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**A LEGAL GUIDE FOR
INS DETAINEES:**

***PETITIONING FOR RELEASE
FROM INDEFINITE
DETENTION***

American Bar Association
Commission on Immigration Policy, Practice and Pro Bono
740 15th Street, NW, 9th Floor
Washington, DC 20005-1022

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Commission on Immigration Policy, Practice and Pro Bono
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Printed in the United States of America

ISBN 1-59031-165-5

STEP ONE:
PETITIONING FOR ADMINISTRATIVE REVIEW OF
INDEFINITE DETENTION FROM THE INS DISTRICT OFFICE
NINETY DAYS AFTER THE FINAL ORDER OF REMOVAL

On June 28, 2001, the Supreme Court ruled in the Zadvydas case that it is illegal for the INS to detain certain aliens who have received a final order of removal but cannot be deported in the “reasonably foreseeable future.” If you believe that the Zadvydas ruling applies to you based on the criteria listed in the previous section, you should follow the steps listed below to petition for administrative review of indefinite detention before attempting to submit a writ of habeas corpus to the court. If you have already been in INS detention for six months or longer since your removal order became final, skip to **Step Two**.

Initial Custody Review

The removal period expires ninety days after your order of removal becomes final. Once the removal period has expired, the INS must begin custody review procedures in order to continue to hold you in detention.⁴ Your initial custody review will be conducted by your local INS district office. You do not need to do anything for the INS to initiate and conduct this first custody review; however, we recommend that you follow the steps listed below. At this stage, the INS should make its decision to detain or release you based on whether they consider you a **danger to the community** or a **significant flight risk**.⁵

You should receive a **written notice** approximately 30 days in advance of your first custody review.⁶ This notice will be sent by the District Director of the local INS office and will tell you the date of your review and the address where you can send any information that you would like the INS to consider.

⁴ 8 C.F.R. § 241.4

⁵ Id. § 241.4(d)(1).

⁶ Id. § 241.4(h)(2).

Steps for you to follow before your first custody review:

1. **Send a letter**, requesting your release from detention, to the address given in the written notice that you received from the INS.⁷
 - The letter must be typed or handwritten neatly.
 - The letter must be in English.
 - Be sure to include your full name and Alien Number (“A – Number”) on all letters sent.
 - You must explain, in as much detail as possible, that you should be released from detention because you are **not a danger to public safety**, you are **not a significant flight risk**, and because the INS has been **unable to obtain travel documents** for your deportation.⁸ The INS will consider the following information in determining whether you should be released:⁹
 - a. Whether you have cooperated with INS efforts to deport you. **You must make reasonable efforts to assist the INS in securing travel documents for your removal. The INS will not release you if you are not cooperating with their efforts to deport you.**¹⁰
 - b. Whether you have had any disciplinary infractions while in detention.
 - c. Your past criminal history.
 - d. Any available information relating to your mental health (*i.e.*, psychiatric/psychological reports).
 - e. Whether you have participated in any job training, educational, or rehabilitation programs.
 - f. Whether you have close relatives residing legally in the United States.
 - g. Whether you have prior immigration violations, including a failure to appear at any immigration proceeding or any attempts to avoid removal.
 - h. Whether you will have a job if released.

⁷ Id. § 241.4(h)(1).

⁸ Id. § 241.4(e).

⁹ Id. § 241.4(f).

¹⁰ Id. § 241.4(g)(ii).

- Address as many of these factors as you can in your letter to the INS. Highlight the factors that would encourage the INS to release you (*i.e.*, if you have a relative legally residing in the United States that you will live with), and explain why any negative factors occurred and why they will not happen again (*i.e.*, you have successfully completed a drug rehabilitation program while in detention). **Do not lie or make misrepresentations in any of the information that you send to the INS.**

- ❖ See **Form 1** for a sample letter that you can fill out and send to the INS.

2. **Send copies of any documents** that you have that will show the INS you have cooperated with their removal efforts, that you are not a danger to the public, that you are not a flight risk, and that you deserve to be released. For example, copies of the following documents will be helpful to send:

- Certificates from education or job training classes you have completed while in detention.
 - Certificates/letters stating that you have completed a behavior management program while in detention (*i.e.*, drug treatment, anger management).
 - Reference letters from detention officers or prison chaplains who can attest to your good behavior while in detention.
 - Reference letters from former employers, responsible family members, or religious leaders who know you personally.
 - A letter from the person you will be living with if you are released (*i.e.*, a relative/sponsor).
 - A letter from your employer, written on business letterhead, stating that you will have a job or interview if you are released.
 - Any letters or other correspondence you have had with your embassy or consulate including passport applications and evidence of application for travel documents.
- ✓ If you believe it is unlikely that you can be deported in the reasonably foreseeable future (*i.e.*, you have received a letter from your consulate stating that they will not accept you for deportation), you should explain this to the INS in your letter and submit any supporting documentation that you have. At this stage, however, the INS probably will not consider this information and will simply forward it to the Headquarters Post-Order Detention Unit (HQPDU) for any subsequent custody reviews.¹¹

¹¹ See *id.* §§ 241.4(i)(7); 241.13(b)(2)(ii).

- ❖ **You should save copies (especially your letter to the INS requesting release) of all the information that you send to the INS because it will be very useful to you in any subsequent custody reviews.**

After your initial custody review, you should receive a written copy from the INS of their decision whether to release or detain you.¹² If the INS decides not to release you, the decision they send you should set forth the reasons for your continued detention.¹³ If your request for release has been denied, you should proceed to **Step Two** of the manual. All subsequent custody review requests will be decided by INS Headquarters (HQPDU).¹⁴ Note that INS Headquarters should automatically conduct this type of review on a yearly basis,¹⁵ and you should continue to follow the steps above for each of these automatic custody reviews.

¹² Id. § 241.4(d).

¹³ Id.

¹⁴ Id. § 241.4(c)(2).

¹⁵ Id. § 241.4(k)(2)(iii)

Form 1: Ninety-Day Letter Requesting Initial Release From Detention

[Print your full name]

[Alien number]

[Mailing address at your detention center]

[Today's date]

[The address provided to you in the written notice from the Office of Detention and Removal U.S. Immigration and Naturalization Service]

I request that the INS take the following information into consideration in reviewing my custody status because I believe that I qualify for an order of supervision. I am under a final order of removal and have been in detention for more than 90 days since my order of removal became final. I am not a danger to public safety, and I am not a flight risk.

I entered the United States on [date of your entry]. I am not a danger to public safety because [In this section, you must convince the INS that you will not commit further crimes or otherwise pose a danger to the public. Include reasons such as those suggested below. **Attach photocopies of any letters or**

documents that support these claims:

- 1) My past criminal conduct occurred while I was associated with certain people who had a negative influence on me. If released, I will be living far away from these people.
- 2) I will live with my parent(s)/other relative/friend where I will have a stable home.
- 3) I will have a job if released (explain where you will work, and, if possible, have your employer write a letter, which you can submit, explaining that you will have a job there).
- 4) I want to continue my education and will enroll in job training/college/educational programs if released.
- 5) I have been rehabilitated while in detention (list the programs that you have completed, such as Alcoholics Anonymous, Bible study, drug treatment, or vocational training, and **attach certificates/letters of completion**).

- 6) I did not have any disciplinary problems while in detention (if you have a good disciplinary record, have someone from your detention center write a letter supporting this claim for you to submit with this letter).
- 7) I have a healthy support network available that will help me succeed outside of detention (describe your family or other ties to the community, church or other religious membership, or any community programs that will support you after you are released).
- 8) Unusual circumstances warrant my release (explain any unusual circumstances, such as a sick family member who needs your help, any extensive medical treatment that you require, or your family's need for your financial support).
- 9) I realize that I have made mistakes in the past, but I have learned from them and can now be a productive member of society.]

I am not a flight risk because I will live at [write the address and phone number where you will live if released] with my [write who you will live with, if applicable]. I have the following family members in the United States:

[Enter the names and addresses of all family members living in the United States, and state whether they are lawful permanent residents or U.S. citizens].

When I am released, I will concentrate on working and supporting my family.

I am prepared to comply with all restrictions imposed on me as part of my release.

[If you have ever violated your probation or missed a court hearing or INS appointment, explain why and state why it will not happen again].

I have cooperated with the INS's efforts to remove me from the United States. I have [In this section, explain what you and your Deportation Officer have done to get your home country's permission for your return. For example, explain which papers you have signed, whether you have talked to your home country's embassy or consulate, and whether you have provided the INS with any photographs, fingerprints, or identity papers. Attach photocopies of any letters or documents you have supporting these claims].

My home country will not accept my deportation because [In this section, provide the reason(s) why the INS will be unable to deport you, if applicable. For example, you could explain that your home country does not have a repatriation agreement with the United States; that you know other detainees from your home country are not deported; that your home country has specifically told you it will not take you back; or that your home country does not consider you to be a citizen].

For the reasons stated above, I ask that the INS release me under an order of supervision so that I may join my family, return to gainful employment, and no longer be a financial burden to society.

Respectfully Submitted,

[Print your full name and Alien number]

[Sign your full name]

I am not a flight risk because I will live at _____
_____ with my _____

I have the following family members in the United States: _____

When I am released, I will concentrate on working and supporting my family.

I am prepared to comply with all restrictions imposed on me as part of my release.

I have cooperated with the INS's efforts to remove me from the United States.

I have _____

My home country will not accept my deportation because _____

For the reasons stated above, I ask that the INS release me under an order of supervision so that I may join my family, return to gainful employment, and no longer be a financial burden to society.

Respectfully Submitted,

Form 2: Six-Month Letter Requesting Release From Detention

[Print your full name]

[Alien number]

[Mailing address at your detention center]

[Today's date]

Headquarters Post-Order Detention Unit
U.S. Immigration and Naturalization Service
801 I Street, N.W., Suite 800
Washington, DC 20536

I request that the INS take the following information into consideration in reviewing my custody status because I believe that I qualify for an order of supervision. I am under a final order of removal and have been in detention for more than 6 months since my order of removal became final. It is unlikely that I will be deported to [your home country] in the reasonably foreseeable future. I am not a danger to public safety, and I am not a flight risk.

I entered the United States on [date of your entry]. I have the following family members in the United States:

[Enter the names and addresses of all family members living in the United States, and state whether they are lawful permanent residents or U.S. citizens].

My home country will not accept my deportation because [In this section, provide the reason(s) why the INS has been unable to deport you. For example, you could explain that your home country does not have a repatriation agreement with the United States, that you know other detainees from your home country are not

deported; that your home country has specifically told you it will not take you back; or that your home country does not consider you to be a citizen].

I have cooperated with INS efforts to remove me from the United States. I have [In this section, explain what you and your Deportation Officer have done to get your home country's permission for your return. For example, explain which papers you have signed, whether you have talked to your home country's embassy or consulate, and whether you have provided the INS with any photographs, fingerprints, or identity papers. **Attach photocopies of any letters or documents you have supporting these claims:**

In addition, I am not a danger to public safety because [In this section, you should provide information to the INS to demonstrate that you will not commit further crimes or otherwise pose a danger to the public. Include reasons such as those suggested below. **Attach photocopies of any letters or documents that support these claims].**

- 1) My past criminal conduct occurred while I was associated with certain people who had a negative influence on me. If released, I will be living far away from these people.
- 2) I will live with my parent(s)/other relative/friend where I will have a stable home.
- 3) I will have a job if released (explain where you will work, and, if possible, have your employer write a letter, which you can submit, explaining that you will have a job there).
- 4) I want to continue my education and will enroll in job training/college/educational programs if released.
- 5) I have been rehabilitated while in detention (list the programs that you have completed, such as Alcoholics Anonymous, Bible study, drug treatment, or vocational training, and **attach certificates/letters of completion**).
- 6) I did not have any disciplinary problems while in detention (if you have a good disciplinary record, have someone from your detention center write a letter supporting this claim for you to submit with this letter).

- 7) I have a healthy support network available that will help me succeed outside of detention (describe your family or other ties to the community, church or other religious membership, or any community programs that will support you after you are released).
- 8) Unusual circumstances warrant my release (explain any unusual circumstances, such as a sick family member who needs your help, any extensive medical treatment that you require, or your family's need for your financial support).
- 9) I realize that I have made mistakes in the past, but I have learned from them and can now be a productive member of society.]

I am not a flight risk because I will live at [write the address and phone number where you will live if released] with my [write who you will live with, if applicable]. When I am released, I will concentrate on working and supporting my family. I am prepared to comply with all restrictions imposed on me as part of my release. [If you have ever violated your probation, or missed a court hearing or INS appointment, you should explain why and tell the INS why your failure to comply will not recur].

For the reasons stated above, I ask that the INS release me under an order of supervision so that I may join my family, return to gainful employment, and no longer be a financial burden to society.

Respectfully Submitted,

[Print your full name and Alien number]

[Sign your full name]

Headquarters Post-Order Detention Unit
U.S. Immigration and Naturalization Service
801 I Street, N.W., Suite 800
Washington, DC 20536

I request that the INS take the following information into consideration in reviewing my custody status because I believe that I qualify for an order of supervision. I am under a final order of removal and have been in detention for more than 6 months since my order of removal became final. It is unlikely that I will be deported to _____ in the reasonably foreseeable future. I am not a danger to public safety, and I am not a flight risk.

I entered the United States on _____. I have the following family members in the United States:

My home country will not accept my deportation because _____

I have cooperated with INS efforts to remove me from the United States. I have _____

In addition, I am not a danger to public safety because _____

I am not a flight risk because I will live at _____
_____ with my _____

When I am released, I will concentrate on working and supporting my family. I am prepared to comply with all restrictions imposed on me as part of my release. _____

For the reasons stated above, I ask that the INS release me under an order of supervision so that I may join my family, return to gainful employment, and no longer be a financial burden to society.

Respectfully Submitted,

