Motion to Reopen, the government cannot demonstrate a significant likelihood of removal in the reasonably foreseeable future.

93. Speculation about potential future changes in Vietnam’s policy, or theoretical possibilities of removal to third countries, is insufficient to meet the government’s burden. The *Zadvydas* Court made clear that indefinite detention based on speculation is constitutionally impermissible. 533 U.S. at 690-91.

94. Mr. Vu’s detention has exceeded the presumptively reasonable period of six months. He has provided good reasons to believe there is no significant likelihood of removal in the reasonably foreseeable future. The government cannot rebut this showing. Continued detention therefore violates 8 U.S.C. § 1231(a)(6) as construed by *Zadvydas* and warrants release.

**COUNT TWO: CONTINUED DETENTION
WITHOUT AN INDIVIDUALIZED BOND
HEARING OR DETERMINATION OF FLIGHT
RISK AND DANGER TO THE COMMUNITY
VIOLATES THE FIFTH AMENDMENT DUE
PROCESS CLAUSE**

95. Even if immediate release is not mandated under *Zadvydas*, Mr. Vu’s continued detention without an individualized bond hearing before an impartial adjudicator violates the Fifth Amendment’s guarantee of due process.

96. The Due Process Clause of the Fifth Amendment prohibits the government from depriving any person of liberty without due process of law. U.S. Const. amend. V. The Supreme Court has recognized that “[f]reedom from imprisonment, from government custody, detention, or other forms of physical

restraint, lies at the heart of the liberty that [the Due Process] Clause protects.”
Zadvydas, 533 U.S. at 690 (citing *Foucha v. Louisiana*, 504 U. S. 71, 80 (1992)).

97. The Supreme Court has applied the *Mathews v. Eldridge* balancing test to determine what process is due in the immigration detention context. *See Mathews v. Eldridge*, 424 U.S. 319 (1976). Under *Mathews*, courts consider three factors: the private interest affected; the risk of erroneous deprivation through the procedures used and the probable value of additional safeguards; and the government’s interest, including the burden of additional procedures. *Id.* at 335.

98. Mr. Vu has been detained for over six months without an individualized hearing to determine whether his detention is justified. His liberty interest is substantial. He is a long-term lawful permanent resident who lived in the United States for over 35 years, is married to a United States citizen, has maintained employment and paid taxes, and has extensive family ties in this country. The deprivation of his liberty has separated him from his wife, disrupted his employment, and subjected him to conditions that threaten his health.

99. Without a bond hearing, there is a substantial risk that Mr. Vu is being detained when detention is not warranted. No neutral adjudicator has considered the factors relevant to whether his continued detention is necessary,

including his 23 years of perfect compliance with ICE reporting requirements, his strong family and community ties, his lack of criminal history since 1998, the vacatur of his only conviction, and the pendency of his Motion to Reopen.

100. The procedures used to detain Mr. Vu provide no meaningful opportunity to challenge his custody. ICE has failed to conduct any of the custody reviews required by its own regulations. Mr. Vu has had no opportunity to present evidence or argument to a neutral decision-maker regarding whether his detention is justified.

101. While the government has an interest in ensuring that aliens with final removal orders are available for removal, this interest is diminished where, as here, removal is not significantly likely in the reasonably foreseeable future. The government's interest is further diminished by Mr. Vu's demonstrated record of compliance with supervision. He reported to ICE annually for over 23 years without incident. There is no reason to believe he would fail to comply with conditions of release.

102. Applying the *Mathews* factors, due process requires, at minimum, that Mr. Vu receive a bond hearing before an immigration judge at which the government bears the burden of justifying his continued detention by clear and convincing evidence.

103. Mr. Vu has been detained for over six months without any individualized hearing. The risk of erroneous deprivation is high given the unique circumstances of his case, including the vacatur of his conviction, his pending Motion to Reopen, and his long history of compliance. The government's interest in detention is diminished by the lack of any significant likelihood of removal and Mr. Vu's demonstrated reliability.

104. Continued detention without an individualized bond hearing violates Mr. Vu's right to due process under the Fifth Amendment. This Court should order that Mr. Vu receive a bond hearing within seven days, at which the government bears the burden of proving by clear and convincing evidence that his continued detention is warranted.

**COUNT THREE: RESPONDENT'S
DELIBERATE INDIFFERENCE TO SERIOUS
MEDICAL NEEDS VIOLATES THE FIFTH
AMENDMENT DUE PROCESS CLAUSE**

105. The deliberate indifference of Respondents to Mr. Vu's serious medical needs violates the Due Process Clause of the Fifth Amendment. The denial of essential medications for life-threatening chronic conditions places Mr. Vu at imminent risk of stroke, heart attack, diabetic emergency, and accelerated kidney damage, and independently warrants release or, at minimum,

emergency injunctive relief requiring immediate provision of adequate medical care.

106. The constitutional right of a person in government custody to receive adequate medical care derives from the Due Process Clause of the Fifth Amendment for federal detainees. The Supreme Court articulated the foundational principle in *DeShaney v. Winnebago County Department of Social Services*, 489 U.S. 189 (1989), explaining that “when the State by the affirmative exercise of its power so restrains an individual’s liberty that it renders him unable to care for himself, and at the same time fails to provide for his basic human needs, e.g., food, clothing, shelter, medical care, and reasonable safety, it transgresses the substantive limits on state action set by the Eighth Amendment and the Due Process Clause.” *Id.* at 200 (citations omitted).

107. This principle applies with equal or greater force to civil immigration detainees. As the Fifth Circuit has explained, a pretrial detainee’s due process rights are “at least as great as the Eighth Amendment protections available to a convicted prisoner.” *Hare v. City of Corinth*, 74 F.3d 633, 639 (5th Cir. 1996) (en banc) (quoting *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983)).

108. The Supreme Court established the governing standard for inadequate medical care claims in *Estelle v. Gamble*, 429 U.S. 97 (1976), and *Farmer v. Brennan*, 511 U.S. 825 (1994). Under these cases, a two-part test applies. First, the detainee must show that he is “incarcerated under conditions posing a substantial risk of serious harm.” *Farmer*, 511 U.S. at 834 (citation omitted). Second, the detainee must show that officials had a culpable state of mind, specifically that they were “deliberately indifferent” to his health or safety. *Id.*

109. Deliberate indifference may be inferred from circumstantial evidence. As the *Farmer* Court explained, “a factfinder may conclude that a prison official knew of a substantial risk from the very fact that the risk was obvious.” *Id.* at 842.

110. Here, Mr. Vu suffers from multiple chronic medical conditions requiring daily medication: hypertension, Type 2 diabetes, hyperlipidemia, and chronic obstructive pulmonary disease. He also has proteinuria with declining kidney function, a kidney cyst, and a lung nodule requiring monitoring.

111. Each of these conditions, if untreated, poses life-threatening risks. Uncontrolled hypertension can lead to stroke, heart attack, or kidney failure.

evaluation and did not receive any flu medication. Despite informing staff of his worsening condition, he was not treated.

116. Upon information and belief, after briefly being placed on a medication schedule, the facility ran out of his medication after five days and stopped administering it. As of December 6, 2025, Mr. Vu had been without his essential medications for four consecutive days.

117. Upon information and belief, when medication was provided, it was given from a ziplock plastic bag with loose pills without labels, raising serious questions about proper identification and dosing.

118. The risk of harm from withholding essential medications for chronic conditions is obvious. The medical danger of withholding hypertension and diabetes medication is a matter of common knowledge. Under *Farmer*, the obviousness of the risk supports an inference that officials knew of the substantial risk and disregarded it.

119. Upon information and belief, the conditions of Mr. Vu's confinement compound the risk to his health. He has been served rotten or low-quality food and has access only to unclean or foul-tasting water. For a diabetic patient who has been advised to carefully monitor his carbohydrate and sugar intake, the inability to control his diet poses additional health risks.

Uncontrolled diabetes can lead to diabetic ketoacidosis, coma, or death. COPD increases vulnerability to respiratory illness.

112. Mr. Vu's March 2025 medical records document concerning trends: [REDACTED], indicating inadequately controlled diabetes, and [REDACTED] [REDACTED] indicating declining kidney function. His medical provider specifically advised him to remain compliant with his medication regimen due to these concerning changes.

113. The facts demonstrate deliberate indifference to Mr. Vu's serious medical needs.

114. Upon information and belief, upon arriving at El Paso on November 21, 2025, Mr. Vu was denied all medication for several days. When he asked a lieutenant about the missing medication, he was told that because he was in "staging" (temporary transfer status), he was not allowed to receive his medications. This demonstrates that officials were aware he required medication and made a conscious decision not to provide it based on an administrative classification.

115. Upon information and belief, Mr. Vu became seriously ill with flu symptoms and submitted a sick-call request. He was never called for medical

120. Upon information and belief, Mr. Vu has been denied adequate exercise. In more than two weeks at El Paso, he was allowed recreation only once, despite his medical provider's advice to engage in at least 30 minutes of cardio exercise five times a week to help manage his conditions.

121. Given the imminent risk to Mr. Vu's health, Petitioner respectfully requests that this Court issue a temporary restraining order and preliminary injunction requiring Respondents to immediately provide Mr. Vu with adequate medical care, including the medications prescribed by his treating physicians for hypertension, diabetes, hyperlipidemia, and COPD.

122. The requirements for injunctive relief are satisfied. Mr. Vu is likely to succeed on the merits of his claim that the denial of medication constitutes deliberate indifference to serious medical needs. He will suffer irreparable harm absent injunctive relief, as the consequences of untreated hypertension and diabetes include stroke, heart attack, and death. The balance of hardships tips sharply in his favor, as the government has no legitimate interest in denying essential medical care. And injunctive relief is in the public interest, as the public has an interest in ensuring that the government fulfills its constitutional obligation to provide for the basic medical needs of those it detains.

123. Respondents' deliberate indifference to Mr. Vu's serious medical needs violates the Fifth Amendment. This Court should issue a temporary restraining order and preliminary injunction requiring immediate provision of adequate medical care. In addition, the medical claim reinforces the need for Mr. Vu's release, as continued detention under conditions that threaten his life and health is constitutionally impermissible.

**COUNT FOUR: RESPONDENT'S FAILURE TO
CONDUCT THE MANDATORY CUSTODY
DETERMINATION AND REVIEWS RENDERS
DETENTION UNLAWFUL**

124. ICE's systemic failure to conduct the mandatory custody determinations required by 8 C.F.R. § 241.4 renders Mr. Vu's continued detention unlawful and entitles him to immediate release under 28 U.S.C. § 2241(c)(3). Multiple federal courts have granted habeas relief on this precise ground within the past weeks, holding that the government's failure to abide by its own regulations in making custody decisions renders detention unlawful.

125. The regulations governing post-order custody reviews are found at 8 C.F.R. § 241.4. These regulations establish a comprehensive framework of procedural protections for individuals detained following a final order of removal. The regulations impose mandatory duties on ICE.

126. Section 241.4(h)(1) requires that the district director or Director of the Detention and Removal Field Office to conduct the initial custody review and “will conduct a records review prior to the expiration of the removal period.”

127. Section 241.4(h)(2) requires that ICE “will provide written notice to the detainee approximately 30 days in advance of the pending records review so that the alien may submit information in writing in support of his or her release.”

128. Section 241.4(h)(4) requires that ICE “will notify the alien in writing that he or she is to be released from custody, or that he or she will be continued in detention pending removal or further review of his or her custody status.”

129. Section 241.4(k)(1)(i) requires that “[p]rior to the expiration of the removal period, the district director or Director of the Detention and Removal Field Office shall conduct a custody review” where the alien’s removal “cannot be accomplished during the period, or is impracticable or contrary to the public interest.”

130. Section 241.4(k)(2)(ii) requires that when detention continues after the 90-day review, “authority over the custody determination transfers” to the Executive Associate Commissioner, and “[t]he initial HQPDU review will

ordinarily be conducted at the expiration of the three-month period after the 90-day review.”

131. The regulations use mandatory language throughout. Under well-established principles of statutory and regulatory interpretation, the word “shall” imposes a mandatory duty. *See Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26, 35 (1998) (“The mandatory ‘shall’ . . . normally creates an obligation impervious to judicial discretion.”).

132. ICE has failed to comply with mandatory requirements in Mr. Vu’s case.

133. ICE was required to provide Mr. Vu with written notice approximately 30 days in advance of a pending records review pursuant to 8 C.F.R. § 241.4(h)(2). On July 22, 2025, Mr. Vu received a notice of custody interview scheduled for August 28, 2025, which is one day after the 90-day removal period. But no custody review was conducted on August 28, 2025.

134. ICE was required to conduct an initial custody review consisting of a records review prior to the expiration of the 90-day removal period pursuant to 8 C.F.R. § 241.4(h)(1), (k)(1)(i). The 90-day removal period expired on or about August 27, 2025. Instead, on September 22, 2025—well after the 90-day

period—Mr. Vu received a Notice of Continued Detention, despite never having received the required interview.

135. Following receipt of the Notice of Continued Detention, Mr. Vu affirmatively requested an interview to review his continued detention. ICE scheduled an interview for November 6, 2025, at 1:00 PM, but cancelled it without explanation. No subsequent interview has been conducted, and no meaningful custody review has ever taken place.

136. ICE was required to conduct a custody review prior to the expiration of the removal period pursuant to 8 C.F.R. § 241.4(k)(1)(i). No such review occurred.

137. Following the expiration of the 90-day removal period, ICE was required to conduct a further custody review within three months (i.e., by approximately November 27, 2025) pursuant to 8 C.F.R. § 241.4(k)(2)(ii). This deadline has passed and no review has occurred.

138. The regulations afford detainees the right to submit information in support of release pursuant to 8 C.F.R. § 241.4(h)(2). Mr. Vu has been denied this opportunity because no review has been scheduled.

139. Multiple federal courts have recently addressed this precise issue and have consistently held that ICE's failure to conduct mandatory custody

reviews renders detention unlawful and warrants habeas relief under 28 U.S.C. § 2241.

140. In *Zhuliang Ye v. Bondi*, No. CIV-25-1230-D (W.D. Okla. Dec. 4, 2025), the United States District Court for the Western District of Oklahoma granted habeas relief to a petitioner whose detention was found to violate ICE's regulatory procedures. The court adopted the magistrate judge's report and recommendation, which found that "ICE failed to abide by its regulations." *Zhuliang Ye*, at 3.

141. The court held that "ICE's failure to abide by its own regulations in making the decision to revoke Petitioner's OOS renders the revocation unlawful, and that his release is therefore appropriate under 28 U.S.C. § 2241(c)(3)." *Id.* at 6.

142. The court rejected the government's argument that "mere failure to comply with immigration regulations does not support the grant of a writ of habeas corpus," finding instead that the regulatory violations constituted "a serious substantive defect in the government's detention" warranting release. *Id.* at 4, 6.

143. Other cases have reached similar conclusions regarding due process mandating release where the regulatory conditions are not satisfied. *See*

Pham v. Bondi, 25-cv-1157-BLP, 2025 WL 3243870 (W.D. Okla. Nov. 20, 2025) (failure to demonstrate changed circumstances justifying detention amounts to a due process violation entitling the petitioner to habeas relief); *Hamidi v. Bondi*, No. 25-cv-1205-G (W.D. Okla. Dec. 1, 2025 (granting habeas relief where the government’s assertions were “inadequate to satisfy” the regulatory requirements); *Qui v. Carter*, 25-cv-3131-JWL, 2025 WL 2770502 (D. Kan. Sept. 26, 2025) (“a failure to establish changed circumstances” under the regulations “renders the revocation of release ineffective, entitling the petitioner to release.”)

147. The regulatory failures in Mr. Vu’s case are even more egregious than those in the cases where courts have granted release. Unlike the cases involving revocation of release on an Order of Supervision, where ICE was required to demonstrate “changed circumstances” under 8 C.F.R. § 241.13(i)(2), Mr. Vu’s case involves the fundamental initial custody review procedures under 8 C.F.R. § 241.4 that apply to all detained individuals with final removal orders.

148. ICE has wholly ignored these procedural requirements. Mr. Vu has been detained for over six and one-half months without receiving a single custody determination of any kind. He has received no written notice of any review. He has had no opportunity to submit information in support of release. He has received no written decision explaining the basis for his continued

detention. ICE has failed to conduct the 90-day review. ICE has failed to conduct the six-month review.

149. The purpose of these regulatory requirements is to ensure that immigration detention is not arbitrary and that detainees have a meaningful opportunity to challenge their continued custody. By systematically ignoring every procedural safeguard, ICE has rendered Mr. Vu's detention arbitrary and unlawful.

150. The failure to conduct custody reviews is not merely harmless procedural error. As the court in *Zhuliang Ye* explained, that such violations are "serious substantive defect[s]" warranting release. *Zhuliang Ye*, at 4.

151. Second, the regulatory procedures are designed to provide substantive protections, not mere formalities. The regulations require ICE to consider specific factors including the nature and seriousness of the offense, criminal history, compliance with supervision, family ties, community ties, and likelihood of removal. 8 C.F.R. § 241.4(f). Without any custody review, there is no mechanism to ensure that these factors have been considered.

152. Third, Mr. Vu has been prejudiced by the failure to conduct custody reviews. Had ICE conducted the required reviews, it would have been required to consider that Mr. Vu has 23 years of perfect compliance with

immigration supervision, strong family ties to U.S. citizens, no criminal history in 26 years since the 1998 incident, serious medical conditions requiring treatment, and a vacated conviction that eliminates the predicate for his removal order. Any fair consideration of these factors would have resulted in release.

153. Fourth, the regulations afford Mr. Vu the right to submit information in support of release. By failing to conduct any review, ICE has denied him this fundamental procedural right.

155. While the recent decisions granting habeas relief for regulatory violations arise from courts in the Tenth Circuit and other jurisdictions, the regulatory framework is federal and applies uniformly nationwide. The regulatory text is mandatory and does not vary by circuit.

156. Upon an exhaustive search and upon information and belief, no Fifth Circuit authority has held that regulatory violations are insufficient for habeas relief.

157. ICE's systemic failure to conduct any of the mandatory custody determinations required by 8 C.F.R. § 241.4 renders Mr. Vu's detention unlawful. As multiple federal courts have held, such regulatory violations constitute serious substantive defects that warrant habeas relief under 28 U.S.C. §

2241(c)(3). This Court should follow the lead of those courts and order Mr. Vu's immediate release.

PRAYER FOR RELIEF

158. WHEREFORE, Petitioner Hien Duy Vu respectfully requests that this Court:

- (a) Issue a writ of habeas corpus pursuant to 28 U.S.C. § 2241 ordering Petitioner's immediate release from custody, subject to appropriate conditions of supervision;
- (b) In the alternative, order Respondents to provide Petitioner with a bond hearing before an immigration judge within seven days of this Court's order, at which hearing the government shall bear the burden of proving by clear and convincing evidence that Petitioner's continued detention is warranted;
- (c) Issue a temporary restraining order and preliminary injunction ordering Respondents to immediately provide Petitioner with adequate medical care for his documented medical conditions, including but not limited to the medication prescribed by his treating physicians for hypertension, diabetes, hyperlipidemia, and chronic obstructive pulmonary disease;
- (d) Declare that Respondents' continued detention of Petitioner violates 8 U.S.C. § 1231(a)(6), 8 C.F.R. § 241.4, and the Fifth Amendment to the United States Constitution;

(e) Award Petitioner his reasonable costs and attorneys' fees; and

(f) Grant such other and further relief as the Court deems just and proper.

Dated: December 16, 2025

Respectfully submitted,

/s/Brian Scott Green

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VERIFICATION

I, Theodore N. Cox, counsel for Petitioner hereby verify under penalty of perjury pursuant to 28 U.S.C. § 1746 that the factual allegations in this petition are true and correct to the best of my knowledge, information, and belief, based upon the records available and information provided by Petitioners.

Dated: December 16, 2025

Respectfully submitted,

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