



**Defending Liberty
Pursuing Justice**



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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FROM INDEFINITE
DETENTION**

Prepared by:

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STEP THREE: PETITIONING FOR A WRIT OF HABEAS CORPUS

A. GENERAL OVERVIEW

If your request for release from INS Headquarters (HQPDU) has been denied, or you have not received a prompt decision from HQPDU after submitting a request for release, you may want to challenge your continued detention by filing a writ of habeas corpus. Filing a writ of habeas corpus means that you will **ask a federal district court to release you from indefinite detention until you can be deported by the INS**. You are not challenging your removal order.³³

It is best to file a writ of habeas corpus with the help of a lawyer; however, many INS detainees successfully file their habeas petitions without a lawyer or “pro se.” You will file your petition in the federal district court that covers the area where you are now detained. **You should check the local rules for the filing requirements of the federal district court in which you will file your petition because court rules and filing requirements may change.** Please refer to the section entitled “Instructions for Filing Habeas Petitions” for the filing requirements as of the date of printing of this manual. The local rules should be in your detention center’s law library. If they are not, ask the clerk’s office in the federal district court where you will be filing your petition for the court’s local rules.

B. STEPS FOR YOU TO FOLLOW:

1. Write your Petition for Writ of Habeas Corpus.

- Your petition must be typed or handwritten neatly in blue or black ink.
- Your petition must be in English.
- Write your full name and Alien Number (“A – Number”) on all documents sent to the court.
- Be sure to sign and date your petition before you send it.
- Make sure that it is clear in your petition that you are **challenging your continued detention by the INS, not your deportation order.**
- Concentrate on making the **facts of your case clear and accurate.** The judge is most interested in the specific facts of your case. You do not need to include many legal arguments or citations.

³³ Allison Wannamaker, Esq., Catholic Legal Immigration Network, Inc., *Release from INS Custody After a Removal Order: Post-Order Reviews and Habeas Corpus* (2002).

- **Do not lie or make misrepresentations in any of the information that you submit to the court.** By signing your petition, you are swearing that what you have submitted is the truth.

❖ **See Form 3** for a model petition that you can use to write your petition for writ of habeas corpus.

*The most important part of your habeas petition is the section where you provide a reason why you are not likely to be removed to your home country in the reasonably foreseeable future. You will present this reason in paragraph 13 of **Form 3**. Here are some examples of you might write in paragraph 13. Remember, choose only the example or examples that apply to you.*

- Example 1: Petitioner is from Vietnam and no repatriation agreement exists between the United States and Vietnam. *See* Ma v. Ashcroft, 357 F.3d 1095, 1100 (9th Cir. 2001) (noting that Vietnamese citizens cannot be removed because United States does not have a repatriation agreement); Ngo v. INS, 192 F.3d 390, 395 (3d Cir. 1999) (recognizing that Vietnam has refused to accept repatriation of citizens ordered removed from United States). Because there is no repatriation agreement between Vietnam and the United States, Petitioner cannot be removed. Thus, Petitioner’s removal from the United States is not significantly likely to occur in the reasonably foreseeable future.
- Example 2: Petitioner has been detained for more than six months and the INS has been unable to carry out his removal. Petitioner’s Consulate has not issued travel documents and there is no certainty as to when, if ever, such travel documents will be issued. Thus, Petitioner’s removal from the United States is not significantly likely to occur in the reasonably foreseeable future. *See* Okwilagwe v. Immigration & Naturalization Service, No. 3-01-CV-1416-BD, 2002 WL 356758, *3 (N.D. Tex. Mar. 1, 2002) (alien from Nigeria in custody for 11 months ordered released under Zadvydas because INS did not have travel documents in hand and there was no certainty as to when such documents might be issued); *see also* Seretse-Khama v. Ashcroft, - - F. Supp.2d --, 2002 WL 1711751, * 11 (D.D.C. 2002) (finding Liberian alien’s release “mandated by Zadvydas” where INS had not obtained travel documents and alien detained nearly four years after final removal order); Lewis v. INS, No. 00CV0758(SJ), 2002 WL 1150158, *4-5 (E.D.N.Y. May 7, 2002) (alien from Barbados provided “good reason” to believe removal not likely to occur in the reasonable

foreseeable future where consulate had not responded to INS requests for travel documents and alien had been detained longer than six months).

- **Example 3:** Petitioner has been in detention longer than six months, and the Chinese Consulate has notified the INS that it will not accept Petitioner's removal to China. Because the Consulate has specifically refused to accept Petitioner's removal to China, Petitioner is not significantly likely to be removed in the reasonably foreseeable future, or at all for that matter. See Zhou v. Ashcroft, Civ. No. 3:CV-01-0863 (M.D. Pa. Apr. 15, 2002) (ordering release of Chinese alien under Zadvydas after 20-month detention and where Chinese Consulate had notified INS by letter that it would not accept Petitioner's removal to China).

- **Be sure to check the chart below and the local rules used by your federal district court for the latest filing requirements.** The format of your petition may vary somewhat from the model petition.
- Some jurisdictions require that you use a special form for your habeas petition (see chart below). If you live in one of these jurisdictions, you must contact the Clerk of the Court to request the special habeas form. We recommend that you file the special form together with the habeas petition in Form 3.

2. Make several copies of your petition.

- You will generally need the original plus one copy for the court, and one copy for yourself.

3. Get a check or money order, made out to "United States District Court," to pay the court-filing fee.

- The court-filing fee is usually \$5.
- If you cannot afford this fee, you can submit an application to file *in forma pauperis*. Submitting an application *in forma pauperis* means that you will pay the court-filing fee over time. You must include an affidavit listing your assets, and a current statement of your prisoner account.

4. **Mail your petition for writ of habeas corpus and the court-filing fee** to the appropriate federal district court.

- You will need to send the **original** petition, plus one or two copies of the petition, and the court-filing fee to the appropriate federal district court.
- You will mail this information to the federal district court that covers the area where you are now detained.
- Be sure to address your envelope to the Clerk of the Court.
- Be sure to sign both your petition and your check or money order before mailing.
- Send your petition by certified mail, if possible, so you will have proof that the Clerk of the Court received your petition.

Once the court receives your petition for writ of habeas corpus and assigns your case to a judge, the judge will send your petition to the government to provide it with a chance to respond. If you disagree with what the government says in its response, you may file a reply with the court.

It may take the judge several months to issue a decision. If the judge agrees that you should be released, he or she will issue a written order telling the INS to release you. If you are released by INS Headquarters before the judge makes a decision, you should write to the court and ask to voluntarily withdraw your petition.

B. FILING INSTRUCTIONS

General Filing Requirements

The requirements listed below apply to most district courts. In the chart on page 18, we have provided a list of the rules that differ from the general requirements listed below. Check to make sure you have followed any special rules that may apply in your district.

- Where Should I File?
 - You should file your habeas petition in the district court with jurisdiction over the location where you are currently being detained. Of the districts with more than one office location, the majority requires that you file in the office that has jurisdiction over the county where you are being detained. In **Appendix B**, you will find a list of all of the district courts and their addresses.
- Cost
 - The cost for filing a habeas corpus petition is usually \$5.00.
 - If you cannot afford to pay the filing fee, you can apply to proceed *in forma pauperis*. See Form 5.

- Forms
 - Some courts require you to fill out special forms for habeas petitions. The next section lists the districts that we know to have these special forms. If the district in which you are filing has a special form, request the form by writing to the clerk of that court. See Appendix B for the addresses of the courts. If they don't have any special forms, you should fill out the model habeas petition. See Form 3.

- Filling Out Forms
 - For all documents that you send to the court, **write clearly or type**. Make sure that the papers do not have any eraser marks or cross-outs.
 - You may want to make a few copies of the forms before you fill them out, in case you make a mistake on one of them.
 - Remember to **sign** all the forms you send to the court.

- Copies
 - Most courts require you to send them the **original plus one copy** of all documents you file. You should also make an extra copy to keep for yourself.
 - If you want the court to return a stamped copy to you confirming that they have received your documents, send one copy in addition to the ones the court requires.

Habeas Corpus Petitions: Special Filing Requirements

District	# Copies	Filing Fee	Special Form	Which Office
Alabama				
<i>Northern District</i>	Original, +2 copies			
<i>Middle District</i>	Original, +2			
<i>Southern District</i>	Original, +2		Self-drafted petition acceptable	
Alaska		\$150.00 ³⁴		
Arizona	Original, +2			
Arkansas				
<i>Eastern District</i>	Original, +2			
<i>Western District</i>	Original, +2			
California				
<i>Northern District</i>	Original, +1		Self-drafted petition acceptable	Any office
<i>Eastern District</i>			Self-drafted petition acceptable; federal civil cover sheet required	
<i>Central District</i>	Original, +3		Self-drafted petition acceptable; federal civil cover sheet required (CV-027)	Any office
<i>Southern District</i>	Original, +2			
Colorado	Original, +4			
Connecticut				Any office
Delaware				
D.C.			Self-drafted petition acceptable; proposed order needed	
Florida				
<i>Northern District</i>			Review local rule 3.2	Any office
<i>Middle District</i>	Original, +2			
<i>Southern District</i>	Original, +2		Adopt a 2254 format for the petition;	

³⁴ This may need to be confirmed in the local rules. This is the only exception to the rule.

District	# Copies	Filing Fee	Special Form	Which Office
			request form	
Georgia				
<i>Northern District</i>			Self-drafted petition acceptable	
<i>Middle District</i>				
<i>Southern District</i>				
Guam	Original, +2		Self-drafted petition acceptable	
Hawaii				
Idaho			Self-drafted petition acceptable	
Illinois				
<i>Northern District</i>	Original, +2		Self-drafted petition acceptable; federal civil cover sheet required	
<i>Central District</i>	Original, +3			
<i>Southern District</i>				Any office; preferable to file in East St. Louis
Indiana				
<i>Northern District</i>	Original, +2		Use form for a 2254 filing	Any office
<i>Southern District</i>			Self-drafted petition acceptable; federal civil cover sheet required	
Iowa				
<i>Northern District</i>	Original, +2	No fee required		
<i>Southern District</i>	Original, +2		Self-drafted petition acceptable	
Kansas			Form is available only from Topeka office	
Kentucky				
<i>Eastern District</i>	Original, +2		Self-drafted petition acceptable	
<i>Western District</i>			Self-drafted petition acceptable	Any office

District	# Copies	Filing Fee	Special Form	Which Office
Louisiana				
<i>Eastern District</i>	Original, +2		Self-drafted petition acceptable	
<i>Middle District</i>	Original, +2			
<i>Western District</i>	Original, +2			File in person at any office; if filed by mail, it needs to go to Shreveport
Maine			Refer to local rule 3(b)	
Maryland				Any office
Massachusetts	Original, +2		Self-drafted petition acceptable; federal civil cover sheet required	
Michigan				
<i>Eastern District</i>	Original, +3		Self-drafted petition acceptable	
<i>Western District</i>			Self-drafted petition acceptable	Any office
Minnesota			Self-drafted petition acceptable; federal civil cover sheet required (JS-44)	
Mississippi				
<i>Northern District</i>	Original, +4		Self-drafted petition acceptable	
<i>Southern District</i>	Original, +4		Self-drafted petition available	
Missouri				
<i>Eastern District</i>	Original, +3		Self-drafted petition acceptable; federal civil cover sheet required	
<i>Western District</i>	Original, +2		Self-drafted petition acceptable	
Montana	Original, +2		Self-drafted petition acceptable	
Nebraska			Self-drafted petition acceptable	
Nevada	Original, +2			

District	# Copies	Filing Fee	Special Form	Which Office
New Hampshire			Self-drafted petition acceptable	
New Jersey	Original, +3		Self-drafted petition acceptable	
New Mexico	Original, +2		Self-drafted petition acceptable; federal civil cover sheet required	
New York				
<i>Northern District</i>				Needs to be sent to Syracuse Office
<i>Eastern District</i>				
<i>Southern District</i>	Original, +2			
<i>Western District</i>			Self-drafted petition acceptable; federal civil cover sheet required	Either office is ok, but Buffalo is preferable
North Carolina				
<i>Eastern District</i>				Needs to be sent to Raleigh office
<i>Middle District</i>				Needs to be sent to Greensboro office
<i>Western District</i>				
North Dakota	Original, +2		Self-drafted petition acceptable	
Northern Mariana Islands	Original, +5		Self-drafted petition acceptable	
Ohio				
<i>Northern District</i>			Self-drafted petition acceptable; federal civil cover sheet required	Can file in any office
<i>Southern District</i>			Self-drafted petition acceptable; federal civil cover sheet	

District	# Copies	Filing Fee	Special Form	Which Office
			required	
Oklahoma				
<i>Northern District</i>				Must be filed with West Fourth St. Tulsa Office
<i>Eastern District</i>				
<i>Western District</i>	Original, +2		This office prefers that they file the forms only; need to call and request special packet	
Oregon				
Pennsylvania				
<i>Eastern District</i>				
<i>Middle District</i>				
<i>Western District</i>			Self-drafted petition acceptable; federal civil cover sheet required	
Puerto Rico	Original, +2		No official form; a sample petition is available for guidance	
Rhode Island			Self-drafted petition acceptable	
South Carolina				
South Dakota				
Tennessee				
<i>Eastern District</i>			Self-drafted petition acceptable	
<i>Middle District</i>			Self-drafted petition acceptable	
<i>Western District</i>			Self-drafted petition acceptable, but forms are available	
Texas				
<i>Northern District</i>			Self-drafted petition acceptable	
<i>Eastern District</i>				
<i>Southern</i>				

District	# Copies	Filing Fee	Special Form	Which Office
<i>District</i>				
<i>Western District</i>				
Utah				
Vermont			Self-drafted petition acceptable	Any office
Virgin Islands			Self-drafted petition acceptable	
Virginia				
<i>Eastern District</i>	Original, +2			Any office
<i>Western District</i>			Use 2254 forms	Needs to be filed in the Roanoke Office
Washington				
<i>Eastern District</i>	Original, +2			
<i>Western District</i>	Original, +2			
West Virginia				
<i>Northern District</i>	Original, +2		Self-drafted petition acceptable	Any office
<i>Southern District</i>			Self-drafted petition acceptable	
Wisconsin				
<i>Eastern District</i>			Self-drafted petition acceptable	
<i>Western District</i>			Self-drafted petition acceptable	
Wyoming			Yes. If using special habeas § 2241 form, call first to discuss filing procedures	

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,

Form 3: Petition for Writ of Habeas Corpus

UNITED STATES DISTRICT COURT
FOR THE [name of district where you will file this petition. For example,
EASTERN DISTRICT OF LOUISIANA]

[Print your full name and A - Number],)
) Civil Action No. [leave blank]
)
Petitioner,)
)
)
 v.)
)
[write name of attorney general],)
)
ATTORNEY GENERAL,)
[write name of INS Commissioner],)
)
IMMIGRATION AND)
)
NATURALIZATION SERVICE)
)
COMMISSIONER, AND)
[name of the District Director for the district)
where you are in custody], INS DISTRICT)
DIRECTOR FOR THE [name of district)
where you are in custody] DISTRICT)
OFFICE.)
)
Respondents.)
_____)

**PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

Petitioner, [your full name], hereby petitions this Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

CUSTODY

1. Petitioner is in the physical custody of Respondents and the Immigration and Naturalization Service (“INS”). Petitioner is detained at the [name of your detention center] in [city and state where you are being held; e.g., New Orleans, Louisiana]. [If you are detained in a state or private facility, you should also write: The INS has contracted with {insert the name of your detention center} to house immigration detainees such as Petitioner]. Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution of the United States, and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104 - 208, 110 Stat. 1570, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq.

3. This Court has jurisdiction under 28 U.S.C. § 2241; art. I § 9, cl. 2 of the United States Constitution (“Suspension Clause”); and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

4. Petitioner has exhausted any and all administrative remedies to the extent required by law.

VENUE

5. Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493 - 500 (1973), venue lies in the United States District Court for the [name of district where you are filing petition, for example, Eastern District of Louisiana], the judicial district in which Petitioner resides.

PARTIES

6. Petitioner is a native and citizen of [list country]. Petitioner was first taken into INS custody on [date], and has remained in INS custody continuously since that date. Petitioner was ordered removed on [date]. [state when your order of deportation became final. For example, "Petitioner waived his appeal from the order of deportation, thereby making it final on that same date." OR "Petitioner did not appeal his order of deportation; thereby making it final 30 days from the date Petitioner was ordered removed."]

7. Respondent [John D. Ashcroft or present Attorney General] is the Attorney General of the United States and is responsible for the administration of the INS and the implementation and enforcement of the Immigration & Naturalization Act (INA). As such, Mr. Ashcroft has ultimate custodial authority over Petitioner.

8. Respondent [James Ziglar or present INS Commissioner] is the Commissioner of the INS. He is responsible for the administration of the INS and the implementation and enforcement of the INA. As such, Mr. Ziglar is the legal custodian of Petitioner.

9. Respondent [name of INS district director] is the District Director of the [name of district office] District Office of the INS and is Petitioner's immediate custodian. See Vásquez v. Reno, 233 F.3d 688, 690 (1st Cir. 2000), cert. denied, 122 S. Ct. 43 (2001).

FACTUAL ALLEGATIONS

9. Petitioner, [your name], is a native and citizen of [your home country]. Petitioner has been in INS custody since [date]. An Immigration Judge ordered the Petitioner removed on [date you were ordered removed. If you appealed to the Board of Immigration Appeals (BIA), also write the date of the BIA's decision in your case].

10. [Provide a summary of your immigration history, including: 1) when you first arrived in the United States; 2) countries you lived in before the United States; and 3) whether you or your family ever became lawful permanent residents or applied for citizenship].

11. [Provide a brief summary of your criminal history].

12. [Explain when and how the INS first took you into custody. For example, the INS picked you up from prison after you finished your sentence, or they arrested you at a meeting with your probation officer].

13. To date, however, the INS has been unable to remove the Petitioner to [your home country] or any other country. [Explain why your home country will not accept you for deportation if you know. For example, if you are from Vietnam or Laos, write: No repatriation agreement exists between the United States and Laos.

If you are from any other country, state whether your home country has an embassy in the United States, or if you have ever heard of your home country accepting citizens for deportation. If people sometimes can be deported to your home country, explain why there is a special reason that your home country will not accept you. For example, it does not consider you a citizen because your parents were born in another country, or it does not accept the deportation of permanent residents or people with certain criminal convictions. If you have talked to your consulate or your Deportation Officer about why you cannot be deported, explain who you spoke to and when, and what you talked about].

14. Petitioner has cooperated fully with all efforts by the INS to remove Petitioner from the United States. [Explain what you have done to help the INS apply for your travel documents. For example, explain whether you have signed a travel document application or other papers, provided your Deportation Officer with information about when and where you were born, or provided the INS with photographs, fingerprints, or identity documents. Refer back to the information you sent the INS in previous custody reviews].

15. Petitioner's custody status was first reviewed on [date of your first custody review]. On [date you received written decision], Petitioner was served with a written decision ordering his/her continued detention.

16. On [date you received notice your case was being transferred to HQPDU], Petitioner was served with a notice transferring authority over his/her custody status to the INS Headquarters Post-Order Detention Unit ("HQPDU"). [Explain

what you have done to ask INS Headquarters to release you from detention. For example, explain the dates that you mailed letters and other supporting documents, whether you have received a written decision or any other information about your custody status, or whether you have heard anything from INS Headquarters since your case was transferred].

17. In Zadvydas v. Davis, 533 U.S. 678 (2001), the Supreme Court in held that six months is the presumptively reasonable period during which INS may detain aliens in order to effectuate their removal. Id. at 702. Interim administrative regulations also recognize that the HQPDU has a six-month period for determining whether there is a significant likelihood of an alien's removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(b)(2)(ii).

18. Petitioner was ordered removed on [date you were ordered removed], and the removal order became final on [date your removal order became final]. Therefore, the six-month presumptively reasonable removal period for Petitioner ended on [six months after the date your removal order became final].

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

19. Petitioner re-alleges and incorporates by reference paragraphs 1 through 18 above.

20. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in Zadvydas.

The six-month presumptively reasonable period for removal efforts has expired. Petitioner still has not been removed, and Petitioner continues to languish in detention. Petitioner's removal to [your home country] or any other country is not significantly likely to occur in the reasonably foreseeable future. The Supreme Court held in Zadvydas that the INS's continued detention of someone like Petitioner under such circumstances is unlawful.

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

21. Petitioner re-alleges and incorporates by reference paragraphs 1 through 20 above.

22. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

23. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. Zadvydas recognized that the INS may continue to detain aliens only for a period reasonably necessary to secure the alien's removal. The presumptively reasonable period during which INS may detain an alien is only six months. Petitioner has already been detained in excess of six months and

Petitioner's removal is not significantly likely to occur in the reasonably foreseeable future.

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

24. Petitioner re-alleges and incorporates by reference paragraphs 1 through 23 above.

25. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that s/he should not be detained. Petitioner in this case has been denied that opportunity. The INS does not make decisions concerning aliens' custody status in a neutral and impartial manner. The failure to Respondents to provide a neutral decisionmaker to review the continued custody of Petitioner violates Petitioner's right to procedural due process. [If you have not received a decision from HQPDU, insert: Further, Respondents have failed to acknowledge or act upon the Petitioner's administrative request for release in a timely manner. There is no administrative mechanism in place for the Petitioner to demand a decision, ensure that a decision will ever be made, or appeal a custody decision that violates Zadvydas].

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody;

- 3) Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;
- 4) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 5) Grant any other and further relief that this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

[Your signature]
Petitioner

[Today's date]
Date executed

[Print your name and A – Number]

[Your mailing address]

UNITED STATES DISTRICT COURT
FOR THE _____

_____,)
Petitioner,) Civil Action No. _____
v.)
_____, ATTORNEY)
GENERAL;)
_____,)
IMMIGRATION AND)
NATURALIZATION SERVICE)
COMMISSIONER; AND)
_____,)
INS DISTRICT DIRECTOR FOR THE)
_____ DISTRICT)
OFFICE,)
Respondents.)
_____)

**PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241**

Petitioner, _____, hereby petitions this Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

CUSTODY

1. Petitioner is in the physical custody of Respondents and the Immigration and Naturalization Service ("INS"). Petitioner is detained at the _____ in _____.

Petitioner is under the direct control of Respondents and their agents.

JURISDICTION

2. This action arises under the Constitution of the United States, and the Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (“IIRIRA”), Pub. L. No. 104 - 208, 110 Stat. 1570, and the Administrative Procedure Act (“APA”), 5 U.S.C. § 701 et seq.

3. This Court has jurisdiction under 28 U.S.C. § 2241; art. I § 9, cl. 2 of the United States Constitution (“Suspension Clause”); and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, and the All Writs Act, 28 U.S.C. § 1651.

4. Petitioner has exhausted any and all administrative remedies to the extent required by law.

VENUE

5. Pursuant to Braden v. 30th Judicial Circuit Court of Kentucky, 410 U.S. 484, 493 - 500 (1973), venue lies in the United States District Court for the _____, the judicial district in which Petitioner resides.

PARTIES

5. Petitioner is a native and citizen of _____. Petitioner was first taken into INS custody on _____, and has remained in INS custody continuously since that date. Petitioner was ordered removed on _____.

6. Respondent _____ is the Attorney General of the United States and is responsible for the administration of the INS and the implementation and enforcement of the Immigration & Naturalization Act (INA). As such, Mr. Ashcroft has ultimate custodial authority over Petitioner.

7. Respondent _____ is the Commissioner of the INS. He is responsible for the administration of the INS and the implementation and enforcement of the INA. As such, Mr. Ziglar is the legal custodian of Petitioner.

8. Respondent _____ is the District Director of the [name of district office] District Office of the INS and is Petitioner's immediate custodian.

FACTUAL ALLEGATIONS

9. Petitioner, _____, is a native and citizen of _____. Petitioner has been in INS custody since _____. An Immigration Judge ordered the Petitioner removed on _____.

10. _____

11. _____

12. _____

13. To date, however, the INS has been unable to remove Petitioner to
_____ or any other country. _____

14. Petitioner has cooperated fully with all efforts by the INS to remove him from the United States. _____

15. Petitioner's custody status was first reviewed on _____.
On _____, Petitioner was served with a written decision ordering his/her continued detention.

16. On _____, Petitioner was served with a notice transferring authority over his/her custody status to the INS Headquarters Post-Order Detention Unit ("HQPDU"). _____

LEGAL FRAMEWORK FOR RELIEF SOUGHT

17. In Zadvydas v. Davis, 533 U.S. 678 (2001), the Supreme Court in held that six months is the presumptively reasonable period during which INS may detain aliens in order to effectuate their removal. Id. at 702. Interim administrative regulations also recognize that the HQPDU has a six-month period for determining whether there is a significant likelihood of an alien's removal in the reasonably foreseeable future. 8 C.F.R. § 241.13(b)(2)(ii).

18. Petitioner was ordered removed on _____, and the removal order became final on _____. Therefore, the six-month presumptively reasonable removal period for Petitioner ended on _____.

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

19. Petitioner re-alleges and incorporates by reference paragraphs 1 through 18 above.

20. Petitioner's continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in Zadvydas. The six-month presumptively reasonable period for removal efforts has expired. Petitioner still has not been removed, and Petitioner continues to languish in detention. Petitioner's removal to _____ or any other country is not significantly likely to occur in the reasonably foreseeable future. The

Supreme Court held in Zadvydas that the INS's continued detention of someone like Petitioner under such circumstances is unlawful.

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

21. Petitioner re-alleges and incorporates by reference paragraphs 1 through 20 above.

22. Petitioner's continued detention violates Petitioner's right to substantive due process through a deprivation of the core liberty interest in freedom from bodily restraint.

23. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner's liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the reasonably foreseeable future. Zadvydas recognized that the INS may continue to detain aliens only for a period reasonably necessary to secure the alien's removal. The presumptively reasonable period during which INS may detain an alien is only six months. Petitioner has already been detained in excess of six months and Petitioner's removal is not significantly likely to occur in the reasonably foreseeable future.

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

24. Petitioner re-alleges and incorporates by reference paragraphs 1 through 23 above.

25. Under the Due Process Clause of the Fifth Amendment, an alien is entitled to a timely and meaningful opportunity to demonstrate that s/he should not be detained. Petitioner in this case has been denied that opportunity. The INS does not make decisions concerning aliens' custody status in a neutral and impartial manner. The failure to Respondents to provide a neutral decisionmaker to review the continued custody of Petitioner violates Petitioner's right to procedural due process. _____

_____.

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release Petitioner from custody;
- 3) Enter preliminary and permanent injunctive relief enjoining Respondents from further unlawful detention of Petitioner;

- 4) Award Petitioner attorney's fees and costs under the Equal Access to Justice Act ("EAJA"), as amended, 5 U.S.C. § 504 and 28 U.S.C. § 2412, and on any other basis justified under law; and
- 5) Grant any other and further relief that this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Petitioner

Date executed

