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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF HAWAI'I

VU, QUANG DUY *Petitioner*, v. MICHAEL J.D. SMITH, *in his official capacity as Warden of the Federal Detention. Center, Honolulu, Hawai'i*; POLLY KAISER, *in his official capacity as Acting Field Office Director of the Immigration and Customs Enforcement, San Francisco Field Office*; KRISTI NOEM, *in her official capacity as Secretary of the Department of Homeland Security*; PAMELA BONDI, *in her official capacity as Attorney General of the United States*, *Respondents.*	**PETITION FOR A WRIT OF HABEAS CORPUS** Civil Case No.

INTRODUCTION

1. Petitioner QUANG DUY VU (hereinafter "Mr. VU") is currently in indefinite Immigration and Customs Enforcement ("ICE") custody at the Federal Detention Center ("FDC") in Honolulu. *See* Exhibit 1. He has been in detention since June 4, 2025, and is seeking habeas corpus relief pursuant to 28 U.S.C. § 2241. While Mr. Vu is technically subject to mandatory detention under INA § 236(c) due to certain non-vacated felony convictions, he was ordered removed on March 23, 2000, and subsequently released on an Order of Supervision on May 31, 2000. Since that release, he has regularly reported to ICE and has not committed any crimes following his last conviction on April 6, 2001.

2. Mr. Vu's removal is not reasonably foreseeable. Vietnam has historically been reluctant to accept deportees, particularly individuals with criminal records. He entered the U.S. in 1990, placing him among Vietnamese nationals whose repatriation has long been constrained under the U.S.–Vietnam repatriation framework. *See* Exhibit 20, 21. Consistent with these barriers, Mr. Vu applied for a Vietnamese passport in 2018 and has received no response, *see* Exhibit 5, further demonstrating that removal is not reasonably foreseeable. Mr. Vu's long-term rehabilitation, extraordinary family responsibilities, ownership of four (4) restaurants and operator of one

of his restaurants, and substantial community ties further underscore that his continued detention is unreasonable under *Zadvydas v. Davis*, 533 U.S. 678 (2001). *See* Exhibits 15, 18,19

3. Mr. Vu is a native and citizen from Vietnam, having been born on [redacted] in Bien Hoa, South Vietnam. *See* Exhibit 13. He was paroled into the United States at Los Angeles, CA on or about December 18, 1990, at the age of 16 as a public interest parolee and was granted lawful permanent resident status. His request for refugee status was denied. *See* Exhibit 11.

4. On August 19, 1999, the Department of Homeland Security ("DHS") issued a Notice to Appear ("NTA"), charging Mr. Vu as removable under § 212(a)(2)(A)(i)(I) of the Immigration and Nationality Act ("INA") based on a 1995 conviction for 1.) Grand Theft: Money/Labor/Property under California Penal Code § 497(a); 2.) Receiving Known Stolen Property §497(a), for which his sentence was 36 months probation and suspended 270 days; 3). Probation was terminated on February 17, 1999, and he was sentenced to 16 months in prison. *See* Exhibit 7.

5. On April 30, 1999, Mr. Vu was convicted for violation of California Penal Code §459, Burglary and §470, Forgery, with a sentence of 60 month's probation, 364 days jail, restitution, and fine.

6. On April 6, 2001, he was convicted of violation of PC §653f(a) Solicitation to Commit Specified Criminal Acts with his sentence 36 months probation, and 365 days in jail (suspended). *See* Exhibit 9, RAP sheet.

7. Since that conviction over 24 years ago, Mr. Vu has led a law-abiding life and has demonstrated rehabilitation and integration into a productive life in Hawaii,

8. On March 23, 2000, Mr. Vu was issued a final order of removal by the Lancaster Immigration Court. Due to a Memo of Understanding between the US and Vietnamese governments signed on January 22, 2008, he was released on May 31, 2000, under an Order of Supervision and has regularly reported to ICE and complied with all conditions of release for more than two decades. *See* Exhibit 8. He was issued lawful permanent residence card in 2006 by USCIS. *See* Exhibit 12.

9. On November 19, 2022, the Superior Court of California, County of Orange, granted Mr. Vu's Motion to Vacate the conviction under California Penal Code § 1473.7(a)(1). The court found that a prejudicial legal error unconstitutionally affected Mr. Vu's ability to understand the immigration consequences of his plea because no Vietnamese interpreter or translator was provided during his court proceedings. *See* Exhibit 10.

10. On June 2, 2025, Mr. Vu received a text from ICE stating, "Your ICE officer has requested that you report to the office for a case review this week. Please arrive at the office either on Tuesday, June 3rd, or on Wednesday, June 4th. If you have any questions, please feel free to contact the office."

11. On June 4, 2025, Mr. Vu reported to the ICE office as requested, believing it was a routine check-in under his Order of Supervision. He was taken into custody without prior notice and was not permitted to leave and has since been detained at the Federal Detention Center ("FDC") in Honolulu.

12. On August 4, 2025, a Motion to Reopen, "MTR", removal proceedings were filed based on the vacatur of Mr. Vu's November 1995 criminal conviction for Grand Theft and Receiving Stolen Property. On September 4, 2025, an Immigration Judge denied the MTR. *See* Exhibit 3. Mr. Vu timely appealed that denial with the BIA, which has been pending since October 6, 2025. *See* Exhibit 2.

13. On November 5, 2025, Mr. Vu was given an ICE custody redetermination interview, during which he fully cooperated and provided all requested information.

14. Due to the Memo of Understanding between the United States and Vietnam, signed at Hanoi on January 22, 2008, he cannot be returned to Vietnam. The memo states that "Vietnamese citizens are not subject to return to Vietnam

under this Agreement if they arrived in the United States before July 12, 1995, the date on which diplomatic relations were re-established between the U.S. Government and the Vietnamese Government, The U.S. Government and the Vietnamese Government maintain their respective legal positions relative to Vietnamese citizens who departed Vietnam for the United States prior to that date". *See* Exhibit 20, 21,22.

15. Mr. Vu has requested a passport from the government of Vietnam, which has failed to issue a passport to him. In addition, ICE may have contacted other nations regarding removal of Mr. Vu and their success rate has been very low. *See* Exhibit 5

16. Since 2019, Mr. Vu has maintained stable employment in Honolulu, has integrated into his community, demonstrated good moral character, and obeyed all laws. He has had no criminal convictions since 2001.

17. The Petitioner is lawfully employed in the restaurant business as the owner and operator of Saito and Pho Restaurant in Honolulu with four (4) locations.

18. Consequently, Mr. Vu has formed deep community relationships as evidenced by his volunteer work with the Asian American National Committee, Inc., and has demonstrated sustained civic engagement and rehabilitation. *See* Exhibit 15,16

19. Although Mr. Vu is subject to a final order of removal, his continued and potentially indefinite detention without prior notice or a meaningful opportunity to be heard is unlawful and violates due process. ICE's arbitrary and capricious detention deprives Petitioner of a protected liberty interest in violation of the Constitution.

20. Because Mr. Vu has been in continuous physical presence in the interior of the United States for decades following parole and a grant of lawful permanent residency, he is not subject to expedited removal. On August 1, 2025, the U.S. District Court for the District of Columbia in *Coalition for Humane Immigrant Rights v. Noem* stayed government policies seeking to place individuals paroled at a port of entry into expedited removal proceedings, holding that the INA does not authorize expedited removal for such individuals even after parole has been terminated. Mr. Vu has also dutifully filed and paid his income taxes.

21. This Verified Petition for Writ of Habeas Corpus therefore seeks relief forthwith under 28 U.S.C. § 2243: immediate release, or, at minimum, a prompt custody redetermination (bond hearing) before an immigration judge, together with appropriate injunctive relief to maintain the status quo while this Court adjudicates the petition.

JURISDICTION AND VENUE

22. This Court has jurisdiction pursuant to 28 U.S.C. § 2241 (the general grant of habeas authority to the district court); Art. I § 9, cl. 2 of the U.S. Constitution ("Suspension Clause"); 28 U.S.C. § 1331 (federal question jurisdiction), and 28 U.S.C. § 2201, 2202 (Declaratory Judgment Act).

23. Federal district courts have jurisdiction to hear habeas claims by non-citizens challenging the lawfulness of their detention. *See, e.g.*, *Zadvydas*, 533 U.S. at 687.

24. Federal courts also have federal question jurisdiction, through the APA, to "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A). APA claims are cognizable on habeas. 5 U.S.C. § 703 (providing that judicial review of agency action under the APA may proceed by "any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus"). The APA affords a right of review to a person who is "adversely affected or aggrieved by agency action." 5 U.S.C. § 702. Respondents' continued detention of Petitioner up to and past the 90-day removal period has adversely and severely affected Petitioner's liberty and freedom.

25. Venue is proper in this district and division pursuant to 28 U.S.C. § 2241(c)(3) and 28 U.S.C. § 1391(b)(2) and (e)(1) because Petitioner is

detained within this district at FDC Honolulu and the Warden of FDC Honolulu—his immediate custodian—is located within this District. *See Rumsfeld v. Padilla,* 542 U.S. 426, 434–47 (2004) (immediate-custodian rule and district-of-confinement principle). The record confirms Petitioner's current confinement at FDC Honolulu.

PARTIES

26. Mr. Vu is a native and citizen from Vietnam and was paroled into the United States at Los Angeles, CA on or about December 18, 1990, as a public interest parolee. He is currently detained at the FDC in Honolulu since June 4, 2025.

27. Michael J.D. Smith, Facility Administrator (Warden), Federal Detention Center Honolulu ("FDC Honolulu"), a detention facility that contracts with ICE to detain non-citizens. He is responsible for the administration and management of FDC Honolulu. Mr. Smith is Petitioner's immediate custodian. He is sued in his official capacity.

28. Polly Kaiser serves as the Acting Field Office Director for the San Francisco ICE Field Office and is the federal agent charged with overseeing all detention centers ICE's in San Francisco Area of Responsibility, including FDC Honolulu. Mr. Kaiser is a legal custodian of Petitioner. She is sued in her official capacity.

29. Kristi Noem is the Secretary of the U.S. Department of Homeland Security ("DHS"). DHS oversees ICE, the agency responsible for administering and enforcing the immigration laws of the United States. In her official capacity and through her agents, Secretary Noem exercises broad authority over the operation and enforcement of the immigration laws, conducts official business within this District, and is legally responsible for actions relating to Petitioner's detention and removal. Secretary Noem is the ultimate legal custodian of Petitioner. She is sued in her official capacity.

30. Pamela Bondi is the Attorney General of the United States and the highest-ranking official within the U.S. Department of Justice. In this role, she oversees the immigration court system, which is housed within the Executive Office for Immigration Review ("EOIR") and includes all Immigration Judges ("IJs") and the Board of Immigration Appeals ("BIA"). She is sued in her official capacity.

LEGAL FRAMEWORK

EXHAUSTION

31. Habeas Corpus review under 28 U.S.C. § 2241 is proper here because Petitioner challenges the lawfulness of his present detention, not the validity of any removal order. The statutory exhaustion provision in 8 U.S.C. § 1252(d)(1) applies to petitions for review filed in the courts of appeals—not

to district-court habeas challenges to executive detention. *See*, e.g., *Zadvydas v. Davis*, 533 U.S. 678, 687– 88 (2001) (permitting § 2241 custody challenges); *Jennings v. Rodriguez*, 138 S. Ct. 830, 840–42 (2018) (channeling provisions do not foreclose detention challenges in district court).

32. Based on our conclusion that indefinite detention of aliens in the former category would raise serious constitutional concerns, we construe the statute to contain an implicit 'reasonable time' limitation, the application of which is subject to federal court review," wrote Justice Breyer. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). The Supreme Court established that six (6) months (180 days) is the presumptive limit for post-order detention, after which the government must justify continued detention by showing that removal is significantly likely in the reasonably foreseeable future. Because Mr. Vu has now been detained for more than 180 days, his continued detention exceeds this presumptive limit and is subject to judicial review.

33. No adequate administrative remedy exists to test the legality of Mr. Vu's detention or to obtain the pre-deprivation hearing he seeks. Under the expedited removal framework (8 U.S.C. § 1231 and 8 C.F.R. §§ 241.4–241.13), custody determinations are made internally by ICE; there is no immigration judge bond jurisdiction and no administrative appeal that can

award the relief requested (immediate release or, at minimum, a neutral hearing before detention). Any later post-order custody review is discretionary, after-the-fact, and cannot cure the present constitutional violation. Requiring Mr. Vu after years of compliance, to await a paper review while in custody would defeat the point of the claim. *See McCarthy v. Madigan,* 503 U.S. 140, 147–49 (1992) (exhaustion not required where remedies are inadequate, futile, or where irreparable injury would result).

34. Under similar circumstances presented here; Courts in the 9th Circuit have recently granted TRO/PI relief for individuals re-detained after long periods on supervision, recognizing that there is no meaningful administrative avenue to adjudicate the due-process requirement of a pre-deprivation hearing and ordering release or a hearing with appropriate burdens. *Maklad v. Murray* (E.D.Cal. Aug. 8, 2025, No. 1:25-cv-00946 JLT SAB) 2025 U.S.Dist.LEXIS 153675 (Notably, already her I-589 petition has been summarily dismissed, and it appears that if she is not released, she will not receive the consideration of her derivative asylum claims. As other courts have done, the Court concludes that the government's interest in detaining Ms. Maklad or re-detaining her without a hearing is slight); *Arzate v Andrews* (E.D.Cal. Aug. 19, 2025, No. 1:25-cv-00942-KES-SKO (HC)) 2025 U.S.Dist.LEXIS 161136.) (petitioner has consistently shown up for his

check-ins and hearings, and petitioner has complied with the terms of supervision. In such circumstances, "the government has no legitimate interest in detaining individuals who have been determined not to be a danger to the community and whose appearance at future immigration proceedings can be reasonably ensured by a lesser bond or alternative conditions."); See also *Barrera v. Andrews* (E.D.Cal. Aug. 21, 2025, No. 1:25-cv-01006 JLT EPG) 2025 U.S.Dist.LEXIS 162825.)(parole allowed him to build a life outside detention, albeit under the terms of that parole. Mr. Garcia has a substantial private interest in being out of custody, which would allow him to continue in these life activities, including supporting his family. As other courts have done, the Court concludes that the government's interest in detaining Mr. Garcia or re-detaining him without a hearing, is slight); *Castellon v. Kaiser* (E.D.Cal. Aug. 14, 2025, No. 1:25-cv-00968 JLT EPG) 2025 U.S.Dist.LEXIS 157841 (During her more than three years on parole, Ms. Arostegui Castellon obtained work, attended classes at a community college, and built connections with her community . . . Thus, parole allowed her to build a life outside detention, albeit under the terms of her parole. Ms. Arostegui Castellon has a substantial private interest in being out of custody, which would allow her to continue in these life activities, including obtaining necessary medical care. As other courts have done, the Court concludes that

the government's interest in detaining Ms. Arostegui Castellon or re-detaining her without a hearing, is slight.)

35. To the extent the Government argues that Mr. Vu could request a stay of removal or make informal pleas to the Field Office, those are purely discretionary measures that do not provide a channel to adjudicate the constitutional and statutory limits on detention and are therefore not required to be exhausted. See *McCarthy,* 503 U.S. at 147–49. Likewise, if Vu has expressed or now expresses fear of return, 8 C.F.R. § 208.31 imposes a mandatory referral for a reasonable-fear interview; there is no administrative appeal to compel that referral, and habeas is an appropriate vehicle to prevent removal and ensure compliance with the regulation. Finally, the claim is ripe. Petitioner is presently detained at FDC Honolulu. The injury is ongoing and not speculative; the absence of any pre-deprivation process is complete, and continued custody inflicts irreparable harm on Petitioner and his family.

36. Federal courts retain authority under 28 U.S.C. § 2241 to review the legality of executive detention, including immigration custody that is independent of, or collateral to, any challenge to a removal order. The Supreme Court has repeatedly confirmed that habeas extends to challenges to "the fact or duration" of detention and to conditions governing release. *See Rumsfeld v. Padilla*, 542 U.S. 426, 434–35 (2004) (core habeas challenges executive

detention; immediate custodian is proper respondent); *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001) (§ 2241 lies to review post-order immigration detention); *Clark v. Martinez*, 543 U.S. 371, 377–78 (2005) (same). The jurisdiction-channeling provisions of 8 U.S.C. § 1252 do not eliminate habeas review for detention claims that do not ask the court to adjudicate the validity of a final removal order. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–42 (2018) (addressing detention authority under §§ 1225/1226; detainees may bring statutory and constitutional challenges to custody); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003) (same). Accordingly, this Court may assess whether Mr. Vu's re-detention and ongoing custody violate the Constitution, the INA, or DHS's own regulations.

PROLONGED POST-ORDER DETENTION WHERE REMOVAL IS NOT REASONABLY FORESEEABLE

a. Statutory Framework Governing Post-Order Detention

37. Detention of non-citizens subject to final orders of removal is governed by 8 U.S.C. § 1231. The statute establishes a "removal period" of 90 days beginning when the removal order becomes administratively final. 8 U.S.C. § 1231(a)(1)(B). During this period, DHS is required to detain the non-citizen while effectuating removal. Id. § 1231(a)(2).

38. If DHS does not remove the non-citizen within the ninety-day removal period, detention beyond that period is discretionary, not mandatory, and is

authorized only under limited circumstances. Id. § 1231(a)(6). To avoid serious constitutional concerns arising from indefinite civil detention, the Supreme Court has construed § 1231(a)(6) to permit detention only for a period reasonably necessary to bring about removal. *See Zadvydas v. Davis*, 533 U.S. 678, 689 (2001).

b. Regulations

39. DHS regulations codify the constitutional requirements articulated in *Zadvydas* and impose mandatory procedural safeguards governing post-order detention. *See* 8 C.F.R. §§ 241.4, 241.13, 241.14.

40. Prior to the expiration of the ninety-day removal period, ICE must conduct an individualized custody review to determine whether continued detention is warranted. 8 C.F.R. § 241.4(c)(1). If the non-citizen is not released, ICE Headquarters must conduct a further custody review by the 180-day mark. *Id.* § 241.4(c)(2), (k)(2)(ii).

41. In conducting these reviews, ICE must assess whether the non-citizen poses a danger to the community or a flight risk, and whether removal is reasonably foreseeable. *Id.* § 241.4(e). If the regulatory criteria for continued detention are not met, ICE must release the non-citizen under appropriate conditions of supervision. *Id.* § 241.4(j)(2).

42. Where the record contains information providing a substantial reason to believe that removal is not significantly likely in the reasonably foreseeable future, ICE must initiate additional review procedures pursuant to 8 C.F.R. § 241.4(i)(7) and § 241.13.

43. Continued detention may be justified only under narrow "special circumstances," such as national security concerns or a showing by clear and convincing evidence that the non-citizen is "specially dangerous," and only after enhanced procedural protections are afforded. 8 C.F.R. § 241.14(b)–(f).

c. ICE Policy

44. Consistent with the statutory and regulatory framework governing post-order detention, ICE has long recognized that continued detention beyond the removal period is not mandatory and is constitutionally constrained where removal is not reasonably foreseeable.

45. ICE policy guidance emphasizes that detention under 8 U.S.C. § 1231(a)(6) must be supported by individualized findings and that release under an order of supervision is appropriate where the non-citizen does not pose a danger to the community or a flight risk and where removal is not imminent.

46. These policy directives reflect ICE's acknowledgement of the constitutional limitations articulated in *Zadvydas v. Davis* and reinforce the requirement

that detention decisions be reasoned, individualized, and consistent with governing regulations.

47. Under the *Accardi* doctrine, an agency's failure to adhere to its own binding policies and procedures constitutes a violation of due process. *Accardi v. Shaughnessy*, 347 U.S. 260 (1954); *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969).

ARGUMENT

I. PETITIONER'S CONTINUED DETENTION IS UNLAWFUL UNDER *ZADVYDAS* BECAUSE HIS REMOVAL IS NOT REASONABLY FORESEEABLE, AND THIS COURT SHOULD ACCORDINGLY ORDER HIS IMMEDIATE RELEASE.

A. Mr. Vu's removal is not reasonably foreseeable under *Zadvydas*.

48. Mr. Vu' s detention is governed by 8 U.S.C. § 1231(a)(6) because he has been detained for more than 90 days since he was taken into detention. The 90-day removal period began for Mr. Vu around June 4, 2025, when the appeal period expired without either party filing a timely appeal. *See* 8 U.S.C. § 1231(a)(1)(B)(i); 8 C.F.R. § 1241.1(c).[6] Therefore, the *Zadvydas* framework applies to Mr. Vu's detention, and he has been detained for more than six months since taken into ICE custody.

49. Mr. Vu will very likely *never* be deported from the United States, let alone in the reasonably foreseeable future. He cannot be deported to his home country of Vietnam because he has a criminal record, which Vietnam has historically

been hesitant to accept in deportees with criminal records, and because he and his family fled Vietnam after the Vietnam War in the 1990s for supporting South Vietnam and the United States. *See* 8 C.F.R. § 1208.17(b)(2).

50. Furthermore, it is exceedingly unlikely that ICE will identify an alternative country to which it can remove Mr. Vu. ICE only managed to remove to third countries approximately three percent of non-citizens in similar circumstances in FY 2019 and 2020, and a significant increase in ICE's third-country removals is highly doubtful without a substantial change in diplomatic relationships between the United States and other countries.[1]

51. More specifically, ICE has recently and repeatedly failed to remove similarly situated Central American individuals to alternative countries. For example, CAIR Coalition recently represented two detainees who ICE failed to remove to a third country, but who nonetheless remained detained in Virginia for more than 90 days past their final relief grants. ICE Washington confirmed that they had received "negative responses" from six alternative removal countries (Honduras, Guatemala, Mexico, Nicaragua, Costa Rica, and Panama) to which ICE had purportedly sought to remove the two individuals. ICE

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[1] Foreign countries do not accept the deportation of random non-citizens who lack any connection to their territory. According to a 2019 DHS report on ICE deportation procedures, "foreign governments do not issue travel documents without confirming the identity and citizenship of the [non-citizen]" and "with limited exceptions, require a passport or temporary travel permit to accept their nationals back into the country." DHS Office of the Inspector General, *ICE Faces Barriers in Timely Repatriation of Detained Aliens* (March 11, 2019), at 8 https://www.oig.dhs.gov/sites/default/files/assets/2019-03/OIG-19-28-Mar19.pdf.

nonetheless continued to detain both individuals for months after receiving "negative responses" and only later released the individuals after they each filed federal habeas petitions like this one. *Id.* at 4, 8; *see also Martinez Alfaro v. Perry*, 1:22-cv-1243 (E.D. Va. 2022); *Hernandez Preza v. Perry*, 1:23-cv-200 (E.D. Va. 2023).

52. Similarly, earlier this month, undersigned counsel litigated a habeas petition in this Court on behalf of three Central American men who were detained in Virginia for more than 90 days past their relief grants. ICE released the three men two weeks after the habeas petition was filed, ostensibly because ICE HQ finally determined that their removal was not reasonably foreseeable. *See Rios Castro v. Crawford*, 1:23-cv-1011 (E.D. Va. 2023).

53. Finally, in a recent case, ICE Washington submitted requests to Honduras, Costa Rica, and Portugal,[8] asking them to accept the deportation of a Guatemalan citizen with no ties to those or any other countries. Even after each of those countries unsurprisingly declined to accept him, WAS ICE still denied the Guatemalan man's release at his 90-day custody review. Not until his case was reviewed by ICE HQ a month later did ICE finally release him, acknowledging that he "[did] not appear to have lawful status in a third country" and, therefore "no [significant likelihood of removal in the reasonably foreseeable future].

54. Given this history, it strains credulity to think that ICE will be able to remove Mr. Vu to a random collection of alternative countries that have recently and repeatedly declined to accept the deportation of similarly situated individuals. [2]Like the individuals referenced above, Mr. Vu is not a citizen of, has never lived in, and has no connection to *any* country besides his home country, let alone the countries to which ICE has purportedly attempted to remove individuals in the past.

55. Even in the highly unlikely scenario that an alternative country notifies ICE of its willingness to accept the deportation of Mr. Vu, ICE would still be required to obtain travel documents and afford him a Reasonable Fear Interview (RFI) at which he would have the opportunity to articulate a fear of return to the country willing to accept him. *See* 8 C.F.R. § 241.8(e). If an Asylum Officer (AO) were to find that Mr. Vu demonstrated a reasonable possibility of persecution or torture at the RFI, or an IJ subsequently vacated a negative finding by the AO, he would enter withholding-only proceedings before an IJ in which he would again seek to demonstrate his eligibility for withholding or CAT relief with respect to that country, thereby restarting the process that took several months to complete the first time.

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[2] ICE has not informed Petitioner to which specific countries it is attempting to remove him.

56. Therefore, Mr. Vu has been detained for more than six months since taken into custody, and his removal is not reasonably foreseeable because 1) he most likely will not be deported to his home country due to his criminal record and past political flee from Vietnam; 2) ICE has historically managed to remove only a tiny fraction of non-citizens to alternative countries; 3) any countries to which requests may still be pending have no logical reason to accept Mr. Vu's deportation and have provided no timeline under which they might decide; and 4) deporting Mr. Vu to those alternative countries would require additional, lengthy proceedings. *See Hassoun v. Sessions*, No. 18-cv-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019); *Kacanic v. Elwood*, No. 02-cv-8019, 2002 WL 31520362, at *5 (E.D. Pa. Nov. 8, 2002).

57. Even if this Court finds that Mr. Vu's removal period did not begin until September 23, 2025, when the IJ denied his motion to reopen and recognized it as untimely, Mr. Vu has still demonstrated that his continued detention is unreasonable under *Zadvydas*. Post-removal order detention for less than six months may still be unreasonable in unique circumstances like Petitioner's where he can meet his burden of demonstrating that removal is not reasonably foreseeable. *See Cesar*, 542 F. Supp. 2d at 904 ("The burden might be on the detainee within the first six months to overcome the presumptive legality of his detention, but where a[] [non-citizen] can carry that burden, even while

giving appropriate deference to any Executive Branch expertise, his detention would be unlawful."); *Trinh v. Homan*, 466 F. Supp. 3d 1077, 1093 (C.D. Cal. 2020) ("*Zadvydas* established a 'guide' for approaching detention challenges, not a categorical prohibition on claims challenging detention less than six months."); *Ali v. DHS*, 451 F. Supp. 3d 703, 708 (S.D. Tex. 2020) ("Whereas the *Zadvydas* Court established a presumption that detention that exceeded six months would be unconstitutional, it did not require a detainee to remain in detention for six months or to prove that the detention was of an indefinite duration before a habeas court could find that the detention is unconstitutional.").

58. For the reasons stated above, Mr. Vu has clearly met any burden of proof that this Court may place on him. Unlike *Zadvydas* and the vast majority of its progeny, which analyzed whether ICE will foreseeably remove non-citizens to their home country or country of citizenship, *see, e.g., Zadvydas*, 533 U.S. at 684-85, the question here is whether ICE will be able to deport Mr. Vu to random third countries to which he has no connection whatsoever. The answer to that question has been no from the moment Mr. Vu's motion to re-open was denied, and the likelihood of third-country removal has only decreased since then.

B. This Court should order Mr. Vu's immediate release.

59. Because Mr. Vu's removal is not reasonably foreseeable, *Zadvydas* requires that he be immediately released. *See* 533 U.S. at 700-01 (describing release as an appropriate remedy); 8 U.S.C. § 1231(a)(6) (authorizing release "subject to . . . terms of supervision"). To order his immediate release, this Court need only determine that Mr. Vu's removal is not reasonably foreseeable under *Zadvydas*; it need not analyze whether he poses a danger to the community or a flight risk. *See* 533 U.S. at 699-700 ("[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.").

60. *Zadvydas* explicitly held that flight risk is already baked into the reasonable foreseeability analysis, *see id.* at 690 (observing that the "justification . . . [of] preventing flight . . . is weak or nonexistent where removal seems a remote possibility at best"), and that dangerousness cannot unilaterally justify indefinite civil detention barring "special circumstances," which may include the non-citizen being a "suspected terrorist[]" but do not include the non-citizen's "removable status itself." *Id.* at 691. *See also Kansas v. Hendricks*, 521 U.S. 346, 358 (1997) ("A finding of dangerousness, standing alone, is ordinarily not a sufficient ground upon which to justify indefinite involuntary [civil detention]."). With respect to Mr. Vu's detention, ICE has not invoked

the regulations governing these "special circumstances" determinations. *See* 8C.F.R. § 241.14.

61. To the extent this Court considers any factors outside of the foreseeability of Petitioner's removal, which it need not do, Mr. Vu's case has significant equities that warrant release. Mr. Vu has lived in the United States for approximately 35 years.

62. Additionally, this Court or ICE is free to impose conditions on release to mitigate any potential concerns regarding flight risk or danger. *See Zadvydas*, 533 U.S. at 700 ("[T]he [non- citizen]'s release may and should be conditioned on any of the various forms of supervised release that are appropriate in the circumstances.").

II. ICE'S CONTINUED DETENTION OF MR. VU, WITHOUT REVIEWING HIS CUSTODY UNDER ICE POLICY VIOLATES THE APA AND DUE PROCESS.

63. Under the *Accardi* doctrine, which originated in the context of an immigration case and has been developed through subsequent immigration caselaw, agencies are bound to follow their own rules that affect the fundamental rights of individuals, even self-imposed policies and processes that limit otherwise discretionary decisions. *See Accardi*, 347 U.S. at 226 (holding that BIA must follow its own regulations in its exercise of discretion); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) ("Where the rights of individuals are affected,

it is incumbent upon agencies to follow their own procedures . . . even where the internal procedures are possibly more rigorous than otherwise would be required.").

64. The requirement that an agency follow its own policies is not "limited to rules attaining the status of formal regulations." *Montilla v. INS*, 926 F.2d 162, 167 (2d Cir. 1991). Even an unpublished policy binds the agency if "an examination of the provision's language, its context, and any available extrinsic evidence" supports the conclusion that it is "mandatory rather than merely precatory." *Doe v. Hampton*, 566 F.2d 265, 281 (D.C. Cir. 1977); *see also Morton*, 415 U.S. at 235–36 (applying *Accardi* to violation of internal agency manual); *U.S. v. Heffner*, 420 F.2d 809, 813 (4th Cir. 1969) ("Nor does it matter that these IRS instructions to Special Agents were not promulgated in something formally labeled a 'Regulation' . . .").

65. When agencies fail to adhere to their own policies as required by *Accardi*, courts typically frame the violation as arbitrary, capricious, and contrary to law under the APA, *see Damus v. Nielson*, 313 F. Supp. 3d 317, 337 (D.D.C. 2018) ("It is clear, moreover, that [*Accardi*] claims may arise under the APA"), or as a due process violation, *see Sameena, Inc. v. United States Air Force,* 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and deny adequate

notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).

66. Prejudice is generally presumed when an agency violates its own policy. *See Montilla,* 926 F.2d at 167 ("We hold that an alien claiming the INS has failed to adhere to its own regulations . . . is not required to make a showing of prejudice before he is entitled to relief. All that need be shown is that the subject regulations were for the alien's benefit and that the INS failed to adhere to them."); *Heffner*, 420 F.2d at 813 ("The *Accardi* doctrine furthermore requires reversal irrespective of whether a new trial will produce the same verdict.").

67. To remedy an *Accardi* violation, a court may direct the agency to properly apply its policy, *see Damus*, 313 F. Supp. 3d at 343 ("[T]his Court is simply ordering that Defendants do what they already admit is required."), or a court may apply the policy itself and order relief consistent with the policy. *See Jimenez v. Cronen*, 317 F. Supp. 3d 626, 657 (D. Mass. 2018) (scheduling bail hearing to review petitioners' custody under ICE's standards because "it would be particularly unfair to require that petitioners remain detained . . . while ICE attempts to remedy its failure").

68. ICE's long-standing policy (hereinafter "the Policy") is to release non-citizens immediately following a grant of withholding or CAT relief absent

exceptional circumstances. ("In general, it is ICE policy to favor the release [non-citizens] who have been granted protection by an immigration judge, absent exceptional concerns . . ."); *id.* at 4 ("Pursuant to longstanding policy, absent exceptional circumstances . . . noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge *should* be released . . .") (emphasis added). The Policy specifically instructs the local ICE field office to make an individualized determination whether to keep a non-citizen detained based on exceptional circumstances. *See id.* at 3 ("[T]he Field Office Director must approve any decision to keep a[] [non-citizen] who received a grant of [asylum, withholding, or CAT relief] in custody.").

69. The Policy constitutes ICE's interpretation of the statute and regulations governing post-removal order detention. *See* 8 U.S.C. § 1231; 8 C.F.R. §§ 241.4, 241.13, 241.14. ICE has reasonably concluded that 8 U.S.C. § 1231(a)(2) does not require the detention of non-citizens granted withholding or CAT relief for the entirety of the 90-day removal period and that ICE "has the authority to consider the release of such [non-citizens] during the removal period." . Furthermore, ICE later stated that the release policy established in 2004 "applies at all times following a grant of protection, including during any appellate proceedings and throughout the removal period," thereby

explicitly extending the Policy to non-citizens with final removal orders who were granted withholding or CAT relief. *Id.* at 3.

70. Such an application of the Policy is consistent with the broad discretion afforded to ICE by the statute and regulations governing post-removal order detention and is a reasonable interpretation of the ambiguities in that framework. Neither the statute nor regulations specifically contradict the Policy, [3]and the regulatory language suggests that the standard custody review procedures for non-citizens with final removal orders do not apply to non-citizens like Petitioner who have been detained for 90 days or more after being granted withholding or CAT and lack a connection to an alternative country. *See, e.g.,* 8 C.F.R. § 241.4(b)(4) ("The custody review procedures in this section do not apply after the Service has made a determination, under the procedures provided in 8 CFR 241.13, that there is no significant likelihood that [non- citizen] under a final order of removal can be removed in the reasonably foreseeable future.").

71. The Policy and its application to individuals with final grants of withholding or CAT relief are thus entitled to deference. *See Kisor v. Wilkie*, 139 S. Ct.

[3] 8 U.S.C. § 1231(a)(2) does not apply to Mr. Rodriguez Guerra because he has been detained past the 90-day removal period. Even if this Court were to find that Mr. Rodriguez Guerra is still within the 90-day removal period, § 1231(a)(2) would not preclude his release because he has not been charged as removable on the grounds described therein. *See, e.g.,* Ex. E; *see also id.* 8 U.S.C. § 1231(a)(2) ("Under no circumstance during the removal period shall [ICE] release a [non-citizen] who has been founded inadmissible [based on certain criminal or terrorism grounds] or deportable [based on similar grounds]).

2400, 2408 (2019) ("This Court has often deferred to agencies' reasonable readings of genuinely ambiguous regulations. We call that practice Auer deference . . ."); *Auer v. Robbins*, 519 U.S. 452 (1997) (deferring to Labor Secretary's reasonable interpretation of overtime pay regulations); *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) (holding that courts should defer to agencies' reasonable interpretations of ambiguous statutes).

72. The Policy is precisely the type of rule ICE is obligated to follow under *Accardi*. In *Damus*, the U.S. District Court for the District of Columbia found that a similarly styled ICE directive from 2009 laying out "procedures ICE must undertake to determine whether a given asylum-seeker should be granted parole" fell "squarely within the ambit of those agency actions to which the [*Accardi*] doctrine may attach," in part because it "establish[ed] a set of minimum protections for those seeking asylum" and "was intended—at least in part—to benefit asylum- seekers navigating the parole process." 313 F. Supp. 3d at 324, 337-38; *see also Pasquini v. Morris*, 700 F.2d 658, 663 n.1 (11th Cir. 1983) ("Although the [INS] internal operating instruction confers no substantive rights on the [noncitizen]-applicant, it does confer the procedural right to be considered for such status upon application."). Similarly, the Policy here establishes procedures for reviewing the custody of non-citizens who are

granted immigration relief and is clearly intended, at least in part, to benefit those non-citizens.

73. Furthermore, by reiterating the Policy four times over the last two decades and using mandatory language, ICE leadership has clearly indicated that it intends the Policy to be binding on all field offices and officers. ICE has stated: "In all cases, the Field Office director *must* . . ." (emphasis added); "I am issuing this reminder to ensure that ICE personnel remain cognizant of and continue to follow this Directive"; *see Padula v. Webster*, 822 F.2d 97, 100 (D.C. Cir. 1987) ("[A]n agency pronouncement is transformed into a binding norm if so intended by the agency.").

74. HON ICE has clearly flouted ICE's national policy with respect to Petitioner's detention, in violation of *Accardi*. The available evidence demonstrates that WAS ICE is automatically detaining *every* non-citizen granted withholding or CAT relief, including Petitioner, for at least the 90-day removal period. After the 90-day removal period lapses, WAS ICE conducts a standard custody review pursuant to the factors in 8 C.F.R. § 241.4, without regard to the Policy's requirements. Only after WAS ICE denies release based on these factors does the case transfer to ICE HQ to consider the likelihood of removal under § 241.13. At no point does it appear that WAS ICE is conducting an

individualized review under the "exceptional circumstances" standard as required by the Policy.

75. Since the beginning of FY 2023, CAIR Coalition has seen virtually every client with a final grant of withholding or CAT relief—approximately 15 individuals, including Petitioner—held by WAS ICE for at least the 90-day period following their relief grants. [4]. Conversations with WAS ICE regarding the detention of Petitioner and similarly situated individuals confirm that the deportation officers have consistently and reflexively continued to detain non-citizens for the 90-day period without any individualized review, seemingly pursuant to an office-wide practice. WAS ICE noted that a non-citizen client "will be released in accordance to policy, close to or on day 90".

76. In Mr. Vu's case, ICE San Francisco should have reviewed his custody after his motion to re-open was denied by the IJ. Yet they did not. There is furthermore no evidence that the ICE San Francisco Field Office Director, who is vested with non-delegable review power under the Policy, approved Petitioner's continued detention at any point after he was granted relief, as required by the Policy.[5]

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[4] This excludes one individual who was in post-order withholding-only proceedings from the outset of his detention and was released about two months after being granted withholding, in part because he had already been held well past the 90-day removal period. *See* Ex. L at ¶ 7.

[5] That WAS ICE is violating ICE policy is not surprising given its history of non-compliance with ICE national directives. In 2021, more than 50% of its enforcement actions were against non- citizens who did not fall within ICE's stated enforcement priorities. Where rank and file officers sought pre-approval from WAS ICE

77. ICE San Francisco's failure to promptly review Petitioner's custody under the Policy is prejudicial to him. Prejudice can be presumed because the Policy implicates Petitioner's fundamental liberty interests and due process rights. See Delgado-Corea v. INS, 804 F.2d 261, 263 (4th Cir. 1986) (holding that "violation of a regulation can serve to invalidate a deportation order when the regulation serves a purpose to benefit the [non-citizen]" and the violation affected "interests of the [non-citizen] which were protected by the regulation") (internal quotations omitted). The Policy provides Mr. Vu with a discrete opportunity to win his freedom from detention and that opportunity has thus far been withheld from him. *See Zadvydas*, 533 U.S. at 690 ("Freedom 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.").

78. Conducting the standard 90-day custody review under 8 C.F.R. § 241.4, which ICE San Francisco should do for Mr. Vu does not suffice to comply with the Policy. 8 C.F.R. § 241.4, which facially applies to all non-citizens

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leadership for these non-priority enforcement actions, leadership approved nearly 98% of the requests. *See* American Immigration Council (AIC), *ICE Didn't Follow Federal Enforcement Priorities Set by Biden Administration* (June 27, 2023), *https://www.americanimmigrationcouncil.org/foia/ice-enforcement-priorities?emci=b046dc53- 8c16-ee11-a9bb-00224832eb73&emdi=ea000000-0000-0000-0000-000000000001&ceid=*.

subject to an administratively final order of removal, employs a different standard that places the burden of proof on the non-citizen to justify their release. *See* 8 C.F.R. § 241.4(d)(1) ("[ICE] may release a[] [non-citizen] if the [non-citizen] demonstrates to the satisfaction of [ICE] that his or her release will not pose a danger to the community or to the safety of other person or to property or a significant risk of flight . . .").

79. In contrast, the Policy presumes that non-citizens granted withholding or CAT relief will be released "absent exceptional circumstances, such as when the non-citizen presents a national security threat or a danger to the community," and it specifies that "prior convictions alone do not necessarily indicate a public safety threat or danger to the community." If ICE San Francisco were to review Mr. Vu's custody under the Policy, he would very likely be released.

80. Therefore, Mr. Vu has been prejudiced by ICE's failure to review his custody under the Policy's "exceptional circumstances" standard. According to the *Accardi* doctrine, ICE's departure from its own policy is arbitrary, capricious, and contrary to law under the APA and violates Mr. Vu's due process rights.

81. As a remedy, this Court should review Mr. Vu's custody under the Policy's "exceptional circumstances" standard and order his release accordingly. *See Jimenez*, 317 F. Supp. at 657 ("In these circumstances, it is most appropriate

that the court exercise its equitable authority to remedy the violations of petitioners' constitutional rights to due process by promptly deciding itself whether each should be released."). At the very least, this Court should order that ICE San Francisco immediately conduct such a review for Petitioner pursuant to the Policy. *See Damus*, 313 F. Supp. 3d at 343.

CLAIMS FOR RELIEF

COUNT I

VIOLATION OF IMMIGRATION AND NATIONALITY ACT, 8 U.S.C. § 1231(a)(6)

82. Petitioner realleges and incorporates by reference the paragraphs above.

83. 8 U.S.C. § 1231(a)(6), as interpreted by the Supreme Court in *Zadvydas*, authorizes detention only for "a period reasonably necessary to bring about the alien's removal from the United States." 533 U.S. at 689, 701.

84. Petitioner's continued detention has become unreasonable because his removal is not reasonably foreseeable. Therefore, his continued detention violates 8 U.S.C. § 1231(a)(6), and he must be immediately released.

COUNT II

ARBITRARY AND CAPRICIOUS AGENCY ACTION UNDER THE ADMINISTRATIVE PROCEDURE ACT, 5 U.S.C. § 706(2)(A)

85. Petitioner realleges and incorporates by reference the paragraphs above.

86. Courts must "hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

87. ICE has deviated from its own policy in continuing to detain Petitioner, without determining whether exceptional circumstances warrant his continued detention. This is arbitrary, capricious, and contrary to law in violation of the APA.

88. As a remedy, this Court should conduct its own review of Petitioner's custody or, at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

COUNT III

VIOLATION OF THE DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT TO THE U.S. CONSTITUTION

89. Petitioner realleges and incorporates by reference the paragraphs above.

90. ICE has violated Petitioner's due process rights by denying him an individualized custody review to which he is entitled under ICE policy.

91. As a remedy, this Court should conduct its own review of Petitioner's custody or, at least, order ICE to review Petitioner's custody under the standard articulated in ICE policy.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully request that this Court:

a. Assume jurisdiction over this matter;

b. Declare that Petitioner's continued detention violates the Immigration and Nationality Act, 8 U.S.C. § 1231(a)(6); the Administrative Procedure Act, 5 U.S.C. § 706(2)(A); and/or the Due Process Clause of the Fifth Amendment to the U.S. Constitution.

c. Order Petitioner's immediate release;

d. Alternatively, review Petitioner's custody under the standard articulated in ICE policy, or order ICE to review Petitioner's custody accordingly;

e. Grant any other further relief this Court deems just and proper.

Dated: 01/14/2026

Respectfully submitted,

Carmen Di Amore-Siah, HI 5035
Lead Counsel of Record

Norman K.M. Wong, HI 10627
Co-Counsel of Record

VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I am submitting this verification on behalf of the Petitioner because I am the attorney for Petitioner. I or my co-counsel have discussed with the Petitioner the events described in this Petition. Based on those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: 01/14/2026

Respectfully submitted,

Carmen Di Amore-Siah, HI 5035
Lead Counsel of Record

CERTIFICATE OF SERVICE

I, undersigned lead counsel, hereby certify that on this date, I filed this Petition for Writ of Habeas Corpus and all attachments using the CM/ECF system. I will furthermore mail a copy by USPS Certified Priority Mail with Return Receipts to each of the following individuals:

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Dated: 01/14/2026

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