



AMERICAN **BAR** ASSOCIATION

Commission on Immigration

A LEGAL GUIDE FOR ICE DETAINEES:

**Seeking Release from Indefinite Detention 180 Days after
Receiving a Final Order of Deportation**

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Commission on Immigration
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Nothing contained herein is to be considered as the rendering of legal advice for specific cases, and readers are responsible for obtaining such advice from their own legal counsel. These materials and any forms and agreements herein are intended for educational and informational purposes only. You should always consult an attorney to discuss the specifics in your case.

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The Commission on Immigration appreciates the 2015 revisions made to this guide by Zehra Asghar.

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Table of Contents

Preface	1
Important Words to Know	2
A Brief Summary of Supreme Court Precedent	3
<i>Zadvydas v. Davis</i>	3
Kestutis Zadvydas	3
Kim Ho Ma	3
The Supreme Court Decision	4
<i>Clark v. Martinez</i>	4
Sergio Suarez Martinez	4
The Supreme Court Decision	5
What Do These Decisions Mean for Me?	5
Timeline Overview	6
<i>How do I know when my final order was issued?</i>	6
Deportation FAQ *	8
90-Day Custody Review	10
What if I Don't Receive Notice of My Custody Review?	10
Step One: Prepare for your Custody Review *	11
(1) A Letter Requesting Release from Detention*	11
(2) Supporting Documents	14
Organize and Submit Your Packet	18
What Happens after I Submit My Packet?	18
How Do I Get More Information about My Case and/or Review Decision?	19
What Should I Do if I Never Receive My 90-Day Custody Review Decision?	19
180-Day Custody Review	20
Step Two: Initiate a HQPDU Custody Review under the <i>Zadvydas</i> Standard	20
Organize and Submit Your Packet	21
What Happens after I Submit My Packet?	22
After 180 Days: <i>Zadvydas</i> Habeas Corpus Petitions *	23
Who Should File a <i>Zadvydas</i> Habeas Corpus Petition?	23

How Do I Know Whether My Deportation is Reasonably Foreseeable?	24
Habeas Corpus FAQ *	27
Step Three: Prepare your <i>Zadvydas</i> Habeas Petition *	29
Before you Begin	29
What Should My Petition Say?	29
Step Four: Prepare Your Motion for Appointment of Counsel	30
Step Five: Prepare Your Motion to Proceed In Forma Pauperis	30
Filing Instructions	31
What Happens after I Mail my Petition to the Court? *	32
Habeas Corpus for Mariel Cubans	33
Release	34
Upon Release, Can I Work in the US?	34
Filing Tips	34
I've Read this Guide, but I Need More Help. How Do I Find a Lawyer?	35
Appendix	36
Form 1: Sample Letter Requesting 90-Day Review & Release from ICE Custody	36
Form 2: Sample Letter Requesting 180-Day Review & Release from ICE Custody	38
Form 3: Sample Habeas Petition	40
Form 4: Certificate of Service	49
Form 5: Sample Motion for Appointment of Counsel	50
Instructions	50
Following the Motion for Appointment of Counsel is a Proposed Order	52
Form 6: Motion to Proceed <i>In Forma Pauperis</i> , Prison Certificate, and Trust Account Withdrawal Authorization	58
Form 7: Petition for Writ of Habeas Corpus for Mariel Cubans	63
Potential ICE Arguments Opposing your Habeas Petition & Sample Responses	71
Argument 1: Petitioner Failed to Exhaust Administrative Remedies	71
Argument 2: Petitioner has Failed to Cooperate	72
Argument 3: Petitioner is Likely to be Removed in the Reasonably Foreseeable Future	74
Argument 4: Petitioner is Too Dangerous to be Released	74
Phone Numbers to U.S. District Courts	76

Preface

Welcome to *A Legal Guide for ICE Detainees: Seeking Release from Indefinite Detention After Receiving A Final Order Of Deportation*. This guide was adapted in part from existing materials provided by the ABA Commission on Immigration, the Florence Immigrant & Refugee Rights Project (FIRRP), and the Political Asylum/Immigration Representation (PAIR) Project. The manual is for detainees with a final order of deportation who seek to understand the custody review process in hopes of obtaining release.

This guide is intended for educational and informational purposes only. Nothing contained in this guide is to be considered as the rendering of legal advice for specific cases; readers are responsible for obtaining such advice from legal representation. This booklet was not prepared by the Department of Homeland Security (DHS), U.S. Immigration and Customs Enforcement (ICE), or by any other part of the United States government. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association, and accordingly, should not be considered as representing the official policy of the American Bar Association.

This guide explains how to petition for administrative review of your custody at all the important junctures following a final order of deportation, including a writ of habeas corpus. It also includes information on filing motions for appointment of counsel and how to have any filing fees waived if you do not have the means to pay for them (that is, proceeding *in forma pauperis*). In the appendices of this handbook you will find sample forms, and addresses of all U.S. District Courts. Before filing a habeas corpus petition, you should speak with an immigration attorney or seek the assistance of pro bono organizations in the area where you are being detained to help you in the process.

We welcome your questions or concerns at any time to: American Bar Association, Commission on Immigration, 1050 Connecticut Avenue, NW, Suite 400, Washington, DC 20036; telephone: 202-442-3363 or, if calling from a detention center, 2150#. If you write the ABA a letter, please indicate in your letter whether the ABA may forward your letter to a legal assistance provider or to the government offices that are responsible for reviewing complaints about detention conditions. If you give us permission, we *may* be able to send your complaints to a government agency that can investigate it: either the DHS Office of the Inspector General (OIG), the DHS Office for Civil Rights and Civil Liberties (CRCL), Immigration and Customs Enforcement (ICE) Headquarters, or other relevant government agencies. **DO NOT SEND ORIGINAL DOCUMENTS. NO COLLECT CALLS PLEASE.**

Important Words to Know

Immigration law has a lot of technical words. Below is a list of some of the words you will see in this guide and a short explanation of what they mean.

- **A-number (A#):** Your alien registration number, which is the number that appears on almost all of your immigration documents. It has 9 numbers and begins with the letter “A.” If you do not know your A-number, ask a jail officer for your A-number or “Immigration reference number.”
- **American Bar Association Commission on Immigration Detainee Hotline (“the Detainee Hotline”):** Hotline available in all detention centers to ICE detainees seeking access to materials to be able to represent themselves in front of deportation proceedings, file complaints with ICE, and limited other matters. Call 2150# from any detention center telephone.
- **Deportation:** ICE has put you in deportation proceedings, which are also called “removal proceedings.” If the Judge orders you deported or “removed” from the United States, you will be sent back to the country where you are a citizen and you will not be able to legally return to the United States for at least ten (10) years.
- **Executive Office of Immigration Review (EOIR):** The office responsible for adjudicating on immigration cases. It is the office under whom the Immigration Court and the Board of Immigration Appeals (BIA) are housed.
- **Government Attorney:** This is the lawyer who represents ICE when you go to your court hearings. He or she sits at the table next to you and also talks to the judge. It’s usually the attorney’s job to ask the Judge to order you deported.
- **Habeas Corpus:** A habeas corpus proceeding is a way to challenge your detention in federal court. By filing a habeas corpus petition, you argue that you are being held in violation of the law and your constitutional rights. Legal arguments in a habeas corpus case are usually done through written motions.
- **Immigration and Customs Enforcement (“ICE”):** This is the agency that has put you in deportation proceedings and is in charge of detaining you. ICE is part of the Department of Homeland Security, or “DHS.”
- **Immigration Judge (“Judge”):** This is the person who will make a decision about your case. He or she holds hearings in the courtroom and wears a black robe. This person does not work for ICE. It’s her job to look at the facts of your case and apply the law fairly.

A Brief Summary of Supreme Court Precedent

In June 2001, the US Supreme Court issued *Zadvydas v. Davis*,¹ a decision with tremendous significance for ICE detainees who are under final orders of removal. The decision required ICE to change the way it handles aliens in detention after a final removal order has been entered. As a result, ICE cannot detain an alien under a final order of removal for longer than six months if there is no significant likelihood that the alien will be removed in the reasonably foreseeable future.

Below are some facts and specifics of each case should you find that interesting and/or helpful as you begin the *Zadvydas* petition process.

Zadvydas v. Davis

Kestutis Zadvydas

Mr. Zadvydas was born in 1948 to Lithuanian parents in a displaced persons camp in Germany. In 1956, he immigrated with his family to the United States, and became a legal permanent resident (i.e. green card holder), but never became a US citizen. He has lived in the US ever since.

Mr. Zadvydas had a long criminal record involving drug crimes, attempted robbery, attempted burglary, and theft. He also had a history of failing to appear at both criminal and deportation proceedings. In 1992, Mr. Zadvydas was convicted in VA for cocaine possession with intent to distribute, and sentenced to 16 years in prison. After two years, he was paroled, then taken into the custody of ICE (which, at the time, was called the Immigration and Naturalization Service, or INS), and in 1994, he was ordered deported to Germany. Later that year, Germany told the INS that it would not accept Mr. Zadvydas because he was not a German citizen. Lithuania also refused to accept him because he was neither a Lithuanian citizen nor a permanent resident of Lithuania.

In September 1995, Mr. Zadvydas filed a petition for a writ of habeas corpus challenging his continued detention.² In October 1997, the District Court for the Eastern District of Louisiana granted his petition and authorized his supervised release. However, the Fifth Circuit Court of Appeals reversed the lower court's decision in 1999, because it believed there was still a possibility that Mr. Zadvydas could be removed. As a result of the Fifth Circuit's ruling, Mr. Zadvydas faced continued detention by INS for an indefinite period of time.

Kim Ho Ma

Mr. Ma was born in Cambodia in 1977. When he was two years old, he and his family fled Cambodia to refugee camps in Thailand, and then the Philippines. Eventually, Mr. Ma came to the United States with his family, where he has lived as a legal permanent resident since he was seven.

¹ 533 U.S. 678 (2001).

² A writ of habeas corpus is an independent judicial proceeding instituted to determine whether the defendant is being unlawfully deprived of his or her liberty. It is not a review of the validity of a final removal order.

In 1995, at the age of 17, Mr. Ma was involved in a gang-related shooting, convicted of manslaughter, and sentenced to 38 months in prison. After serving two years, Mr. Ma was released from prison, taken into INS custody, and ordered deported by an immigration judge. The INS, however, was unable to deport him because Cambodia did not have a repatriation agreement³ with the United States.

In 1999, Mr. Ma filed a petition for a writ of habeas corpus challenging his continued detention. The District Court for the Western District of Washington granted his petition and authorized his supervised release. The Ninth Circuit Court of Appeals agreed with this decision and also granted supervised release for Mr. Ma.

The Supreme Court Decision

The Supreme Court decided to review Mr. Zadvydas' and Mr. Ma's cases together to resolve the opposite outcomes. It ruled that the indefinite detention of removable aliens, such as Mr. Zadvydas and Mr. Ma, is not allowed when the alien is unlikely to be removed in the reasonably foreseeable future. For certain aliens who have entered the United States, the Court recognized that the INS (now ICE) generally cannot detain an alien for longer than six months after the issuance of a final removal order.

The Court ruled that, *after six months of post-removal order detention, if the alien can provide good reason to believe that he or she is unlikely to be removed in the reasonably foreseeable future, and the INS cannot provide evidence showing otherwise, the alien must be released.* The Supreme Court did not define a time frame for what would be the "reasonably foreseeable future," but did state that the longer an alien has been detained, the shorter the "reasonably foreseeable future" becomes.

In light of the Supreme Court's ruling, both Mr. Zadvydas and Mr. Ma were released under supervision.

Clark v. Martinez

The *Zadvydas* decision applied only to aliens who had been admitted to the United States. This left the status of inadmissible aliens, such as Mariel Cubans, unclear. In January 2005, the Supreme Court also decided *Clark v. Martinez*,⁴ holding that the standard announced in *Zadvydas* also applied to inadmissible aliens. Aliens under final orders of removal, even if they had never formally been admitted to the United States, must be released after six months of detention if they can prove that there is no significant likelihood that they will be removed in the reasonably foreseeable future.

Sergio Suarez Martinez

Mr. Martinez arrived in the United States from Cuba as part of the Mariel Boatlift and was paroled. In 1991, Mr. Martinez sought to adjust his status to that lawful permanent resident as permitted under the Cuban Refugee Adjustment Act, but was ineligible because he had previously been convicted of assault with a deadly weapon and burglary in the United States. Mr. Martinez was convicted of additional crimes after his adjustment application was denied.

³ A repatriation agreement is an agreement made between two countries to govern the return of a person to his or her country of origin.

⁴ 543 U.S. 371 (2005)

In December 2000, Mr. Martinez's parole was revoked by the Attorney General. He was taken into custody by the INS and, in removal proceedings, was found inadmissible because of his prior convictions and lack of sufficient documentation. Mr. Martinez was ordered removed and did not appeal. He was kept in custody beyond the expiration of the 90-day removal period. Mr. Martinez filed a petition for a writ of habeas corpus challenging his continued detention.

The Supreme Court Decision

The Supreme Court held the *Zadvydas* standard - after six months of post-removal order detention, if the alien can provide good reason to believe that she or he is unlikely to be removed in the reasonably foreseeable future, and ICE cannot provide evidence showing otherwise, the alien must be released - applies to all aliens, including those who are inadmissible. Based on this standard, the Supreme Court granted Mr. Martinez's habeas corpus petition.

What Do These Decisions Mean for Me?

The *Zadvydas* and *Martinez* decisions established a form of habeas relief by ruling that ICE cannot detain any person under a final order of removal for longer than six months if there is no significant likelihood that they will be removed in the *reasonably foreseeable future*. Not only do these decisions establish a form of relief, but they also provide guidance on what detainees must prove during the administrative review process in order to try to get released before 6 months elapse.

If you have a final order of deportation and believe that your deportation is not reasonably foreseeable, follow the steps listed below to petition for administrative review of indefinite detention. If you have been in ICE detention for six months or longer *since your removal order became final*, skip to Step 2.

Timeline Overview

When you receive a **final order of removal**, some important countdowns begin that this guide covers. ICE begins counting your removal period from the day your final removal order was issued. Your order of removal - also called a **deportation order** - becomes final when an Immigration Judge orders your deportation and:

- a. You waive your right to appeal; or
- b. The 30-day time period to file an appeal expires; or
- c. Your appeal is dismissed by the Board of Immigration Appeals (BIA); or
- d. The Board of Immigration Appeals makes a decision to uphold the removal order.

▫ ***How do I know when my order of removal was issued?***

Call the EOIR hotline at 1-800-898-7180 (speed dial: 111#) to learn the date of the decision in your case. This is an automated system and will ask you to type your A-number on the telephone keypad, after which it will give you a set of options. Press 3 to learn your case status. If you have been ordered deported, it will tell you when. Otherwise, it says, "Case pending," which means that either a final decision has not been reached.

Once you receive your final deportation order, Immigration and Customs Enforcement (ICE) has 90 days to deport you. The law requires that people with final deportation orders remain in detention during this 90-day period. It is possible you will be deported during this time, provided ICE can obtain travel documents for your return to your country of citizenship. Within a few weeks of receiving a final removal order, you will receive a notice from ICE telling you the date your custody review will be held.

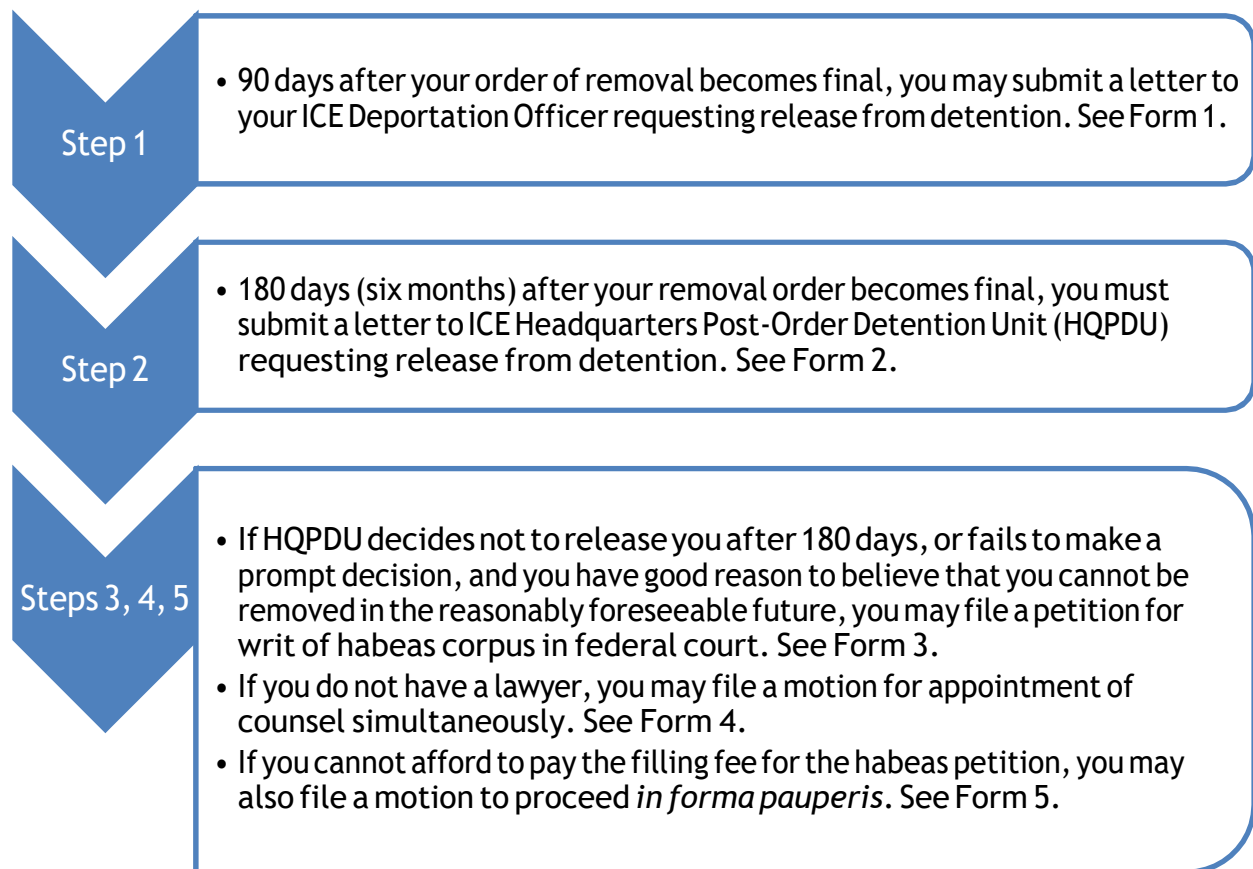
At your **90-day custody review**, ICE may decide that your deportation is reasonably foreseeable, and hold you for another 90 days, since the law allows them six (6) months to try to remove you. This does not mean that you will automatically be released after six months, but you should receive a second custody review at the six-month mark (your **180-day custody review**) to reevaluate whether your deportation is reasonably foreseeable.

Once you have been detained for six months (180 days) past the date of your final order of removal, you become eligible to file a **petition for a writ of habeas corpus** (a habeas petition) demanding release from detention.

- Note that this petition does NOT change your immigration status. You will still have a final deportation order on your name. It simply is a request for release from detention.

Alongside your habeas petition, you may file a **motion for appointment of counsel** if you do not have a lawyer. If you do not have money to pay the filing fee for your habeas petition, you may also file a **motion to proceed in forma pauperis**.

Below is a timeline for seeking administrative review of your detention and for filing a habeas corpus petition in federal court.



The following sections are organized according to the chronological stage of detention following a final order of deportation, i.e. the 90-day custody period, the 180-day custody period, and after six months. Each section outlines what to expect at that stage, and what steps you should take at that stage to increase your chances of being released from detention.

- ❖ If you are a Mariel Cuban, please skip ahead to the section entitled *Habeas Corpus for Mariel Cubans* (page 36).

Deportation FAQ *

❖ *How long will it take for me to get deported?*

It's hard to know how long it will take for ICE to deport you. The answer depends on what country you are from, whether you have a passport or other identity documents, how cooperative your consulate is, and how busy ICE is. Many people are deported within the first 90 days after their final deportation order. However, many others end up waiting longer. If you want to get deported as fast as possible, make sure you give ICE all the information requested. You can also write your consulate to urge them to issue your travel documents to ICE quickly, as discussed below.

❖ *Why do I have to wait 90 days if I know I can't be deported?*

ICE takes the position that even if your deportation is not "reasonably foreseeable," you *must be detained for at least 90 days*. In practice, it is often difficult to be released until you have been detained for more than six months. Steps you can try to take to get released after 90 days are discussed below.

❖ *I have the money to buy the plane ticket. Can I get released if I promise to leave?*

No, unless the immigration judge granted voluntary departure. If you have not yet been ordered deported and would like more information on voluntary departure or other forms of relief, call the Detainee Hotline (2150#) to discuss.

❖ *Can ICE deport me to a country where I am not a citizen?*

Yes, if ICE finds another country that will take you, but this is rare.

❖ *What happens if I refuse to cooperate with ICE's attempts to deport me?*

ICE can detain you indefinitely if it believes that the reason why you cannot be removed quickly is that you haven't cooperated in obtaining travel documents.⁵ If you do not cooperate, the 90-day removal period does not run, and ICE does not have to release you from custody. In addition, ICE can bring criminal charges against you for failure to cooperate. In order for ICE to release you, you must show that you are making *every effort to cooperate* in obtaining travel documents for your removal.

As difficult as it sounds to cooperate in obtaining travel documents for your own deportation, it is in your best interest to cooperate with your deportation officer on this, and other matters. Having a positive relationship with your deportation officer is extremely important, because she or he has the power to recommend your release (or not) once you begin your custody review process. No matter how frustrated you may feel about your situation, try to be patient and polite, and cooperative - *even if* the other side is not being any of those things.

⁵ 8 C.F.R. §241.13(e)(2).

* Adapted in part from <http://pairproject.org/wp-content/uploads/2016/04/Habeas.pdf>

❖ ***What do I have to do to show that I am cooperating with ICE's efforts to deport me?***

During the first 90 days after your final order, your deportation officer will visit you to ask for certain documents and give you the forms needed to request travel documents from your country. Fill out the travel document request forms. As soon as possible, give your deportation officer any documents that might help her or him obtain your travel documents, such as your passport or birth certificate. Try to apply for travel documents with your consulate and sign your request for travel documents.

If you do not have your passport, birth certificate, or other necessary documents, you must contact your country's consulate or embassy to request acceptable documents. Make sure to submit your request in writing and make two copies: one for your deportation officer and one for yourself.

❖ ***What should I write in my letter to my consulate?***

You should explain that you want to know the status of your case, particularly whether the consulate has issued travel documents, or whether they may do so soon. You should also ask the consulate to explain any reason why they may be unwilling to issue travel documents to you. Finally, mention that you are willing to cooperate with them to obtain your travel documents.

When you mail a letter to the consulate, try to use certified mail to prove that you actually sent the letter, and send a copy of that certificate to ICE with the letter. If the consulate or embassy responds in writing, also give a copy of their letter to your deportation officer. A list of all the consulates' phone numbers should be posted on the wall in your detention center housing area.

If you won CAT or Withholding of Removal, you cannot be sent to the country where you fear harm. So ICE will try to find another country to send you to, and you must request travel documents from those other countries in order to qualify for a custody review even though other countries generally will not issue a travel document to you unless you are a citizen, national, or lawful immigrant.

Anytime you call your consulate or embassy, always write down the date, time, name of the person you talked to, and what she or he said. If your family or friends call or write to the consulate or embassy, they should also document any communication and send this information to you for your deportation. Also keep detailed notes about all your interactions with your deportation officer so that you can prove that you have been cooperating later on.

❖ ***Can ICE deport me if I refuse to sign my travel documents?***

Yes. Refusing to sign your travel documents might slow down your deportation, but it will not prevent your deportation.

90-Day Custody Review

If ICE is unable to deport you within 90 days after you receive your final order of removal, ICE must conduct custody review procedures in line with *Zadvydas* to consider whether you can be removed in the “reasonably foreseeable future.”⁶ According to *Zadvydas*, of course, detainees who cannot be removed in the reasonably foreseeable future must be released from detention. Detainees who have received a grant of withholding or deferral of removal under the Convention against Torture (CAT) also receive 90-day custody reviews. Your initial 90-day custody review will be conducted by your local ICE Field Office Director.⁷

Approximately 30 days before your 90-day custody review, ICE should provide you with a written notice.⁸ This notice will be sent by the Field Office Director of the local ICE field office and will tell you the date of your review and the address where you can send any letters, certificates, or other papers you want ICE to consider. The Custody Review Notice usually says something like this:

Release is dependent on your demonstrating by ‘clear and convincing evidence’ that you will not pose a danger to the community and will not be a significant flight risk. The Deciding Officer may consider, but is not limited to considering, the following:

1. *Criminal convictions and criminal conduct;*
2. *Other criminal and immigration history;*
3. *Sentence(s) imposed and time actually served;*
4. *History of escapes, failures to appear for judicial or other proceedings, and other defaults;*
5. *Probation history;*
6. *Disciplinary problems while incarcerated;*
7. *Evidence of rehabilitative efforts or recidivism;*
8. *Equities in the United States;*
9. *Cooperation in obtaining your travel documents;*
10. *Any available mental health reports.*

❖ What if I Don’t Receive Notice of My Custody Review?

Ordinarily, you do not need to do anything for ICE to initiate and conduct this first custody review. If you do not receive any initial notice from ICE, you should send a letter to ICE asking when your first custody review will be.

⁶ 8 C.F.R. §241.4(k). See also Memo, Hutchinson, Undersecretary DHS (Mar. 30, 2004), “Guidance on ICE Implementation of Policy and Practice Changes Recommended by the Department of Justice Inspector General,” reprinted in 81 No. 16 *Interpreter Releases* 513, 528-532 (Apr. 19, 2004).

⁷ When the INS was reorganized as part of the Department of Homeland Security (DHS) in 2002, the positions of district director and the Director of the Detention and Removal Field Office were combined and renamed U.S. ICE Field Office Director.

⁸ 8 C.F.R. §241.4(h)(2).

Step One: Prepare for your Custody Review *

As soon as you receive notice of your upcoming custody review, you should begin gathering documents to support your release. Be prepared to give your deportation officer copies of all of your documents **at least two weeks (14 days)** before the review date, since they often start the review process early. If the deportation officer reviews your file before you have submitted anything, your release will be denied.

It is best to prepare diligently for your custody review by putting together a support packet containing statements and documents. At the very least, you should address the factors mentioned in your custody review notice, but it is a good idea to go above and beyond that to demonstrate as best you can to ICE that you are a good candidate for release.

If your review date is coming up soon, and you are still waiting for letters of support, tell your Deportation Officer (DO) so that she or he knows that more documents are coming.

Please do not be discouraged if you are unable to put together a big packet for your custody review, however. ICE sometimes releases people who cannot be removed in a timely way so long as they can provide an address where they will live.

We recommend that your packet include the following items:

(1) A Letter Requesting Release from Detention*

Under ICE's custody review rules, you should ask to be released in writing. So, you should write a letter requesting your release and explaining in as much detail as possible why you should be released from detention. **Form 1** of this Guide is a sample letter, which you can use as an example for your own letter, which you should prepare on a separate piece of paper. Be sure to type your letter or write *very neatly* if you do not have a typewriter or computer to use.

The most important goals of your letter are to show that you are (1) unlikely to be removed in the reasonably foreseeable future, (2) not and will not be a danger to public safety, (3) not and will not be a significant flight risk, and (4) cooperating in obtaining travel documents, provided that these circumstances are correct for your situation.⁹ We also recommend you include additional information that will allow your deportation officer to get to know more about you and see you as a person rather than as a file.

(A) Explain Why you are Unlikely to be Removed in the Reasonably Foreseeable Future

If you believe your country is unlikely to accept you for deportation in the reasonably foreseeable future—even if people have been deported there—explain what reasons you have for believing this, and include as much proof and detail as you can. If your country's consulate informed you that they will not issue you travel documents, mention that your country has

⁹ 8 C.F.R. §241.4(e).

* Adapted in part from <http://pairproject.org/wp-content/uploads/2016/04/Habeas.pdf> and (<http://firrp.org/media/90-Day-Custody-Review-Guide-2013.pdf>)

refused to issue you travel documents. If your country does not have a repatriation agreement with the United States, be sure to mention this.

Because ICE claims that it can get travel documents from almost every country, even countries that do not often issue them, you should give ICE any proof you have that your country has refused to accept you, or that you and ICE have tried unsuccessfully to apply for your travel documents.

B) Address Danger to Public Safety

One of the Local ICE Field Office's main considerations during your custody review is whether you are a **danger to public safety**. It is very important to submit "clear and convincing" evidence that you are not a danger to public safety.¹⁰ This means you must show ICE that you are nonviolent, and you will not commit any new crimes. We recommend that you address the following factors in your letter:

- ✓ Whether you have had any disciplinary infractions while in detention.
- ✓ Your past criminal history.
- ✓ Any available information relating to your mental health (i.e. psychiatric/psychological reports).
- ✓ Whether you have participated in any job training, educational, or rehabilitation programs.
- ✓ Anything else that you believe will prove that you will not commit any new crimes upon release
- ✓ Show remorse: ICE wants to know that you are sorry for your crime(s) and that you accept responsibility for your actions. It is important to express why you know or feel that what you did is wrong, how it has affected your life, and how you want to do things differently in the future.

Highlight the factors that would encourage ICE to release you (i.e., you have close relatives residing legally in the US that you would live with upon release, and therefore not be a flight risk). 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 and therefore will not be dealing with illicit drugs upon release). **Do not lie or make misrepresentations in any of the information that you send to ICE.**

(C) Address Flight Risk

The Local ICE Field Office's second main consideration is whether you are a significant flight risk. You must submit "clear and convincing" evidence that you won't run away to avoid being deported, and you will let ICE know where you are. We recommend that you address the following factors in your letter:

- ✓ Where you will live upon release.

¹⁰ 8 C.F.R. §241.4(f).

- ✓ Whether you will have a job if released.
- ✓ Whether you have participated in any job training, educational, or rehabilitation programs.
- ✓ Whether you have close relatives residing legally in the United States.
- ✓ Whether you have prior immigration violations, including a failure to appear at any immigration proceeding or any attempts to avoid removal.

(D) Show that you Cooperated in Obtaining Travel Documents

You must make reasonable efforts to assist ICE in securing travel documents for your removal. ICE will not release you if you are not cooperating with their efforts to deport you.¹¹

Your letter should describe what you have done to help ICE deport you, such as telling your Deportation Officer when and where you were born, giving ICE a copy of your birth certificate or passport, having your picture and fingerprints taken, signing your travel document application, and so on. You should also tell ICE if you have tried to contact your embassy or consulate about being deported.

(E) Additional Topics to Cover in your Letter

When your Deportation Officer reviews your file, she or he will only know your immigration and criminal history. By writing a letter, you are giving her or him a chance to know more about you and see you as a person rather than as another file. You should address the following topics:

- ✓ **Immigration History:** It might be a good idea to talk about how you came to the United States. Talk about your family and what they went through to get here, and what it was like for you growing up, if you feel it is relevant to your case.
- ✓ **Future Plans:** It is very important that you demonstrate that you have a practical plan for how you will live upon release. Discuss where you will live and how you will find a job and support yourself (discussed below), as well as how you will deal with necessities, such as transportation.
- ✓ **Goals:** Discuss your goals and what you will do to achieve them.
- ✓ **Dependents and Hardship:** You can also talk about anyone at home with legal status who is having a hard time because you are in detention. If you have children or family members with legal status who rely on your financial or emotional support, you should write about why they need you. What kind of hardship is your family experiencing because of your incarceration? How will you help them if you are released?

¹¹ 8 C.F.R. §241.4(g)(iii).

(2) Supporting Documents

Send copies of any documents that you have that will show ICE that you are not a danger or a flight risk, that you have cooperated with their removal efforts, and that you deserve to be released. It will be helpful to send copies of the following documents:

(A) Letters from Family and Friends

Family and friends can help your case by writing letters of support. In fact, anyone who can attest to the fact that you are not dangerous and will not flee if released from detention may write a letter in your support. This can include religious leaders, prison chaplains, former employers, jail/detention officers who you know personally, neighbors, etc.

Letters should be original—meaning they should be unique and different from other letters. We recommend that the author write something that is personal and honest. They can mention your crimes, and how they know you have changed and will not commit crimes in the future. They should talk about the kind of support that they are able to give you to help you avoid trouble—financial or emotional. In general, they should discuss you on a personal level and why you deserve to be released.

Letters must include:

- ✓ Identifying information for you
 - Your full name
 - Your A-number
- ✓ Identifying information for the person writing the letter
 - Their full name
 - Their A-number (if applicable)
 - Their address
 - Their immigration status
 - Their relationship to you and how long they've known you

(B) Housing

If you have someone to live with:

You need to show where you will live if you are released. If you have family or a friend to stay with, they **MUST** write a letter to your deportation officer in support of your release. Their letter should include:

- ✓ Date
- ✓ Name of the author (friend or family member)
- ✓ How she or he knows you and for how long
- ✓ Address and phone number of place where you will live
- ✓ Signature
- ✓ Copy of her or his identification

Also, if your supporter is willing to provide you with food and other necessities until you are ready to support yourself again, then they should say that clearly in the letter.

If you do not have anyone to live with:

If you do not have anyone to live with, then you will need to locate a halfway house, residential treatment program, or a shelter that will write you a letter of acceptance. The best way to find resource information in your area is to call the resource hotline (211) or The United Way (703-836-7112).

(C) Establish that you have Strong Family Connections in the United States

It will also be helpful to demonstrate that you have strong family connections in the United States as proof that you are not dangerous and will not flee. Try to get a copy of your marriage certificate if you are married, and birth certificates of your children or spouse, especially if you have immediate family born in the United States. In addition, you can include photos of you and your family. Finally, it will be helpful to send letters you have received from your children or family members while in detention.

(D) Employment

If you have a job or a job interview waiting on the outside, then ask the employer to write a letter confirming this. The employer should write the letter on company stationery, and include his or her name, A-number (if applicable), and immigration status. The employer should state what the job is, what the wage is, how many hours per week you can/will work, and when you can start.

If you work in the detention center, you can ask for a statement or performance evaluation from your supervisor showing what you do and when you started.

Include copies of any certificates from education or job-training classes you completed in detention.

(E) Rehabilitation

If you have had any behavioral problems in the past (drug or alcohol addictions; or mental health issues pertaining to grief, anger, or violence), then you will need to show that you are taking steps to rehabilitate.

- ❖ If you have taken any educational, self-help, or rehabilitation courses while in prison or detention (such as counseling, anger management, drug treatment, or other behavioral programs), then you should submit copies of the certificates and diplomas with your packet.
- ❖ If you have yet to seek treatment, we suggest that you contact treatment programs directly and ask them to write a letter of acceptance upon your release, or send materials about their services.

- ❖ There are two types of substance treatment programs: in-patient and out-patient. In-patient treatment means you live at the facility, which could be either in a hospital or a residence with other people recovering from addictions. If you choose to enter an in-patient program, you will probably satisfy your housing, support, rehabilitation, and employment requirements. The state or county assistance may help pay for the program. You can call the following number to get referrals to substance treatment programs all over the country: 1-800-711-6375.
- ❖ If you have had problems with domestic violence, then you should find a domestic violence recovery program to attend. In fact, your conditions of probation or parole may state that you must attend these groups. They usually consist of group meetings, and you may need to pay for the class yourself.
- ❖ Finally, be creative and think of other ways that show you are trying to change your life for the better. For example, if you have written letters to family, friends, or past victims expressing regret for your actions, you may want to include copies of these letters.

(F) Cooperation in Seeking Travel Documents

Include copies of your identification documents, copies of correspondence (passport applications, letters) you had with your consulate, and any other documents that prove you've cooperated with ICE's efforts to obtain travel documents.

If you have claimed in your letter that your country is unlikely to accept you for deportation, submit any supporting documentation of this that you have. If your consulate has told you it will not accept you back for deportation, ask the consulate to write you a letter to give to ICE confirming that your country will not accept you or does not recognize you as a citizen.

Supporting Document Checklist

Identification documents, such as a birth certificate or passport

□

Any correspondence you have had with your consulate or embassy, including passport applications, letters, signed travel documents you have sent or received, evidence of application for travel documents, and/or a letter from your consulate stating that your home country will not accept you for deportation, or they do not recognize you as a citizen

Letter from the person you will live with if released (i.e., a relative or sponsor)

Letter from your employer, written on business letterhead, stating that you will have a job or an interview upon release

Reference letters from current or former employers

Certificates of education or job-training courses taken while in ICE custody or elsewhere (English-language instruction, GED, college, etc.)

Certificates/letters stating that you have completed a behavior management or rehabilitation program (AA, NA, anger management, etc.) in ICE custody or elsewhere

Informational pamphlets on rehabilitation centers/programs in your area (you should contact a rehabilitation center if you have any domestic violence, driving under the influence, or controlled substance convictions). Letter of acceptance from a rehabilitation program you will attend in the future

Reference letters from responsible family members

Reference letters from religious organizations you belong to

Reference letters from detention officers or prison chaplains who can attest to your good behavior while in detention

Letter to my probation/parole officer explaining that you are in ICE custody and any documents you have showing your conditions of probation/parole

Reference letters showing participation in your community. For example: any help that you have given to neighbors, such as yard work, rides, childcare, etc.

Letters or documents showing financial contributions to your family. For example: proof you paid rent, child support, groceries, etc.

Paystubs from *lawful* employment

Social security records

Tax records

Photos of family (birthday parties, holidays, pets, babies, etc.)

Can I Include Documents that Weren't Written in English?

If you are including any documents that were not originally written in English, they **must** be accompanied by an English translation. Make sure the translator includes a certificate swearing that he or she is competent in both languages. Here is an example:

Certificate of Translation

I, (name of translator), am competent to translate from (name of other language) into English, and certify that the translation of (type of document - letter, birth certificate, etc.) is true and accurate to the best of my abilities.

Signature of Translator

Name of Translator

Address of Translator

Telephone Number of Translator

Organize and Submit Your Packet

Try to send all of your documents together in one well-organized packet.

Everything should be typed or handwritten neatly, in English or with an English translation. Write your full name and A-number on all documents.

Do not send originals, as you will not receive them back. You always should make and save copies of all the information that you send to ICE (especially your letter to ICE requesting release), because it will be very useful to you in any subsequent custody reviews. It is also a good idea to keep a copy of all your documents even after you leave detention in case you need them in the future or ICE loses them.

If you have a lot of documents to submit, you should group them by type and make a list of categories. Each group of documents of a particular kind should be separated with a blank page that just has the letter A, B, C, etc. Put the list, also known as the index, at the top of the packet so the deportation officer knows where to look for particular information. Here is an example of an index:

Exhibit A: Housing and Sponsor Letter

Exhibit B: Letters and Identification from Family

Exhibit C: Offers of Employment

Mail your packet to your deportation officer at the address on your 90-day custody review notice.¹²

What Happens after I Submit My Packet?

At the end of the 90-day period, your file and the Deportation Officer's recommendation will go to the ICE Field Office Director, and she or he will make the final decision as to whether to release or continue detaining you. If ICE grants release, the detention facility will simply inform you that it is time to pack up and go. If you are denied release, ICE will send you a decision letter explaining their reasons for your continued detention.¹³

If your request for release has been denied, you should continue reading this Guide.

¹² 8 C.F.R. §241.4(h)(1).

¹³ 8 C.F.R. §241.4(d).

How Do I Get More Information about My Case and/or Review Decision?

You or your family can contact your Deportation Officer at the Local ICE Field Office for more information. Usually, a specific Deportation Officer is assigned to each case. To find that person's name, call your Local ICE Field Office and ask for the officer assigned to your case (using your A-number).

What Should I Do if I Never Receive My 90-Day Custody Review Decision?

If you do not receive a 90-day custody review, contact ICE in writing and request a review. This is important for you to do; not doing so could hurt your chances for habeas relief.

Keep a record of your communication with ICE. You will use these records if you choose to file a legal petition in court requesting your release.

180-Day Custody Review

If you are not released after your 90-day custody review, you will be detained for [at least] another 90 days, as ICE is allowed up to six months to try to deport you. Near the end of your 180-day custody period, ICE is required to do another custody review to determine whether to release you. By default, your next custody review will either be conducted by the ICE Field Office Director or ICE Headquarters using the same criteria as the 90-day review.

If the ICE Field Office Director returns your file to your Deportation Officer, she or he will have another 90 days to obtain travel documents and will submit his recommendation once again to the ICE Field Office Director for the 180-day custody review. You can send any new documents and letters you believe strengthen your case to the address you originally sent your release packet to.

If your case was transferred to ICE headquarters in Washington, D.C. (HQPDU), you should mail the original release packet you gave to your deportation officer, plus any new documents and comments you wish to express about your continued detention to:

Headquarters Post-Order Detention Unit (HQPDU)
ICE Enforcement
801 I Street, NW, Suite 800
Washington, D.C. 20536

Step Two: Initiate a HQPDU Custody Review under the *Zadvydas* Standard

Regardless of whether your case was transferred to HQPDU or not, once 180 days have elapsed since your removal order became final,¹⁴ we recommend that you **contact HQPDU specifically requesting that your custody be reviewed under the *Zadvydas* standard**¹⁵ (i.e., reviewed to determine whether it is significantly likely that you will be deported in the reasonably foreseeable future). You must do this before you can file a petition for habeas corpus. You should submit updated versions of what you submitted to the Local ICE Field Office for your 90-day custody review. Refer back to Step One to refresh your memory and prepare your 180-day custody review packet.

¹⁴ See 8 C.F.R. §241.13(b)(2)(ii).

¹⁵ 8 C.F.R. §§241.13(c), (d)(1).

Organize and Submit Your Packet

Try to send all of your documents together in one nicely-organized packet.

Everything should be typed or handwritten neatly, in English or with an English translation. Write your full name and A-number on all documents.

If you have a lot of documents to submit, you should group them by type and make a list of categories. Each group of documents of a particular kind should be separated with a blank page that just has the letter A, B, C, etc. Put the list, also known as the index, at the top of the packet so the deportation officer knows where to look for particular information. Here is an example of an index:

Exhibit A: Housing and Sponsor Letter

Exhibit B: Letters and Identification from Family

Exhibit C: Offers of Employment

Make at least three copies of everything - two to submit, and one to keep. Do not send originals, as you will not receive them back. You always should make and save copies of all the information that you send to ICE (especially your letter to ICE requesting release), because it will be very useful to you in any subsequent custody reviews. It is also a good idea to keep a copy of all your documents even after you leave detention, in case you need them in the future or ICE loses them.

Send your first packet to:

Headquarters Post-Order Detention Unit
ICE Enforcement
801 I Street, NW, Suite 800
Washington, D.C. 20536

Send your second packet to your Deportation Officer (the address you sent your original 90-day review packet to).

What Happens after I Submit My Packet?

You will receive a letter from HQPDU acknowledging receipt of your information and explaining the procedures they will use to evaluate your request within ten business days after they have received your information.¹⁶ If ICE first determines that you have failed to make reasonable efforts to comply with the removal order or that you have obstructed the removal process, ICE will advise you of this fact in writing and will inform you of the additional steps that you must take before it reconsiders your request for release.¹⁷ ICE may gather more information about your case from the US State Department,¹⁸ and they may want to interview you in person or on the telephone.¹⁹ You have a right to have access to all information ICE intends to rely on in making its decision, and you have a right to respond to this information with your own information or evidence.²⁰ If you write to HQPDU about your case, you should ALSO send a copy of your letter to your local ICE case officer. On your letter, write “180-day custody review material.”

Once ICE has considered all information as relevant to your case, HQPDU will mail you a copy of its written decision.²¹

If ICE determines that there is no significant likelihood of your removal in the reasonably foreseeable future, you will be released under supervised conditions.²²

If your request for release is denied, you may submit another request after six months,²³ or you may file a habeas corpus petition to a federal district court. You may also file a habeas corpus petition if HQPDU does not issue a written decision promptly and you have a good reason to believe you cannot be removed in the reasonably foreseeable future.²⁴ Continue reading the next section if you are interested in filing a habeas corpus petition.

¹⁶ 8 C.F.R. §241.13(e)(1).

¹⁷ 8 C.F.R. §241.13(e)(2).

¹⁸ 8 C.F.R. §241.13(e)(3).

¹⁹ 8 C.F.R. §241.13(e)(5).

²⁰ 8 C.F.R. §241.13(e)(4).

²¹ 8 C.F.R. §241.13(g).

²² 8 C.F.R. §241.13(h).

²³ 8 C.F.R. §241.13(j).

²⁴ There is no administrative appeal from a HQPDU decision under this section. 8 C.F.R. §241.13(g)(2).

After 180 Days: *Zadvydas* Habeas Corpus Petitions *

Even after 180 days, ICE will possibly decide to continue detaining you in hopes of deporting you soon. ICE is obligated to conduct custody reviews at the end of every 90-day period in order to determine whether deportation is still possible in the “reasonably foreseeable future.”

But if 180 days (six months) have gone by since your order of removal became final, and your request for release from HQPDU was denied, or HQPDU has not promptly responded to your request for release, you may want to challenge your continued detention by filling a writ of habeas corpus.

Filing a habeas corpus petition is not a way to appeal of your deportation order; you are not arguing that you should not be deported or challenging the removal order. *You are only asking a federal court to release you from detention until ICE can deport you.* The court will not go back and look at the issue of whether you should have been ordered deported in the first place.

The type of petition for writ of habeas corpus described in this Guide is referred to as a *Zadvydas* habeas petition. It is called this because of the case *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) described early on in this Guide, where the Supreme Court held that after six months had passed, a person with a final deportation order should be released from detention if she or he “provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.”

Who Should File a *Zadvydas* Habeas Corpus Petition?

Although anyone who has been detained for 180 days following their final order of removal can technically file a *Zadvydas* habeas corpus petition, you have the best chance of succeeding on your petition if you fit the following criteria:

1. **You have a final order of removal.**
2. **You have petitioned for administrative review of your indefinite detention.**
 - a. You sent a letter requesting release from your detention along with copies of any documents that helped ICE its decision for a 90-day custody review.
 - b. You sent a letter to the ICE HQPDU requesting to have your 180-day custody review under the *Zadvydas* standard.
3. **There is no significant likelihood that you will be removed from the United States in the reasonably foreseeable future.**

* Adapted in part from <http://pairproject.org/wp-content/uploads/2016/04/Habeas.pdf>

How Do I Know Whether My Deportation is Reasonably Foreseeable?

Whether your deportation is reasonably foreseeable depends on what country you are from and the circumstances of your case. Your deportation is less likely to be reasonably foreseeable if there are “institutional barriers” preventing your removal, such as:

You are Stateless

No country will issue you travel documents because they do not recognize you as a citizen.

Example: The court granted habeas corpus for a petitioner born to Lithuanian parents in a displaced persons’ camp in Germany, noting that neither Germany nor Lithuania recognized the petitioner as a citizen, and thus the petitioner was not likely to be removed to either country in the reasonably foreseeable future. See *Zadvydas v. Davis*, 533 U.S. 678 (2001).

No Repatriation Agreement Exists between the U.S. and Your Country of Citizenship

As of July 28, 2015, the only countries with which the U.S. does not have a formal repatriation agreement are Laos and Cuba.²⁵

Example: The court granted habeas corpus for a petitioner from Laos, noting that the petitioner could not be removed in the reasonably foreseeable future because Laos does not have a repatriation agreement with the U.S. See *Kim Ho Ma v. Ashcroft*, 257 F.3d 1095, 1100 (9th Cir. 2001).

A Repatriation Agreement Exists between the U.S. and Your Country Of Citizenship, But Your Country of Citizenship Seldom Issues Travel Documents

Tip: Include evidence in your petition proving that your country of citizenship seldom issues travel documents. Cite statistics about how many people have been deported to your country of citizenship recently. Call the Detainee Hotline and ask us to send you the latest “Yearbook of Immigration Statistics” published by the Department of Homeland Security.

Example: The court granted habeas corpus for a petitioner from Eritrea, noting that although Eritrea does theoretically have a repatriation agreement with the U.S., “in practice it is extremely difficult to identify and engage with the appropriate Eritrean authorities in order to produce the requisite travel documents,” and therefore removal in the reasonably foreseeable future was not significantly likely. See *Zerabruk v. ICE Field Office Dir.*, No. C10-1572-RAJ-MAT, 2011 WL 718828, at *4 (W.D. Wash. Jan. 27, 2011) report and recommendation adopted, No. C10-1572-RAJ, 2011 WL 719608 (W.D. Wash. Feb. 22, 2011).

Example: The court granted habeas corpus to a petitioner, relying on evidence she had submitted proving that Bangladesh, her country of citizenship, is one of fifteen countries ICE identified as least likely to issue travel documents. *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011

²⁵ But as US-Cuba relations thaw, this may change. If you are of Cuban origin, we recommend that you keep an eye on the news, as this may change. Note: Vietnam signed repatriation agreement in 2008, but only people with deportation orders up to 1995 may be deported. Cambodia signed repatriation agreement in 2002.

WL 4374226, at *3 (D. Ariz. Aug. 30, 2011) report and recommendation adopted, No. CV-11-0515-PHX-PGR, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011).

Your Country of Citizenship Regularly Issues Travel Documents, But Has Not In Your Case, Contrary To Their Usual Behavior

Tip: Try to find statistics about the average amount of time in which people are typically removed to your country of citizenship. Your petition will be much stronger if this average amount of time has already elapsed.

Example: The court granted habeas corpus for a petitioner, noting that the petitioner had been detained in excess of the fifteen month window another court had allotted for showing that acquiring travel documents to China is unlikely to happen in the reasonably foreseeable future, even if the U.S. Government has attempted to secure them. See *Chun Yat Ma v. Asher*, 2012 WL 1432229, citing *Zhou v. Farquharson*, 2001 U.S. Dist. Lexis 18239.

Note: Courts are likely to deny habeas corpus to petitioners who have been detained for only a few months past the six-month period when statistics can show that people are regularly removed to that country. See *Jiang v. Holder*, No. 15-CV-48-JTC, 2015 WL 3649739, at *6 (W.D.N.Y. June 11, 2015) (where the court denied habeas corpus to a petitioner from China who had been detained for slightly over six months without being issued travel documents, noting that many Chinese nationals had successfully been removed in the recent past, so there was no reason to believe that the petitioner would not be issued travel documents and removed in the reasonably foreseeable future). See also *Chun Kwong Ching v. B.I.C.E./D.H.S.*, 2006 WL 3454996.

Your Country of Citizenship Has Declined To Issue You Travel Documents

This is a very strong reason and your petition will almost certainly be granted.

Example: The court granted habeas corpus to a petitioner, where the petitioner had been in detention for longer than six months, and the Chinese Consulate had notified ICE that it would not accept Petitioner's removal to China. Because the Consulate has specifically refused to accept Petitioner's removal to China, Petitioner was not significantly likely to be removed in the reasonably foreseeable future, or at all for that matter. See *Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290, *4 (N.D. Ill. Apr. 28, 2003) (ordering release of Yugoslavian alien under *Zadvydas* after 17-month detention where Yugoslavian Embassy notified the INS that it would not issue him a travel document); *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.)

Examples of Who Is Eligible For Release Under A Zadvydas Petition

Note: Eligibility does not mean that such a petition would definitely be granted.

- Question: Mr. Li, a citizen of China, has been in ICE detention for 10 months since receiving a final removal order. ICE submitted a request to China for his travel documents. China responded to ICE

with a statement that it will not issue travel documents for Mr. Li because of his criminal conviction. Is Mr. Li eligible for release under *Zadvydas*?

- Answer: Yes, Mr. Li is eligible for release under *Zadvydas* because he has been in detention for more than six months after receiving a final removal order and because China has refused to issue travel documents, so there is no significant likelihood that Mr. Li can be removed to China in the near future.
- Question: Mr. Ibarra was paroled into the United States in 1980 as a part of the Mariel Boatlift. He committed several crimes in the 1980s, and as a result, ICE revoked his parole. He has been in ICE detention for eight years since receiving a final removal order. Is Mr. Ibarra eligible for release under *Zadvydas* and *Martinez*?
 - Answer: Yes, Mr. Ibarra is eligible for release under *Martinez*, which extended the ruling of *Zadvydas* to Mariel Cubans and other “inadmissible” aliens, such as those apprehended at the airport or at sea. Mr. Ibarra has been detained for more than six months after receiving his final deportation order, and no repatriation agreement exists between the United States and Cuba,²⁶ so there is no significant likelihood that Mr. Ibarra can be removed to Cuba in the near future.
- Question: Ms. Ndjani entered the US seeking asylum from Cameroon. ICE apprehended her at the airport and classified her as an arriving, or “inadmissible” alien. 11 months ago, Mr. Ndjani was denied asylum and ordered removed. Is Ms. Ndjani eligible for release?
 - Answer: Maybe. Although Ms. Ndjani has been detained for more than six months after receiving a final removal order, she needs to establish that no significant likelihood exists that she can be removed to Cameroon in the near future. Because of the *Martinez* decision, Ms. Ndjani’s status as inadmissible is irrelevant.
- Question: In January 2005, ICE issued a final order of removal for Ms. Rios, a citizen of Mexico who entered the US without inspection. She waived her right to appeal, so her removal order is now final. It is now March 1, 2005. Is Ms. Rios eligible for release under *Zadvydas*?
 - Answer: No, Ms. Rios is not eligible under *Zadvydas*, because she has only been in detention for two months since receiving her final removal order. ICE has six months to try to remove her.

Other Things to Note

Sometimes, countries refuse to accept their citizens for deportation for humanitarian reasons. For instance, occasionally home countries refuse to accept citizens with life-threatening illnesses when medical treatment in the home country is not available.

Occasionally, home countries also refuse to accept citizens who have no real connection to the home country - for example: if the citizen never lived there, or was adopted by U.S. citizen parents. The home country makes these decisions, not ICE. ICE will try very hard to deport you, if at all possible.

²⁶ As of July 27, 2015. As US-Cuba relations thaw, this may change, however. We recommend that you keep an eye on the news if you are of Cuban origin.

Habeas Corpus FAQ *

❖ *Will Filing a Petition for Habeas Corpus Get Me Released?*

Maybe. It is hard to know in advance whether filing a habeas petition will cause the government to try to deport you more quickly. If ICE can deport you, but has not done so yet because it has been busy with other cases, ICE might respond to your petition by telling the court that it will deport you quickly, and then put your case “at the top of the pile” to focus on deporting you more quickly than it would have.

The court will deny your petition if it finds that you have failed to cooperate in your own deportation. In order to be released, you must convince the federal court that, although you have cooperated, your deportation is not “reasonably foreseeable.” Even if your deportation is not reasonably foreseeable, ICE may continue to detain you if the federal court finds that you fit certain “special circumstances.”

❖ *What are “Special Circumstances”?*

Special circumstances exist if:

1. You have a highly contagious disease;
2. Your release would have serious negative consequences on foreign policy or endanger national security; or
3. You are specially dangerous. ICE may decide you are “specially dangerous” if:
 - a. You have committed one or more violent crimes in the past;
 - b. Due to a mental condition or personality disorder, you are likely to commit violent actions in the future; and
 - c. There are no conditions for release that would ensure the safety of the public.

Before ICE can claim you are “specially dangerous,” ICE must have you evaluated by a doctor, provide you with copies of the evaluation, and hold a hearing separate from your deportation hearing before an immigration judge on the issue of whether you are “specially dangerous.” If ICE wants you declared “specially dangerous,” you will get a form I-863, Notice of Referral to the Immigration Judge and notice of an upcoming hearing. A hearing will take place about 10 days later.

❖ *Will Filing a Petition for Habeas Corpus Cause the Government to Detain Me Longer?*

No.

❖ *When Can I File a Petition for a Writ of Habeas Corpus?*

To file a *Zadvydas* habeas petition, you must wait 6 months from the date of your final order of removal, because the court believes that that gives ICE as “presumptively reasonable” time to arrange for your deportation. If you file a petition for a writ of habeas corpus earlier, there is a chance that the federal

* Adapted in part from <http://pairproject.org/wp-content/uploads/2016/04/Habeas.pdf>

court will dismiss it “with prejudice” and you will not be allowed to file a new one.

You should also not file a petition for habeas corpus until after you have received your six-month review from HQPDU, or you have requested that review in writing. On at least one occasion, a district court has dismissed a petition for “failure to exhaust administrative remedies” where the detainee did not request an HQPDU review in writing.

You also must cooperate with ICE to obtain travel documents from your country. As mentioned previously, this means writing a letter to your embassy [or the embassies of other countries] or applying for a passport. You should also try to gather and submit with your habeas petition any evidence showing that your country will not accept you back, such as letters from your embassy denying a travel document or proof that your country does not generally accept people who are removed from the United States. If you do not have any proof, ICE may try to say that you have not shown that there is “no significant likelihood of removal in the reasonably foreseeable future.”

❖ ***Can I File a Petition for a Writ of Habeas Corpus on My Own or Do I Need a Lawyer?***

Because petitioning for a writ of habeas corpus can be complicated, it is best to file a habeas corpus petition with the help of a lawyer. If you do not have a lawyer, you may file a Motion for Appointment of Counsel together with your habeas corpus petition (refer to Step Two).

Many ICE detainees, however, successfully file their habeas petitions without a lawyer, or “*pro se*.” If you choose to file *pro se*, please make sure to read the Guide carefully and to change the sample to explain your facts. You will file your petition in the federal district court that covers the area where you are now detained. The information that follows will explain the filing requirements as of the date of printing this Guide. However, you should check the local rules of the court where you will file your petition for the filing requirements, since court rules and filing requirements may change. 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.

Step Three: Prepare your *Zadvydas* Habeas Petition *

Before you Begin

- Some courts require you to fill out special forms for habeas petitions. Check with your district to see if yours requires them, and if so, request the forms by writing to the clerk of that court. If they don't have any special forms, you should follow the sample habeas petition (Appendix, Form 3).
- 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. Nothing you send should have cross-outs or eraser markers.
- Write neatly or type up all documents that you send to the court.
- Remember to sign the forms you send to the court.

What Should My Petition Say?

- Your petition should clearly state that you are challenging your continued detention by ICE - not your deportation order.
- Your petition must show that, even though you followed the custody review rules described earlier in this Guide, ICE has not released you in violation of the law. You do not need to include many legal arguments or citations. Concentrate on clearly and accurately informing the judge of the specific facts of your case that are relevant to your reasons for challenging your continued detention. Provide documentation to support those facts.
- *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 country of citizenship in the reasonably foreseeable future.* Refer to the “How Do I Know Whether My Deportation is Reasonably Foreseeable?” section in this Guide to find all reasons that apply to your case. Describe these reasons in great detail, providing as much detail and evidence as possible to support your belief.
 - If your country of citizenship does not have a repatriation agreement with the United States, state this clearly.
 - Provide details of the communications you've had with your consulate which lead you to believe that you will not be removed in the reasonably foreseeable future.
 - If you've talked to your Deportation Officer about why you cannot be deported, explain who you spoke with, when, and what you discussed.
- Provide accurate details. Write down exactly what you asked for, and what ICE has done. For example, if you sent a letter to ICE requesting release, write down when you mailed the letter and where. If you talked to your Deportation Officer about applying for travel documents, write down when you spoke to him or her and what information you gave. If you got a letter from ICE denying your release or transferring your case to HQPDU, describe the letter, and when you received it. Attach copies of letters you have written to or received from ICE, and from your consulate. It is very important that you keep records of all communications with the Local ICE Field Office, and ICE HQ.

See Form 3 for a model petition that you can use to write your petition for writ of habeas corpus. You are the “Petitioner,” because you are filing the petition for writ of habeas corpus. You must write your

* Adapted in part from <http://pairproject.org/wp-content/uploads/2016/04/Habeas.pdf>

own petition using the sample as a starting point, taking care to fill in the facts of your own case. You cannot submit this sample.

Step Four: Prepare Your Motion for Appointment of Counsel

We have provided a sample motion for the appointment of counsel, if you cannot afford a lawyer. See Form 4. You can use this motion to ask the court to appoint a lawyer to represent you in your habeas proceeding. Similar to the sample habeas petition, there are blanks through the document where you can fill in information based on the specific facts of your case. If you cannot afford a lawyer, you may want to consider filing this motion because of the complex nature of the issues involved in your habeas case.

The motion for appointment of counsel must be filed together with your habeas petition.

Step Five: Prepare Your Motion to Proceed *In Forma Pauperis*

If you do not have enough money to pay the filing fee for the filing of a petition for a writ of habeas corpus, you should file a motion to proceed *in forma pauperis*. This means that you are asking the court to waive the fees so that you do not have to pay it. To proceed *In Forma Pauperis*, you should send in a separate motion or letter entitled “Motion to Proceed *In Forma Pauperis*” explaining why you have no access to money to pay the \$5.00 fee.

In Form 5 of the appendix, you will find the following three documents:

- (1) Motion to Proceed *In Forma Pauperis*
- (2) Prisoner Certificate
- (3) Trust Account Withdrawal Authorization

These three documents are samples only and are designed to give you an idea of what the required forms look like if you want to proceed *in forma pauperis*. Most courts, however, have their own forms that you must request and submit with your habeas petition. You should, therefore, contact the Clerk of the Court where you plan to file your habeas petition, to request that they send you the necessary forms to proceed *in forma pauperis*. Once you have the proper forms, fill them out and submit them to the Court together with your habeas petition and your motion for appointment of counsel.

In addition, you can submit a record of all transactions of your institutional account (including receipts, expenditures, and balances) for the past six months. If you have had more than one account in the past six months (for example, if you have been in multiple institutions), you should include records from each. The records must be official documents from the institution. If there are other documents that explain your financial situation and why you cannot pay, attach those to the motion as well.

Filing Instructions

Before you begin filing, please ensure that:

- ✓ You have not lied or made any misrepresentations in anything you are about to submit to the court.
- ✓ You have signed and dated your petition. Above your signature, you should write: “I declare under penalty of perjury that the foregoing is true and correct.” This means that you swear that what you have written is the truth, just like when you testify in court.
- ✓ Your petition is in English and easy to read. It is best to type all of the papers you send to federal court, but if you cannot type, be sure to write very neatly in blue or black ink.
- ✓ You have included your full name and A-number on all documents you send to the court.

The requirements listed below apply to most district courts. Some jurisdictions require that you use a special form for your habeas petition. Contact the Clerk of the Court to see if your district requires one and to request it (see page 75 for U.S. district court phone numbers). We recommend that you file the special form together with the habeas petition in Form 3.

- 1) If you are not applying to proceed *in forma pauperis*, get a check or money order and make it out to “United States District Court” to pay the court-filing fee.
 - a. The court-filing fee is usually \$5.
 - b. Ask a counselor or a detention center officer how to withdraw money from your account.
- 2) Make enough copies.
 - a. Most courts require you to send them the original plus two copies of all documents you file. You should also make an extra copy to keep for yourself.
 - b. 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 two or more copies that the court requires and include a request to return one stamped copy to you.
- 3) Mail your petition for writ of habeas corpus and the fee to the appropriate federal district court.
 - a. You should file your habeas petition in the district court with jurisdiction over the location where you are currently being detained.
 - i. If your district has 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. Beginning on page 76 there is a table which provides the address and telephone number for each the court which accepts habeas filing from each detention facility. If your facility is not on the list, please contact the ABA and we will help you determine the proper court for your location.
 - ii. Before filing your habeas petition you should call the court to verify the proper filing procedure.
 - b. Send your petition (the original plus at least two copies), the court-filing fee, and a Certificate of Service.
 - c. Along with your petition, you must complete, sign, and date the Certificate of Service, which is your promise that you have mailed a copy of everything that you send to the court to the U.S. Attorney. The court will not accept your petition if you do not include this.

- d. Be sure to address your envelope to the Clerk of the Court.
 - e. Be sure to sign both your petition and your check or money order before mailing.
 - f. Send your petition by certified mail, if possible, so you will have proof that the Clerk of the Court received your petition.
- 4) You must send a copy of everything that you send to federal court to the U.S. Attorney, who is the lawyer for the government in this case.

What Happens after I Mail my Petition to the Court? *

Once the court receives your petition and assigns your case to a judge, the judge will send your petition to the government to provide it with a chance to respond. The judge usually gives the government up to 20 days to file a response. This is the government's chance to challenge your petition. If they think your detention is legal, they will explain why. If they think you have filed your petition with the wrong court, they will also say why. The government's return may be titled "Government's Response to Petition for Writ of Habeas Corpus." Instead of a return, the government may also file a "Motion to Dismiss," which means the government is asking the judge to throw your petition out of court.

If the government files a Response or a Motion to Dismiss, make sure that you answer the government's motion within fourteen (14) days from the date it is filed. (Note: the court must *receive* your answer within 14 days, so send it out early). Your answer will have the same basic format as the government's Motion to Dismiss, but it should be titled, "Petitioner's Opposition to Motion to Dismiss."

If you disagree with what the government says in its response, you may file a "Reply" with the court. It is your responsibility to say why the government's facts and legal position are wrong. The court rules allow you, under oath, to deny any facts the government has included in its return, or to allege any new facts supporting your case. We are not including a sample Opposition to Motion to Dismiss in this packet, because the response will depend entirely on the individual facts in your case and what the government wrote in their motion.

Write to the court clerk if your address changes, if you are moved to another jail, or if you are released. If you don't, you won't know to answer the government's response, and your petition will be dismissed.

Based on all of the papers you and the government send, the judge will decide whether your detention is legal. If the judge agrees that you should be released, he or she will issue a written order, telling ICE to release you. If you win your case, it is possible but unlikely that the government will appeal your case to the Circuit Court of Appeals, and ask the court to keep you in detention while the case is on appeal. It could take the judge several months to issue a decision as there is no time limit. The federal court of appeals can order the judge to make a decision through a writ of mandamus.

If you are released by ICE before the judge makes a decision, you should write to the court and ask to voluntarily withdraw your petition.

* Adapted in part from <http://pairproject.org/wp-content/uploads/2016/04/Habeas.pdf>

Habeas Corpus for Mariel Cubans

Up to this point in the handbook, we have discussed the Supreme Court ruling in *Zadvydas* and the procedures by which detained aliens can seek release from ICE detention based on the *Zadvydas* decision. If you are Cuban and came to the United States as part of the Mariel Boatlift, the Supreme Court ruled in *Martinez* that *Zadvydas* applies equally to you. However, the administrative rules that apply to you are somewhat different.

1. Petitioning for Administrative Review: The Cuban Review Plan

For Mariel Cubans, your continued detention is reviewed by ICE somewhat differently than other aliens. See 8 C.F.R. §212.12. The continued detention of Mariel Cubans is not reviewed by HQPDU, and you cannot ask HQPDU to review your custody status. For your yearly custody review, the factors that ICE will look at are very similar to those discussed in Step One of this Guide. In advance of your review, you should submit the same documents and information listed. You may use Form 1 to submit a letter to the Cuban Review Panel explaining why you should be released.

2. Petitioning for a Writ of Habeas Corpus

If ICE has not released you more than six months after your detention, and after you requested a Cuban Review Panel custody review, you may wish to bring a petition for a writ of habeas corpus under *Martinez*. In Form 6 of the appendix, you will find a model habeas corpus petition for Mariel Cubans. To file this petition, follow the instructions in Step Three.

If you need a lawyer and cannot afford one, you may file a motion for the appointment of counsel by following instructions under Step Four of this Guide. If you cannot afford the filing fee for the habeas petition, refer to Step Five.

Release

If ICE decides to release you, there may be restrictions, usually laid out in the Order of Supervision. It is helpful to think of your Order of Supervision like criminal probation or parole. There are certain things you must do to avoid being incarcerated again. It is important to follow all terms of release and report to ICE when required.

For example, if you have any drug-related offenses, you may be required to show proof of enrollment in a substance-abuse treatment program that you will begin if you are released. Also, you must usually go to the nearest ICE office to check in once a month or every few months, depending on the instructions. ICE may prosecute and re-detain you if you fail to comply with the conditions of your release.

If you have any pending criminal parole or probation requirements, we recommend that you report promptly with evidence that you were in ICE custody during the time you were absent.

Upon Release, Can I Work in the US?

If you have a final deportation order, you technically have no legal status in the US even if you were a permanent resident before. However, you can apply for an Employment Authorization Document (EAD) to work lawfully in the US.

You will need to fill out an “Application for Employment Authorization” (Form I-765), which is available online at www.uscis.gov. The application includes instructions on how to fill it out, what to include with it, and how to file it.

Everyone with a final removal order who is granted supervised release must pay the application fee *unless* you were granted Withholding of Removal or protection under CAT. The work permit should arrive within 90 days, unless USCIS requests more information or denies your application.

Filing Tips

- ✓ Make sure you write “(C)(18)” in the eligibility classification box
- ✓ Write your current status as “Order of Supervision”
- ✓ Enclose a copy of the Order of Supervision with your application
- ✓ Send the application and supporting documents to U.S Citizenship and Immigration Services (CIS), P.O. Box 805887, Chicago, IL 60680-4140

I've Read this Guide, but I Need More Help. How Do I Find a Lawyer?

Remember that when you file a habeas corpus petition, you have the right to ask the court to appoint a lawyer for you if you cannot afford one. This request is called a **motion for appointment of counsel**. The judge does not have to provide you a lawyer, but can if she/he feels it necessary.

If you are not appointed counsel for your habeas petition, or you need help with earlier steps, you may call the ABA Commission on Immigration's Detainee hotline (2150#) and ask for a providers list to contact pro bono attorneys near you.

Appendix

Form 1: Sample Letter Requesting 90-Day Review & Release from ICE Custody

Note: Please refer back to “Step One: 90-Day Custody Review” as you fill this out. This is merely a sample so that you know how to arrange your letter.

[Print your full name]

[Your A#]

[Name and address of the jail/detention facility in which you are detained]

[Today’s date]

[List the address written on your notice of 90-day review]

Dear Immigration Officer:

I request that ICE review my custody status while taking the following information into consideration, because I believe I qualify for release under an order of supervision. I have been in detention for more than 90 days after my removal order became final, and it is unlikely that I will be deported to [your country of citizenship] in the reasonably foreseeable future. I am not a danger to public safety, and nor am I a flight risk.

I entered the United States on [date of entry]. My home country will not accept my deportation, because [explain why you cannot be deported].

I am not a danger to public safety, because [Explain why you aren’t a danger to public safety based on the topics we suggest and anything else you believe will be clear and convincing. Show remorse].

I am not a significant flight risk, because I will live at [your address upon release] with [person/organization you will live with]. If 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. [Explain why else you aren’t a flight risk based on the topics we suggest and anything else you believe will be clear and convincing]

I have cooperated with ICE's efforts to remove me from the United States. [Explain what you and your deportation officer have done.]

[Make sure you incorporate the additional topics we mention into your letter]

I will comply with all conditions placed on my release.

For these reasons, I respectfully request that I be released under an order of supervision so that I may join my family, return to lawful employment, and no longer be a financial burden to my family or society.

Respectfully Submitted,

[Your signature]

[Your name]

[Your A#]

Form 2: Sample Letter Requesting 180-Day Review & Release from ICE Custody

Note: Please refer back to “Step Two: 180-Day Custody Review” as you fill this out. This is merely a sample so that you know how to arrange your letter.

[Print your full name]

[Your A#]

[Name and address of the jail/detention facility in which you are detained]

[Today’s date]

Headquarters Post-Order Detention Unit

U.S. Department of Homeland Security

Immigration and Customs Enforcement

801 I Street, N.W., Suite 900

Washington, D.C. 20536

I request that ICE review my custody status while taking the following information into consideration, because I believe I qualify for release under an order of supervision. I have been in detention for more than 90 days after my removal order became final, and it is unlikely that I will be deported to [your country of citizenship] in the reasonably foreseeable future. I am not a danger to public safety, and nor am I a flight risk.

I entered the United States on [date of entry]. My home country will not accept my deportation, because [explain why you cannot be deported].

I am not a danger to public safety, because [Explain why you aren’t a danger to public safety based on the topics we suggest and anything else you believe will be clear and convincing. Show remorse].

I am not a significant flight risk, because I will live at [your address upon release] with [person/organization you will live with]. If 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. [Explain why else you aren’t a flight risk based on the topics we suggest and anything else you believe will be clear and convincing]

I have cooperated with ICE's efforts to remove me from the United States. [Explain what you and your deportation officer have done.]

[Make sure you incorporate the additional topics we mention into your letter]

I will comply with all conditions placed on my release.

For these reasons, I respectfully request that I be released under an order of supervision so that I may join my family, return to lawful employment, and no longer be a financial burden to my family or society.

Respectfully Submitted,

[Your signature]

[Your name]

[Your A#]

Form 3: Sample Habeas Petition

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

Print your full name and A#,

Petitioner,

v.

[write the name of the attorney general],
ATTORNEY GENERAL, [write name of the DHS
secretary], SECRETARY OF THE DEPARTMENT OF
HOMELAND SECURITY; [name of the Field Office
Director for the District where you are in
custody], U.S. ICE FIELD OFFICE DIRECTOR FOR
THE [name of the district where you are in
custody] FIELD OFFICE; AND WARDEN OF
IMMIGRATION DETENTION FACILITY,

Respondents

Civil Action No. [leave blank]

PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241, BY A PERSON
SUBJECT TO INDEFINITE IMMIGRATION
DETENTION.

BACKGROUND

Petitioner, [your full name], hereby petitions this Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, and to enjoin Petitioner's continued unlawful detention by the Respondent. 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 U.S. Immigration and Customs Enforcement (“ICE”). Petitioner is detained at the [name of your detention center] in [city and state where you are being held; for example, New Orleans, Louisiana]. [If you are detained in a state, county, or private facility, you should also write: ICE 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, 28 U.S.C. §2241(c)(1), and the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101 *et seq.* This Court has subject matter 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. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (“We conclude that §2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.”) *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* applies to aliens found inadmissible as well as removable).

VENUE

3. Venue lies in the [name of the district where you are filing petition, for example the Eastern District of Louisiana], because Petitioner is currently detained in the territorial jurisdiction of this Court, at the [name of the jail / detention center where you are being detained]. 28 U.S.C. §1391.

EXHAUSTION OF REMEDIES

4. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. After the Supreme Court decision in *Zadvydas*, the

Department of Justice issued regulations governing the custody of aliens removed. *See* 8 C.F.R. §241.4. Petitioner received a final order of removal on [date of final removal order]. At her/his “90-day” custody review, on or about [date of 90-day custody review], ICE decided to continue her/his detention. Subsequently in a decision dated [date], ICE’s Headquarters Post-Order Detention Unit (“HQPDU”) informed Petitioner that it would continue to keep him in custody despite having been detained for six months after a final order of removal. The custody review regulations do not provide for appeal from a HQPDU custody review decision. *See* 8 C.F.R. §241.4(d).

5. No statutory exhaustion requirements apply to Petitioner’s claim of unlawful detention.

[IF YOU FILED A HABEAS PETITION IN THE PAST: include an additional paragraph: On [date you filed habeas corpus petition previously], Petitioner filed a petition for writ of habeas corpus *prose*. The district court [describe district court’s decision and reasoning.]. However, more than [number of months that have passed since you filed the habeas petition], months have passed since Petitioner’s *prose* habeas petition was filed, and Petitioner still remains detained without any indication from the governments of the United States or [your country of citizenship] that Petitioner’s repatriation is reasonably foreseeable. A new habeas petition is proper in light of these new facts.]

PARTIES

6. Petitioner is a native and citizen of [list country]. Petitioner was first taken into ICE custody on [date], and has remained in ICE custody continuously since that date. Petitioner was ordered removed on [date]. Petitioner is currently detained at [name of jail / facility where you are currently detained]. Petitioner has been continuously detained by ICE for over [number of months you’ve been in detention] months.

7. Respondent [Loretta E. Lynch or present Attorney General] is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Naturalization Act (INA). As such, [Ms. Lynch or present Attorney General] has ultimate custodial authority over Petitioner.

8. Respondent [Jeh Johnson or present DHS Secretary] is the Secretary of the Department of Homeland Security. He is responsible for the administration of ICE and the implementation and enforcement of the INA. As such [Mr. Johnson or present DHS Secretary] is the legal custodian of Petitioner.

9. Respondent [name of ICE Field Office Director] is the ICE Field Office Director of the [name of field office] Field Office of ICE 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).

10. Respondent Warden of [name of facility where you are detained], where Petitioner is currently detained under the authority of ICE, alternatively may be considered to be Petitioner's immediate custodian.

STATEMENT OF THE FACTS

11. Petitioner, [your full name], was born in [country of birth] on [date of birth]. [Briefly describe your personal background: the date and your age when you came to the United States; the reason you came to the United States, your immigration status when you first came to the United States; your immigration status right before you were ordered deported; where you lived before you were taken into custody; people with whom you've lived (spouse, parents); names of close relatives in the United States and their immigration status; whether you had a passport from your country of origin when you came to the United States; whether you lived in another country before coming to the United States; whether you or your family ever became lawful permanent residents or applied for citizenship.]

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

13. On [date on your original NTA], ICE charged [full name] with being [inadmissible or deportable - give the reason you were ordered deported]. S/he was ordered deported to [country of citizenship] by the Immigration Judge (IJ) on [date of your final order of removal]. [State how and when your deportation order became final. For example, "Petitioner waived his right to 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." OR "BIA dismissed the appeal."]

[This paragraph is different for every person. Here, you should briefly describe the reason you were ordered deported from the United States. This paragraph will help the judge to understand the background on your case. Ideally, you should include the date you were first ordered charged by ICE 9 and the reason) and the date you were ordered deported. You should try to include the specific section of the law that the government used to deport you (this will be on your original NTA from the

government). If you appealed the Immigration Judge's decision, you should tell the judge that, and provide the date your appeal was denied or the date you withdrew or abandoned your appeal. If you were ordered deported because you were convicted of a crime, you should include that information also.

14. On [date you were taken into custody], ICE took Petitioner into custody to await his deportation. Petitioner received a final removal order on [date]. Since that time, Petitioner has been continuously detained by ICE for over [number of months you've been detained] months.

15. Petitioner's custody status was first reviewed on [date of 90-day review]. On [date you received a written decision], Petitioner was served with a written decision ordering his/her continued detention.

16. On or about six months after Petitioner's removal order became final, ICE conducted another review. In a letter dated [date of 180-day review decision], ICE informed Petitioner that Petitioner would not be released, because Petitioner's deportation was "reasonably foreseeable." ICE did not specify how many individuals from [country of citizenship] it had, in fact, repatriated, indicate whether it had contacted the government of [country of citizenship] with respect to Petitioner's case, or mention whether it had received any information from [country of citizenship] regarding the status of Petitioner's travel documents. Nor did it give an indication of when it expected Petitioner's travel documents would issue. Indeed, it gave no information concerning the existence or status of efforts to deport Petitioner.

17. In the [number of months since your last custody review] months that have passed since Petitioner's last custody review, ICE has not notified Petitioner of any progress in Petitioner's repatriation.

18. To Petitioner's knowledge, the government of [country of citizenship] has not issued travel documents for him. Indeed, neither ICE nor [country of citizenship] have provided any indication that [country of citizenship] would accept Petitioner in the reasonably foreseeable future. [Explain why you are unlikely to be removed in the reasonably foreseeable future. Refer back to Step Three of this Guide.]

19. Petitioner has cooperated fully with all efforts by ICE to remove Petitioner from the United States. [Explain what you have done to help ICE apply for your travel documents. For example, explain whether you have signed a travel document application or other papers, provided your Deportation

Office with information about when and where you were born, or provided ICE with photographs, fingerprints, or identity documents. Refer back to the information you sent ICE in previous custody reviews.]

LEGAL FRAMEWORK FOR RELIEF SOUGHT

20. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the U.S. Supreme Court held that 8 U.S.C. §1231(a)(6), when “read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States.” 533 U.S. at 689. A “habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal.” *Id.* at 699. If the individual’s removal “is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute.” *Id.* at 699-700.

21. In determining the length of a reasonable removal period, the Court adopted a “presumptively reasonable period of detention” of six months. *Id.* at 701. After six months, the government bears the burden of disproving an alien’s “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” *See Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS 18239, *2-*3 (D. Mass. Oct. 19, 2001) (quoting and summarizing *Zadvydas*). Moreover, “for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Zadvydas*, 533 U.S. at 701. ICE’s 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. *See* 8 C.F.R. §241.4(k)(2)(ii).

22. Evidence showing successful repatriation of other persons to the country at issue is not sufficient to meet the government’s burden to establish that an alien petitioner will be deported in the reasonably foreseeable future. *See Thompson v. INS*, 2002 U.S. Dist. LEXIS 23936 (E.D. La. September 16, 2002) (government failed to show that alien’s deportation to Guyana was reasonably foreseeable where the government offered historical statistics of repatriation to Guyana, but failed to show any response from Guyana on the application for travel documents that INS and the petitioner had requested). Rather for the government to meet its burden of showing that an alien’s repatriation is reasonably foreseeable, it must provide some meaningful evidence particular to the individual petitioner’s case.

22. An alien who has been detained beyond the presumptive six months should be released where the government is unable to present documented confirmation that the foreign government at issue will agree to accept the particular individual in question. *See Agbada v. John Ashcroft*, 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court “will likely grant” habeas petition after fourteen months if ICE is “unable to present document confirmation that the Nigerian government has agreed to [petitioner’s] repatriation”); *Zhou*, 2001 U.S. Dist. LEXIS 19050 at *7 (W.D. Wash. February 28, 2002) (government’s failure to offer specific information regarding how or when it expected to obtain the necessary documentation or cooperation from the foreign government indicated that there was no significant likelihood of petitioner’s removal in the reasonably foreseeable future).

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

23. Petitioner re-alleges and incorporates by reference paragraphs 1 through 22 [change if you have more paragraphs] above.

24. Petitioner’s continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231(a)(6) as interpreted by the U.S. Supreme Court in *Zadvydas*. The six-month presumptively reasonable period for continued removal efforts has expired. Petitioner still has not been removed, and for the reasons outlined above in paragraphs 1 to 20, Petitioner’s removal to [country of citizenship] is not reasonably foreseeable. The Supreme Court held in *Zadvydas* and *Martinez* that ICE’s continued detention of someone after six months where deportation is not reasonably foreseeable is unreasonably and in violation of 8 U.S.C. § 1231(a). 533 U.S. at 701.

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

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

26. 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. *See e.g., Tam v. INS*, 14 F.Supp.2d 1184 (E.D. Cal 1998) (aliens retain substantive due process rights).

27. 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. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest - to effect the alien's removal. See *Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention - executing removal - is nonsensical.")

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

28. Petitioner re-alleges and incorporates by reference paragraphs 1 through 27 above.

29. 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. ICE does not make decisions concerning aliens' custody status in a neutral and impartial manner. The failure of Respondents to provide a neutral decision-maker 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, under reasonably conditions of supervision;

3) Order Respondents to refrain from transferring the Petitioner out of the jurisdiction of the ICE [name of the ICE field office district you are in] Director during the pendency of these proceedings and while the Petitioner remains in Respondent's custody; and

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. Respectfully submitted this [day of the month] of [month], [year].

[Signature]

[Full name], *Pro Se*

[Your address]

Form 4: Certificate of Service

I, [full name], certify that a true copy of the above document (Petition for Writ of Habeas Corpus) together with the attached documents, was served on [date when you mailed your petition to the U.S. Attorney's Office], upon the following:

U.S. Attorney's Office

[Address of the U.S. Attorney's Office to whom you served your Petition]

by placing a copy of the above in the mail system at the facility where I am detained.

[Signature]

[Full name], *Pro Se*

Form 5: Sample Motion for Appointment of Counsel

Instructions

We have included in this manual a sample motion for the appointment of counsel. Follow these instructions to complete this motion. Remember that the motion for appointment of counsel must be filed together with your habeas petition.

Along the left side of every page on the sample motion are the numbers 1-28. These numbers correspond roughly to the lines of text on the page. Instructions are written using these numbers. Read Instructions below on how to fill in each blank and complete the motion.

Page 1

- Lines 1-5:
 - Line 1: Write your name
 - Line 2: Write your A#
 - Lines 3-5 Write your address
 - E.g.: John Smith
A# 123-456-789
ICE Detention Facility
123 Main Street
City, State 12345
- Line 9: In the blank under the words “United States District Court,” write the name of the court where you are filing your petition. For example: Northern District of California, or Eastern District of Louisiana, etc.
- Line 10: Write your name in the blank on the left side.
- Line 11: Next to the A on the left side, write your A#
- Line 15: Write the name of the United States Attorney General. As of July 29, 2015, The Attorney General is Loretta E. Lynch.
- Line 16: Write the name of the Secretary of the Department of Homeland Security. As of July 29, 2015, the DHS Secretary is Jeh Johnson.
- Line 18: Write the name of the ICE Field Office Director for the district where you are in custody.
- Line 19: Write the name of the Field Office for the district where you are in custody.
- Line 24: Write the name of your country of citizenship.
- Line 25: Write the name of the country to which you have been ordered removed.

Page 2

- Line 1: Write the name of the country to which you have been ordered removed.
- Lines 18-20:
 - In this space, you should explain that you do not have enough money to pay for a lawyer.
 - If you are applying to proceed *in forma pauperis*, that is, you are unable to pay the court fee, write:

- “The affidavit accompanying Petitioner’s request to proceed *in forma pauperis* demonstrates that Petitioner cannot afford to hire counsel.”
- If you are not applying to proceed *in forma pauperis*, but you still cannot afford to pay for your own lawyer, explain your financial situation. Here are some examples of things you can say, *as long as they are true*.
 - You have no income or other assets.
 - You have very little income or assets, and not enough to pay for a lawyer.
 - Write down how much your income is, and where it comes from.
 - You have no property
 - You have very little money in your prisoner account
 - Write down how much money you have in your account
 - Examples:
 - “Petitioner has no income and only has \$100 in her prisoner account.”
 - “Petitioner only has \$50 in her prisoner account, and she receives \$10 a month from her mother.”
- Remember that you must be truthful about anything you write in any motion or other statement or document.

Page 3

- Line 5: Write the amount of time you have been in custody since the date of your final removal order.
 - Remember, you must have been in custody for at least six months since your final removal order in order to have a chance at getting your habeas petition granted by the court.
- Lines 6 and 7: Write the name of the country to which you have been ordered removed.
- Lines 17-19: Write down the reasons why you will not be able to understand the laws involved in your case.
 - Things you might want to mention:
 - Immigration law, and the issues involved here, are complex and that you are unable to adequately represent yourself. Your fundamental right to freedom is at stake here, and it would be very difficult for you to present your case, and respond to any defenses raised by ICE, without the assistance of counsel.
 - You have very little education.
 - You do not understand English well enough.
 - You do not know anything about the American legal system.
 - Examples:
 - “Petitioner is a lay person without special education in the law. The issues presented in my case are complex, and my fundamental right to freedom is at stake. It would be difficult for me to respond to any defenses raised by ICE without the assistance of counsel.”
 - “Petitioner has only had a few years of schooling, and does not speak English well.”

- “Petitioner has a very limited knowledge of English.”
- “Petitioner has no knowledge of the American legal system and cannot understand the issues in this case.”
- Remember to be truthful! Don’t say that you don’t know English if you actually understand it well.

Page 4

- Line 23
 - In the blank on the left, write the date you are filling out the form.
 - In the blank on the right, write your full name clearly. In the space above where you have written your name, sign your name.

Following the Motion for Appointment of Counsel is a Proposed Order

Fill in the information in the top part of the motion just as you did in the motion for appointment of counsel. Also, write your name in the first paragraph where there is a blank line. That is all you need to write on the Order. Submit the Proposed Order together with the Motion for Appointment of Counsel.

_____,
[A _____],
Petitioner,

v.

_____,
ATTORNEY GENERAL;
_____,
SECRETARY OF DEPARTMENT
OF HOMELAND SECURITY;
_____, U.S.
ICE FIELD OFFICE DIRECTOR FOR
THE _____ FIELD
OFFICE, and WARDEN OF
IMMIGRATION DETENTION
FACILITY,

Respondents.

**MOTION FOR APPOINTMENT
OF COUNSEL PURSUANT TO
18 U.S.C. § 3006A**

Petitioner is a citizen of _____. Petitioner is in ICE custody in the United States, but has been ordered removed to _____ by an immigration judge. Petitioner's removal order is final, but Petitioner cannot be removed to _____.

_____, or any other country. Thus, Petitioner remains indefinitely detained in ICE custody, and has been confined for a period far longer than the law mandates. Under 8 U.S.C. § 1231(a)(1)–(2), once an alien has been ordered removed, the Attorney General must carry out the removal within a period of 90 days, during which time the alien shall be detained. The post-removal-period provision of the same statute, 8 U.S.C. § 1231(a)(6), allows for certain aliens to be detained beyond the removal period, but the Supreme Court explicitly limited this detention period in Zadvydas v. Davis, 533 U.S. 678 (2001). In that case, the Court held that § 1231(a)(6) restricts an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal, and that it “does not permit indefinite detention.” Zadvydas, 533 U.S. at 689. The Court found that a presumption exists that an alien may not be held longer than six months; the general rule is that an alien may no longer be confined when there is “no significant likelihood of removal in the reasonably foreseeable future.” Id. at 701. In Clark v. Martinez, the Supreme Court extended this holding to inadmissible aliens. 125 S. Ct. 716, 722 (2005).

The question as to whether Petitioner’s detention is in violation of the laws of the United States is one for a federal habeas court to hear. 28 U.S.C. § 2241. Accordingly, Petitioner files the accompanying habeas corpus petition, pursuant to 28 U.S.C. § 2241, requesting that this Court order Petitioner’s release. _____

Therefore, Petitioner requests that this Court appoint counsel to represent Petitioner in this habeas action.

I. The Court Should Exercise Its Discretion to Appoint Counsel

Assuming that a Petitioner has shown financial need, a district court may appoint counsel in a habeas proceeding under 28 U.S.C. § 2241 when the “interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B). Courts have often examined three elements in

1 determining whether appointment of counsel is necessary: the likelihood of success on
2 the merits, the complexity of the legal issues involved in the case, and the ability of the
3 Petitioner to present the case in light of its complexity. See, e.g., Weygandt v. Look, 718
4 F.2d 952, 954 (9th Cir. 1983); Saldina v. Thornburgh, 775 F.Supp. 507, 511 (D. Conn.
5 1991). Petitioner has been held in custody for _____ since being ordered
6 removed to _____, and removal in the reasonable foreseeable future
7 is unlikely because _____ will not accept Petitioner. Under the Supreme
8 Court's decision in Zadvydas, Petitioner's continued detention is presumptively
9 unreasonable. Thus, Petitioner has a high likelihood of success on the merits.

10 Moreover, Petitioner would encounter great difficulty in presenting this habeas
11 corpus case alone. The House Report on the predecessor to § 3006A(a)(2)(B) recognized
12 that habeas corpus proceedings often present "serious and complex issues of law and
13 fact" that would necessitate the assistance of counsel. H.R. Rep. No. 1546, 91st Cong. 2d
14 Sess. (1970), reprinted in 1970 U.S.C.C.A.N. 3982, 3993. In addition, the congressional
15 report on § 3006A(2)(B) stated that a court *should* appoint counsel when "necessary to
16 insure a fair hearing." Id. The complexity of a habeas case will pose an especially great
17 obstacle for Petitioner. _____
18 _____

19 In light of the complicated issues involved in habeas cases and Petitioner's inability to
20 adequately present the case at bar, as well as Petitioner's likelihood of success on the
21 merits, this Court should exercise its discretion to appoint counsel under 18 U.S.C.
22 3006A(a)(2)(B).

11 II. Appointment Of Counsel Is Necessary Because Discovery Is Imperative

1 The rules governing habeas proceedings require the appointment of counsel in
2 certain circumstances.³⁶ Under Rule 6(a), 28 U.S.C. foll. § 2254, a judge must appoint
3 counsel for a Petitioner if it is “necessary for effective utilization of discovery procedures.”
4 ICE has information and documents relevant to Petitioner’s habeas petition, and without
5 the assistance of counsel, Petitioner will not be able to effectively pursue discovery and, as a
6 result, will not adequately present his claims. The aid of an attorney is especially
7 important in this case, given Petitioner’s lack of familiarity with the legal procedure
8 involved in requesting and obtaining discovery. Moreover, even if Petitioner were to obtain
9 documents in discovery, without the assistance of counsel, Petitioner would not be capable
10 of analyzing them to determine his likelihood of being removed in the foreseeable future.

11
12 III. An Evidentiary or Motions Hearing May Be Necessary

13 Under Rule 8(c), 28 U.S.C. foll. § 2254, the court is required to appoint counsel in a
14 habeas proceeding if an evidentiary hearing is needed. An evidentiary hearing will likely
15 be necessary in this case. Regardless of any other issues, if an evidentiary hearing is
16 scheduled, the court must appoint counsel for Petitioner.

17 For the above reasons, this Court should appoint counsel to assist Petitioner in
18 instant habeas proceedings challenging Petitioner’s detention by ICE, pursuant to the
19 Supreme Court decisions in Zadvydas and Martinez.

20
21 Respectfully submitted,

22 Dated: _____

23 _____
24 Petitioner

25 ³⁶ The rules cited in sections II and III typically govern those habeas corpus cases brought
26 under § 2254. However, these rules may be applied to habeas cases that do not fall under §
27 2254 – such as those cases arising under § 2241 – at the discretion of the court. Rule 1(b),
28 U.S.C. foll. § 2254.

1
2 UNITED STATES DISTRICT COURT
3

4 _____,
5 [A _____],
6 Petitioner,
7 v.
8 _____,
9 ATTORNEY GENERAL;
10 _____,
11 SECRETARY OF DEPARTMENT
12 OF HOMELAND SECURITY;
13 _____, U.S.
14 ICE FIELD OFFICE DIRECTOR FOR
15 THE _____ FIELD
16 OFFICE; and WARDEN OF
17 IMMIGRATION DETENTION
18 FACILITY,
19 Respondents.

Civil Action No.

20
21 ORDER

22 Upon consideration of Petitioner _____'s Petition for a Writ
23 of Habeas Corpus and Motion for Appointment of Counsel, it is hereby

24 ORDERED that Petitioner's Motion for Appointment of Counsel is
25 hereby GRANTED.

26 Done and dated this _____ day of _____, 200__.

27 BY THE COURT:

United States District Judge

Form 6: Motion to Proceed *In Forma Pauperis*, Prison Certificate, and Trust Account Withdrawal Authorization

If you do not have enough money to pay the filing fee, you may file a motion to proceed *in forma pauperis*. The forms we have provided are merely to give you an idea of what the forms look like. Most courts have specific forms of their own that you *must* use if you want to proceed *in forma pauperis*. You should, therefore, contact the court where you are going to be filing your habeas petition to request an *in forma pauperis* form. If, for some reason, you are unable to obtain these forms from the court, however, you can use the attached forms.

UNITED STATES DISTRICT COURT
FOR THE _____
DISTRICT OF _____

Plaintiff

v.

Case No. _____
(to be filled in by Clerk)

Defendant

**MOTION AND DECLARATION UNDER
PENALTY OF PERJURY IN SUPPORT
OF MOTION TO PROCEED IN FORMA
PAUPERIS**

I, _____, declare, depose, and say that I am the Petitioner in this case. In support of my motion to proceed without being required to prepay fees, costs or give security under 28 U.S.C. § 1915, I state that because of my poverty I am unable to pay the costs of said proceeding or to give security therefore. I believe I am entitled to redress.

I declare that the responses that I have made below are true.

1. If you are presently employed, state the amount of your salary wage per month, and give the name and address of your last employer.

2. If you are NOT PRESENTLY EMPLOYED, state the date of last employment and amount of the salary per month which you received and how long the employment lasted.

3. Have you received, within the past twelve months, any money from any of the following sources?

- | | | |
|---|------------------------------|-----------------------------|
| a. Business, profession or form of self-employment? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| b. Rent payments, interest or dividends? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| c. Pensions, annuities or life insurance payments? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| d. Gifts or inheritances? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| e. Family or friends? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |
| f. Any other sources? | Yes <input type="checkbox"/> | No <input type="checkbox"/> |

If you answered yes to any of the questions above, describe each source of money and the amount received from each during the past 12 months.

4. Do you own any cash, or do you have money in a checking or savings account, including any funds in prison accounts? Yes ☐ No ☐

If the answer is yes, state the total value owned. _____

5. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (including ordinary household furnishings and clothing)? Yes ☐ No ☐

If the answer is yes, describe the property and state its approximate value. _____

6. List the person(s) who are dependent upon you for support, state your relationship to those person(s), and indicate how much you contribute toward their support at the present time.

7. List any other debts (current obligations, indicating amounts owed and to whom they are payable).

8. State any special financial circumstances that the court should consider in this application.

I understand that a false statement or answer to any questions in this declaration will subject me to the penalties for perjury.

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

Signed this _____ day of _____, _____.

day

month

year

Signature

**ATTACH PRISON CERTIFICATE AND TRUST ACCOUNT WITHDRAWAL
AUTHORIZATION TO THE MOTION**

PRISON CERTIFICATE

(To be completed by an officer of institution of incarceration.)

I certify that the applicant _____
(Name of Detainee)

_____ has the sum of \$ _____ on account to
(Detainee's A Number)

his/her credit at _____. I further certify that the
(Name of institution)

applicant has the following securities _____

to his/her credit according to the records of the aforementioned institution. I further certify

that during the past six months the applicant's average monthly balance was

\$ _____ and the average monthly deposits to the applicant's account was

\$ _____

Date

Signature of Authorized Officer of institution

Officer's Full Name (Printed)

Officer's Title / Rank

TRUST ACCOUNT WITHDRAWAL AUTHORIZATION

(This form MUST be completed by the detainee to proceed *in forma pauperis*.)

I, _____, request and authorize the agency holding me
Name and A number
in custody to prepare for the Clerk of the United States District Court for the
_____ District of _____, a certified copy of the
statement for the past six months of my trust fund account (or institutional
equivalent) activity at institution where I am incarcerated.

I further request and authorize the agency holding me in custody to calculate and
disburse funds from my trust fund account (or institutional equivalent) pursuant to
any future orders issued by the Court relating to this civil action pursuant to the
Prison Litigation Reform Act of 1995, Pub. L. No. 104-134, Title VIII, §§ 801-10, 110
Stat. 1321 (1996).

This authorization is furnished in connection with a civil action filed in the _____
District of _____, and I understand that, pursuant to 28 U.S.C.
§§ 1914 and 1915(b)(1), the total amount of filing fees for which I am obligated is
\$____. I also understand that this fee will be debited from my account regardless of
the outcome of this action. This authorization shall apply to any other agency into
whose custody I may be transferred.

Date

Signature of Prisoner

Form 7: Petition for Writ of Habeas Corpus for Mariel Cubans

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

Print your full name and A#,

Petitioner,

v.

[write the name of the attorney general],
ATTORNEY GENERAL, [write name of the DHS
secretary], SECRETARY OF THE DEPARTMENT OF
HOMELAND SECURITY; [name of the Field Office
Director for the District where you are in
custody], U.S. ICE FIELD OFFICE DIRECTOR FOR
THE [name of the district where you are in
custody] FIELD OFFICE; AND WARDEN OF
IMMIGRATION DETENTION FACILITY,

Respondents

Civil Action No. [leave blank]

PETITION FOR A WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241, BY A PERSON
SUBJECT TO INDEFINITE IMMIGRATION
DETENTION.

BACKGROUND

Petitioner, [your full name], hereby petitions this Court for a writ of habeas corpus to remedy Petitioner's unlawful detention by Respondents, and to enjoin Petitioner's continued unlawful detention by the Respondent. 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 U.S. Immigration and Customs Enforcement (“ICE”). Petitioner is detained at the [name of your detention center] in [city and state where you are being held; for example, New Orleans, Louisiana]. [If you are detained in a state, county, or private facility, you should also write: ICE 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, 28 U.S.C. §2241(c)(1), and the Immigration and Nationality Act (“INA”), 8 U.S.C. §1101 *et seq.* This Court has subject matter 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. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001) (“We conclude that §2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”); *INS v. St. Cyr*, 533 U.S. 289, 301 (2001) (“at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.”) *Clark v. Martinez*, 543 U.S. 371 (2005) (holding that *Zadvydas* applies to aliens found inadmissible as well as removable).

VENUE

3. Venue lies in the [name of the district where you are filing petition, for example the Eastern District of Louisiana], because Petitioner is currently detained in the territorial jurisdiction of this Court, at the [name of the jail/detention center where you are being detained]. 28 U.S.C. §1391.

EXHAUSTION OF REMEDIES

4. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. After the Supreme Court decision in *Zadvydas*, the

Department of Justice issued regulations governing the custody of aliens removed. See 8 C.F.R. §241.4. Petitioner received a final order of removal on [date of final removal order]. At her/his “90-day” custody review, on or about [date of 90-day custody review], ICE decided to continue her/his detention. Subsequently in a decision dated [date], ICE’s Headquarters Post-Order Detention Unit (“HQPDU”) informed Petitioner that it would continue to keep him in custody despite having been detained for six months after a final order of removal. The custody review regulations do not provide for appeal from a HQPDU custody review decision. See 8 C.F.R. §241.4(d).

5. No statutory exhaustion requirements apply to Petitioner’s claim of unlawful detention.

[IF YOU FILED A HABEAS PETITION IN THE PAST: include an additional paragraph: On [date you filed habeas corpus petition previously], Petitioner filed a petition for writ of habeas corpus *prose*. The district court [describe district court’s decision and reasoning.]. However, more than [number of months that have passed since you filed the habeas petition], months have passed since Petitioner’s *prose* habeas petition was filed, and Petitioner still remains detained without any indication from the governments of the United States or [your country of citizenship] that Petitioner’s repatriation is reasonably foreseeable. A new habeas petition is proper in light of these new facts.]

PARTIES

6. Petitioner is a native and citizen of Cuba. Petitioner was first taken into ICE custody on [date], and has remained in ICE custody continuously since that date. Petitioner was ordered removed on [date]. Petitioner is currently detained at [name of jail/facility where you are currently detained]. Petitioner has been continuously detained by ICE for over [number of months you’ve been in detention] months.

7. Respondent [Loretta E. Lynch or present Attorney General] is the Attorney General of the United States and is responsible for the administration of ICE and the implementation and enforcement of the Immigration & Naturalization Act (INA). As such, [Ms. Lynch or present Attorney General] has ultimate custodial authority over Petitioner.

8. Respondent [Jeh Johnson or present DHS Secretary] is the Secretary of the Department of Homeland Security. He is responsible for the administration of ICE and the implementation and enforcement of the INA. As such [Mr. Johnson or present DHS Secretary] is the legal custodian of Petitioner.

9. Respondent [name of ICE Field Office Director] is the ICE Field Office Director of the [name of field office] Field Office of ICE 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).

10. Respondent Warden of [name of facility where you are detained], where Petitioner is currently detained under the authority of ICE, alternatively may be considered to be Petitioner's immediate custodian.

STATEMENT OF THE FACTS

11. Petitioner, [your full name], was born in Cuba on [date of birth]. [Briefly describe your personal background: the date and your age when you came to the United States; the reason you came to the United States, your immigration status when you first came to the United States; your immigration status right before you were ordered deported; where you lived before you were taken into custody; people with whom you've lived (spouse, parents); names of close relatives in the United States and their immigration status; whether you had a passport from your country of origin when you came to the United States; whether you lived in another country before coming to the United States; whether you or your family ever became lawful permanent residents or applied for citizenship.]

12. Petitioner first arrived in the United States in 1980 as part of the Mariel boatlift. Petitioner previously resided in Cuba.

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

14. [Explain the details of your parole, and when ICE most recently took you into custody. For example, you were paroled from 1980 to 1995, and ICE picked you up from prison in 1998 after you finished your criminal sentence, or they arrested you at a meeting with your probation officer.]

15. To date, however, ICE has been unable to remove the Petitioner to Cuba. It is Petitioner's understanding that Cuba will deny any and all requests for travel documents, as there is no formal or informal repatriation agreement between Cuba and the United States.

16. Petitioner has cooperated fully with all efforts by ICE to remove Petitioner from the United States. [Explain what you have done to help ICE apply for your travel documents. For example, explain whether you have signed a travel document application or other papers, provided your Deportation Office with information about when and where you were born, or provided ICE with photographs,

fingerprints, or identity documents. Refer back to the information you sent ICE in previous custody reviews.]

17. Petitioner was ordered removed on [date you were ordered removed], and the removal order became final on [date your removal order became final].

18. Petitioner's most recent custody review under the Cuban Review Plan, 8 C.F.R. §212.12, took place on [date of your most recent custody review]. On [date you received written decision], Petitioner was served with a written decision by ICE to continue Petitioner's indefinite detention.

19. On [dates of other custody reviews], the Petitioner's custody status was reviewed under the Cuban Review Plan. After each review, Petitioner was informed that Ice would continue detention.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

20. In *Zadvydas v. Davis*, 533 U.S. 678 (2001), the U.S. Supreme Court held that 8 U.S.C. §1231(a)(6), when "read in light of the Constitution's demands, limits an alien's post-removal-period detention to a period reasonably necessary to bring about that alien's removal from the United States." 533 U.S. at 689. A "habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal." *Id.* at 699. If the individual's removal "is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by the statute." *Id.* at 699-700. In *Clark v. Martinez*, 543 U.S. 371 (2005), the U.S. Supreme Court held that *Zadvydas* applies to aliens found inadmissible as well as removable.

21. In determining the length of a reasonable removal period, the Court adopted a "presumptively reasonable period of detention" of six months. *Id.* at 701. After six months, the government bears the burden of disproving an alien's "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future." *See Zhou v. Farquharson*, 2001 U.S. Dist. LEXIS 18239, *2-*3 (D. Mass. Oct. 19, 2001) (quoting and summarizing *Zadvydas*). Moreover, "for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the 'reasonably foreseeable future' conversely would have to shrink." *Zadvydas*, 533 U.S. at 701. ICE's 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. *See* 8 C.F.R. §241.4 (k)(2)(ii).

22. An alien who has been detained beyond the presumptive six months should be released where the government is unable to present documented confirmation that the foreign government at issue will agree to accept the particular individual in question. *See Agbada v. John Ashcroft*, 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court “will likely grant” habeas petition after fourteen months if ICE is “unable to present document confirmation that the Nigerian government has agreed to [petitioner’s] repatriation”); *Zhou*, 2001 U.S. Dist. LEXIS 19050 at *7 (W.D. Wash. February 28, 2002) (government’s failure to offer specific information regarding how or when it expected to obtain the necessary documentation or cooperation from the foreign government indicated that there was no significant likelihood of petitioner’s removal in the reasonably foreseeable future).

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

23. Petitioner re-alleges and incorporates by reference paragraphs 1 through 22 [change if you have more paragraphs] above.

24. Petitioner’s continued detention by Respondents is unlawful and contravenes 8 U.S.C. § 1231(a)(6) as interpreted by the U.S. Supreme Court in *Zadvydas*. Petitioner’s ninety-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have both passed. Respondents are unable to remove Petitioner to Cuba, because there is no repatriation agreement between the United States and Cuba, and Cuba will not accept its citizens who have been ordered removed from the United States. In *Martinez*, the U.S. Supreme Court held that the continued indefinite detention of someone like Petitioner under such circumstances is unreasonable and not authorized by 8 U.S.C. § 1231(a)(6).

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

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

26. 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. *See e.g., Tam v. INS*, 14 F.Supp.2d 1184 (E.D. Cal 1998) (aliens retain substantive due process rights).

27. 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. The U.S. Supreme Court in *Zadvydas* thus interpreted 8 U.S.C. §1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal, because any other reading would go beyond the government's articulated interest - to effect the alien's removal. See *Kay v. Reno*, 94 F.Supp.2d. 546, 551 (M.D. Pa. 2000) (granting writ of habeas corpus, because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention - executing removal - is nonsensical."). Because Petitioner is unlikely to be removed to Cuba, her continued indefinite detention violates substantive due process.

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

28. Petitioner re-alleges and incorporates by reference paragraphs 1 through 27 above.

29. 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. There is no administrative mechanism in place for the Petitioner to obtain a decision from a neutral arbiter or appeal a custody decision that violates *Martinez*. See generally 8 C.F.R. §212.12. The custody review procedures for Cubans are constitutionally insufficient both as written and as applied. A number of courts have identified a substantial bias within ICE toward the continued detention of aliens, raising the risk of an erroneous deprivation to constitutionally high levels. See, e.g., *Phan v. Reno*, 56 F. Supp. 2d 1149, 1157 (W.D. Wash. 1999) ("INS does not meaningfully and impartially review the Petitioners' status."); *St. John v. McElroy*, 917 F. Supp. 243, 251 (S.D.N.Y. 1996) ("Due to political and community pressure, INS, an executive agency, has ever incentive to continue to detain aliens with aggravated felony convictions, even though they have served their sentences, on the suspicion that they may continue to pose a danger to the community."); see also *Rivera v. Demore*, No. C 99-3042 THE, 199 WL 521177, *7 (N.D. Cal. Jul. 13, 1999) (procedural due process requires that aliens release determination be made by impartial adjudicator due to agency bias).

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, under reasonably conditions of supervision;
- 3) Order Respondents to refrain from transferring the Petitioner out of the jurisdiction of the ICE [name of the ICE field office district you are in] Director during the pendency of these proceedings and while the Petitioner remains in Respondent's custody; and
- 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. Respectfully submitted this [day of the month] of [month], [year].

[Signature]

[Full name], *Pro Se*

[Your address]

Potential ICE Arguments Opposing your Habeas Petition & Sample Responses

After filing your habeas petition, the judge assigned to your case will forward the petition to attorneys for ICE. ICE attorneys may then file a “Return” or an “Opposition” to your habeas petition. They may attempt to have your habeas petition dismissed by raising certain arguments. We have listed several arguments that ICE attorneys may raise, followed by sample responses. Please note that the responses may not apply to your particular situation. Make sure that your arguments are valid and accurate as applied to the specific facts of your case.

In response to ICE’s Return or Opposition, you may file what’s called a “Traverse,” or a “Reply” (these terms are interchangeable). We will explain, after each possible ICE argument, how you might respond in your Traverse or Reply. Note that ICE may raise arguments different than those covered here. Unfortunately, this Guide cannot address every argument that ICE may raise.

Argument 1: Petitioner Failed to Exhaust Administrative Remedies

If you file a habeas corpus petition before you get a decision from HQPDU, ICE may argue that you must wait for their decision first. They will say you have “failed to exhaust administrative remedies.” However, HQPDU may take a long time to send a decision on your request for release, and there is no limit on how long they can take. It is, therefore, logical and advisable to file the habeas petition, after waiting a reasonable amount of time for HQPDU to make a decision. “Administrative remedies” refers to the action that HQPDU can take to decide whether to release you from detention under *Zadvydas*, before you file a habeas petition with the court. HQPDU may argue that it has not had a chance to make its own decision in your case, and therefore your habeas petition should be dismissed until it does.

Sample Response:

Petitioner need not exhaust his administrative remedies. The statute in question, 8 U.S.C. §1231(a)(6), has no exhaustion requirement. Exhaustion is required only when Congress specifically mandates it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992). See *Woodford v. Ngo*, 548 U.S. 81, 126 S. Ct. 2378, 165 L. Ed. 2d 368 (2006) (where the Supreme Court held that Congress intended that the Prisoner Litigation Reform Act exhaustion requirement requires proper exhaustion). In all other instances, “sound judicial discretion governs.” *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992).

This Court should not require Petitioner to exhaust his administrative remedies. First, the Supreme Court has recognized that courts should not require exhaustion when there is an unreasonable or indefinite time-frame for administrative action. *Id.* at 147. Here, HQPDU is not required to issue a decision within any particular length of time. 8 C.F.R. §241.13(g). The custody review regulations do not provide any other administrative method of obtaining or appealing a custody review decision. See *id.* §241.13(g)(2). Petitioner has petitioned for HQPDU review of his indefinite detention, and has already waited a reasonable time for a decision. However, HQPDU has failed to make a decision. In light of the fundamental right to liberty at stake, the lack of any statutory requirement that a decision be rendered in any particular timeframe whatsoever, and the resulting extreme prejudice to Petitioner’s liberty

interest, Petitioner should not be required to wait *indefinitely* for an HQPDU decision on his continued indefinite detention. Exhaustion is not appropriate where “plaintiff may suffer irreparable harm if unable to secure immediate judicial consideration of his claim.” *Id.* Petitioner has a constitutionally-protected liberty interest in freedom from government custody. *Zadvydas*, 121 S.Ct. at 2498-2501. Petitioner’s unlawful indefinite detention constitutes irreparable harm. *See Seretse-Khama v. Ashcroft*, 215 F. Supp.2d 37,53 (D.D.C. 2002) (ordering release under *Zadvydas* on preliminary injunction based on substantial likelihood of success and finding that continued unlawful detention constitutes irreparable harm).

Second, exhaustion is not required where the Petitioner challenges the constitutionality of the agency procedure itself, “such that the question of the adequacy of the administrative remedy is for all practical purposes identical with the merits of the plaintiff’s lawsuit.” *McCarthy*, 503 U.S. at 148 (identical brackets omitted). In this case, Petitioner is challenging the constitutionality of the procedures by which ICE reviews the custody status of aliens who cannot be removed within six months, and whose removal is not significantly likely to occur in the reasonably foreseeable future. The administrative remedy is inadequate to address these constitutional grounds for recovery.

Finally, exhaustion is not required where the administrative remedy is inadequate due to agency bias. *Id.* at 148. Numerous courts have recognized the bias inherent in the ICE custody review process. *See Phan v. Reno*, 56 F. Supp. 2d 1149, 1157 (W.D. Wash. 1999) (“We have...concerns about the quality of the review afforded by INS to the Petitioners. Indeed, our review of the record confirms that INS does not meaningfully and impartially review the Petitioners’ custody status.”); *Rivera v. Demore*, No. C 99-3042 THE, 1999 WL 521177, *7 (N.D. Cal. Jul. 13, 1999) (procedural due process requires that alien release determination be made by impartial adjudicator due to agency bias); *Ekekhor v. Aljets*, 979 F. Supp. 640, 644 (N.D. Ill. 1997); *St. John v. McElroy*, 917 F. Supp. 243, 251 (S.D.N.Y. 1996) (“Due to political and community pressure, INS, an executive agency, has every incentive to continue to detain aliens with aggravated felony convictions, even though they have served their sentences, on the suspicion that they may continue to pose a danger to the community.”) Petitioner should not be required to languish in detention awaiting a decision by HQPDU.

Argument 2: Petitioner has Failed to Cooperate

ICE may argue that you are not cooperating enough with their efforts to remove you. They may argue that because you are not cooperating, they can suspend the removal period under 8 U.S.C. §1231(a)(1)(C), and continue to hold you without being subject to any time constraints until you prove that you are cooperating.

The law only supports ICE’s argument if you have **refused** to apply for travel documents or if you have provided untruthful information to ICE about, for example, your place of birth, citizenship, date of entry, etc. If you have applied for travel documents, and have provided ICE with truthful information about your place of birth, etc., then ICE should not be able to argue that you have failed to cooperate. Even if you initially provided false information about your place of birth, if you later tell the truth, then ICE cannot argue that you are not cooperating.

Sample Response:

ICE cannot seriously contend that the Petitioner is not cooperating. The relevant statutory provision provides that the 90-day removal period may be extended beyond 90 days and the alien may remain in detention during that period only “if the alien fails or refuses to make timely application in good faith for travel or other documents necessary to the alien’s departure or conspires or acts to prevent the aliens’ removal subject to an order of removal.” 8 U.S.C. §1231(a)(1)(C). This statutory provision cannot be applied to Petitioner. Petitioner has made a timely application in good faith for travel documents from the [fill in your country’s name] Consulate. Petitioner also has provided truthful information to ICE concerning his place of birth and citizenship.

The Government cites no cases in support of its position that it may indefinitely detain an alien who truthfully admits he is a national of the country to which ICE seeks to remove him, where there is no allegation that he has provided false or misleading information, and where the alien has done whatever has been asked of him to facilitate his removal. That is because the case law demonstrates that to constitute noncooperation, an alien must take some action that impedes the government’s efforts to remove him or refuse to provide relevant assistance. *Compare Moro v. Immigration & Naturalization Service*, 58 F. Supp. 2d 854, 858 (N.D. Ill. 1999) (“Although [§1231(a)(1)(C)] places a burden of good-faith cooperation on aliens in securing their removal, it does not, contrary to the government’s assertion, require Moro’s continued detention, because there is no evidence in this case that Moro impeded the government’s efforts to remove him or refused relevant assistance.”) *with Powell v. Ashcroft*, 194 F. Supp. 2d 209, 2010-11 (E.D.N.Y. 2002) (alien who provided false name, false place of birth, and false date of entry, was not cooperating). Petitioner has not done any of these things.

Therefore, ICE’s contention that Petitioner is not cooperating is meritless, and provides no basis for the suspension of the removal period or Petitioner’s continued unlawful detention. *See Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WL 1964290, *4 (N.D. Ill. Apr. 28, 2003) (rejecting ICE’s allegation of noncooperation as baseless where alien obtained his birth certificate and sought information from Yugoslavian Embassy regarding ICE’s application for a travel document). *See also Lawrikow v. Kollus*, No. CV081403PHXGMSLOA, 2009 WL 2905549, at *10 (D. Ariz. July 27, 2009) (rejecting ICE’s allegation of noncooperation as baseless where the petitioner sought information from the Russian embassy regarding ICE’s application for a travel document).

Moreover, to the extent that Respondents attempt to “suspend” the removal period after the removal period has already expired, the removal statute plainly does not permit such maneuvering. The Government’s regulations provide that the Government must provide the alien with a “Notice of Failure to Comply” ... *before the expiration of the removal period.*” 8 C.F.R. §241.4(g)(1)(C)(ii) (emphasis added). If the act that the Government now deems as noncooperation took place during the 90-day removal period, the Government had every opportunity to invoke §1231(a)(1)(C) during the removal period itself. That it failed to do without justification. Once the removal period has run, the Government cannot retroactively suspend that period pursuant to §1231(a)(1)(C) when the act alleged to constitute noncooperation fell squarely within the removal period. *See Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 53 n. 19 (D.D.C. 2002).

Argument 3: Petitioner is Likely to be Removed in the Reasonably Foreseeable Future

ICE may also argue that its evidence shows that you are likely to be removed in the reasonably foreseeable future. It may assert that it has requested travel documents from your Consulate, and is awaiting a response. It may also offer statistics citing the number of citizens of our country that ICE has successfully removed in the past several years, or the average number of months it takes for a citizen of your country to be removed.

Sample Response

Note: This response is unlikely to work if you have been detained for six months, less unlikely if you have been detained for 9 months, more likely if you have been detained for twelve months, and so on.

ICE has not satisfied its burden of showing that Petitioner is significantly likely to be removed in the reasonably foreseeable future. Already, Petitioner has been detained for [number of months detained] months. This period of detention exceeds the six-month presumptively reasonable period of detention authorized by *Zadvydas*. *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Although ICE states that it has made a request for travel documents from the [your country of origin] Consulate, the fact is that no travel documents have been issued to date. Because the Consulate has not issued travel documents, and there is no evidence when, if ever, travel documents will be issued, ICE has not satisfied its burden and Petitioner must be released. *See Shefqet v. Ashcroft*, No. 02 C 7737, 2003 WIL 1964290, *5 (N.D. Ill. Apr. 28, 2003) (INS failed to carry burden of proof where no travel documents had been issued, Yugoslavian alien had been detained for 17 months, and INS had been able to remove other aliens to Yugoslavia during that period); *Okwilagwe v. INS*, No. 3-01-CV-1416-BD, 2002 WL 356758, *2-3 (N.D. Tex. Mar. 1, 2002) (INS failed to sustain its burden of showing alien's removal to Nigeria would occur in reasonably foreseeable future where alien was detained for 11 months, travel documents were not issued, and no certainty existed as to when they might be issued); *see also Seretse-Khama v. Ashcroft*, 215 F. Supp.2d 37, 503 (D.D.C. 2002) (finding that Respondent failed to meet their burden of proof under *Zadvydas* where they "have not demonstrated to this Court that any travel documents are in hand, nor have they provided any evidence, or even assurances from the Liberian government, that travel documents will be issued in a matter of days or weeks or even months").

Argument 4: Petitioner is Too Dangerous to be Released

ICE may argue that you cannot be released because you pose a danger to the public. It may point to the fact that you have been convicted of an aggravated felony to try to convince the court that you are too dangerous to be released.

Sample Response

ICE cannot seriously contend that Petitioner is too dangerous to be released. Moreover, *Zadvydas* does not permit ICE to indefinitely detain Petitioner based on allegations of criminal dangerousness alone. In *Zadvydas*, the Supreme Court held that an alien under a final removal order could be held longer than the presumptively-reasonable period of six months if the alien is "specially dangerous." *Zadvydas v. Davis*, 533 U.S. 678, 691 (2001). Having a criminal record is an insufficient reason to refuse to release an alien after the six-month removal period has expired. *Id.* Rather, the U.S. Supreme Court demanded that

the “dangerousness rationale be accompanied by some other special circumstance, such as mental illness, that helps to create the danger.” *Id.* In its analysis, the Court reiterated the need to protect an individual’s due process rights guaranteed by the Fifth Amendment. *Id.* at 692 (noting a “serious constitutional problem arising out of a statute that...permits indefinite, perhaps permanent, deprivation of human liberty”). The Court also suggested that the Constitution prohibited an administrative agency from making unreviewable decisions affecting one’s fundamental rights. *Id.*

To implement *Zadvydas*, the Government established regulations setting forth a detailed quasi civil commitment proceeding that it must follow in order to continue to detain an alien whose removal is not significantly likely to occur in the reasonably foreseeable future. See 8 C.F.R. §241.14. These regulations establish a review procedure in Immigration Court, which ICE itself must initiate, whenever ICE seeks to indefinitely detain an alien. ICE’s regulations list only four circumstances where an alien may remain in detention even though his or her removal is not reasonably foreseeable: (1) where the alien has a highly contagious disease, (2) where serious adverse foreign policy consequences would result from the alien’s release, (3) for security of terrorism concerns, or (4) where the alien is determined to be specially dangerous. *Id.*

Petitioner does not fall into any of these categories, and ICE has not initiated any of the procedures required to certify Petitioner as falling into any of these categories. To the extent ICE is arguing that it can continue indefinitely detaining Petitioner on the grounds that he is “especially dangerous,” it has not even attempted to comply with its own extensive procedures to obtain such a classification. See 8 C.F.R. 241.14(f)-(g), (i). Here, ICE has not obtained a certification of special dangerousness from the Commissioner, it has not ordered that Petitioner undergo a medical examination, and it has not initiated a reasonably cause proceeding in Immigration Court. ICE’s own regulations provide that without proving “special dangerousness “ by clear and convincing evidence before an Immigration Judge, ICE does not have the ability to indefinitely detain an alien who has no significant likelihood of being removed within a six-month period. In short, ICE has not followed its own rules, or the due process demanded by the U.S. Constitution and by *Zadvydas*. It follows that ICE’s assertions that Petitioner can be indefinitely detained due to his criminal record should carry no weight whatsoever in this Court’s determination.

Phone Numbers and Addresses to U.S. District Courts

ICE should pre-program speed dial numbers to allow you to contact U.S. District Courts and the following has preprogrammed numbers in **(parenthesis *BOLD Italics*)**. If the Court you wish to contact does not have a speed dial number, you the right to ask an officer to make a call to a U.S. district court [toll-free]. You should contact the Clerk of Court to determine: whether the Court uses special habeas petitions; who to file the petition with; number of copies required, etc. Following the telephone list is a list of Court House address to allow you to verify the correct mailing address when you call the clerk.

1	Detention Facility	State	District Court Address
2	Montgomery City Jail Montgomery, AL	Alabama	Middle District Court of Alabama Frank M. Johnson, Jr. United States Courthouse One Church Street Montgomery, AL 36104 334-954-3600 (1830#)
3	DeKalb County Detention Center Fort Payne, AL	Alabama	Northern District Court of Alabama United States Courthouse Huntsville 101 Holmes Avenue, NE Huntsville, AL 35801 256-534-6495 Northern District Court of Alabama Hugo L. Black United States Courthouse 1729 Fifth Avenue North Birmingham, AL 35203 205-278-1700 (1677#)
4	Etowah County Jail Gadsden, AL	Alabama	Northern District Court of Alabama United States Courthouse Huntsville 101 Holmes Avenue, NE Huntsville, AL 35801 256-534-6495 Northern District Court of Alabama Hugo L. Black United States Courthouse 1729 Fifth Avenue North Birmingham, AL 35203 205-278-1700 (1677#)
5	Baldwin County Correctional Center Bay Minette, AL	Alabama	Southern District Court of Alabama John A. Campbell United States Courthouse 113 St. Joseph Street Mobile, AL 36602 251-690-2371 (2069#)
6	Anchorage Correctional Complex Anchorage, AK	Alaska	Alaska District Court Federal Building and United States Courthouse 222 West 7th Avenue Room 229 Anchorage, AK 99513 907-677-6100 866-243-3814 (toll free)

7	CCACentralArizonaDetention Center Florence, AZ	Arizona	Arizona District Court Sandra Day O'Connor United States Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003 602-322-7200 (8931#)
8	CCA, Florence Correctional Center Florence, AZ	Arizona	Arizona District Court Sandra Day O'Connor United States Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003 602-322-7200 (8931#)
9	Coconino County Detention Facility Flagstaff, AZ	Arizona	Arizona District Court Sandra Day O'Connor United States Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003 602-322-7200 (8931#)
10	Eloy Federal Contract Facility Eloy, AZ	Arizona	Arizona District Court Sandra Day O'Connor United States Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003 602-322-7200 (8931#)
11	Florence Service Processing Center Florence, AZ	Arizona	Arizona District Court Sandra Day O'Connor United States Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003 602-322-7200 (8931#)
12	LaPaz County Adult Detention Facility Parker, AZ	Arizona	Arizona District Court Sandra Day O'Connor United States Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003 602-322-7200 (8931#)
13	Navajo County Sheriff Holbrook, AZ	Arizona	Arizona District Court Sandra Day O'Connor United States Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003 602-322-7200 (8931#)
14	SanLuisRegional Detention Center San Luis, AZ	Arizona	Arizona District Court Sandra Day O'Connor United States Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003 602-322-7200 (8931#)
15	Yavapai County Detention Center Camp Verde	Arizona	Arizona District Court Sandra Day O'Connor United States Courthouse Suite 130 401 West Washington Street, SPC 1 Phoenix, AZ 85003 602-322-7200 (8931#)
16	Lonoke Police Department Lonoke, AR	Arkansas	Eastern District Court of Arkansas Richard Sheppard Arnold United States Courthouse 600 West Capitol Avenue Suit A-149 Little Rock, AR 72201 501-604-5351

17	Miller County Jail Texarkana, AR	Arkansas	United States Courthouse and Post Office Building 500 North State Line Avenue Room 302 Texarkana, AR 71854 870-773-3381
18	Sebastian County Detention Center Fort Smith, AR	Arkansas	Judge Isaac C. Parker Federal Building 30 South Sixth Street Room 1038 Fort Smith, AR 72901 479-783-6833
19	Adelanto Correctional Facility Adelanto, CA	California	Central District Court of California George E. Brown, Jr. United States Courthouse 3470 Twelfth Street Riverside, CA 92501 951-328-4450 213-894-1565 (8834#)
20	James A. Musick Facility Irvine, CA	California	Central District Court of California United States District Court 411 West Fourth Street Suite 1-053 Santa Ana, CA 92701 714-338-4750 213-894-1565 (8834#)
21	Santa Ana City Jail Santa Ana, CA	California	Central District Court of California United States District Court 411 West Fourth Street Suite 1-053 Santa Ana, CA 92701 714-338-4750 213-894-1565 (8834#)
22	Theo Lacy Facility Orange, CA	California	Central District Court of California United States District Court 411 West Fourth Street Suite 1-053 Santa Ana, CA 92701 714-338-4750 213-894-1565 (8834#)
23	Mesa Verde Detention Facility Bakersfield, CA	California	Eastern District Court of California Robert E. Coyle United States Courthouse 2500 Tulare Street Fresno, CA 93721 559-499-5600 (2081#)
24	Rio Cosumnes Correctional Center Elk Grove, CA	California	Eastern District Court of California Robert T. Matsui Federal Courthouse 501 I Street, Room 4-200 Sacramento, CA 95814 916-930-4000
25	Yuba County Jail Marysville, CA	California	Eastern District Court of California Robert T. Matsui Federal Courthouse 501 I Street, Room 4-200 Sacramento, CA 95814 916-930-4000 559-499-5600 (2081#)
26	Contra Costa County Jail West Richmond, CA	California	Northern District Court of California Phillip Burton United States Courthouse 450 Golden Gate Avenue Room 16-1111 San Francisco, CA 94102 415-522-2000 (113#)
27	Imperial Regional Detention Facility El Centro, CA	California	Southern District Court of California San Diego Main Office Street Address: James M. Carter and Judith N. Keep US Courthouse Clerk's Office 333 West Broadway, Suite 420 San Diego, CA 92101 619-557-6348 (2292#)

28	Otay Mesa Detention Center (San Diego CDF) San Diego, CA	California	Southern District Court of California San Diego Main Office Street Address: James M. Carter and Judith N. Keep US Courthouse Clerk's Office 333 West Broadway, Suite 420 San Diego, CA 92101 619-557-6348 (2292#)
29	Denver Contract Detention Facility Aurora, CO	Colorado	Colorado District Court Alfred A. Arraj United States Courthouse 901 19th Street Room A105 Denver, CO 80294 303-844-3433
30	El Paso County Criminal Justice Center Colorado, CO	Colorado	Colorado District Court Alfred A. Arraj United States Courthouse 901 19th Street Room A105 Denver, CO 80294 303-844-3433
31	Moffat County Jail Craig, CO	Colorado	Colorado District Court Alfred A. Arraj United States Courthouse 901 19th Street Room A105 Denver, CO 80294 303-844-3433
32	Teller County Jail Divide, CO	Colorado	Colorado District Court Alfred A. Arraj United States Courthouse 901 19th Street Room A105 Denver, CO 80294 303-844-3433
33	Baker County Sheriff's Office MacClenny, FL	Florida	Middle District Court of Florida Bryan Simpson United States Courthouse 300 North Hogan Street Jacksonville, FL 32202 904-549-1900
34	Collier County Naples Jail Center Naples, FL	Florida	Middle District Court of Florida United States Courthouse and Federal Building 2110 First Street Room 2-194 Fort Myers, FL 33901 239-461-2000
35	Glades County Detention Center Moore Haven, FL	Florida	Middle District Court of Florida United States Courthouse and Federal Building 2110 First Street Fort Myers, FL 33901 239-461-2000
36	Orange County Jail Orlando, FL	Florida	Middle District Court of Florida United States Courthouse 401 West Central Boulevard Suite 1200 Orlando, FL 32801 407-835-4200
37	Pinellas County Jail Clearwater, FL	Florida	Middle District Court of Florida Sam M. Gibbons United States Courthouse 801 North Florida Avenue 2nd Floor Tampa, FL 33602 813-301-5400

38	Wakulla County Jail Crawfordville, FL	Florida	Florida Northern District Court Tallahassee Division 111 North Adams Street Suite 322 Tallahassee, FL 32301 850-521-3501
39	Broward Transitional Center Pompano Beach, FL	Florida	Southern District Court of Florida United States Courthouse 299 East Broward Boulevard Fort Lauderdale, FL 33301 954-769-5400
40	Krome North Service Processing Center Miami, FL	Florida	Southern District Court of Florida Wilkie D. Ferguson, Jr. United States Courthouse 400 North Miami Avenue Miami, FL 33128 305-523-5100
41	Monroe County Detention Center Key West, FL	Florida	Southern District Court of Florida Wilkie D. Ferguson, Jr. United States Courthouse 400 North Miami Avenue Miami, FL 33128 305-523-5100
42	Irwin County Detention Center Ocilla, GA	Georgia	Middle District Court of Georgia Valdosta Division U.S. District Court P.O. BOX 68 Valdosta, GA 31601 229-242-3616
43	Stewart Detention Center Lumpkin, GA	Georgia	Middle District Court of Georgia Columbus Division U.S. Post Office & Court House PO Box 124 Columbus, GA 31902 706-649-7816
44	Atlanta City Detention Center Atlanta, GA	Georgia	Northern District Court of Georgia Atlanta Division Richard B. Russell Federal Building and United States Courthouse 75 Ted Turner Drive Room 2217 Atlanta, GA 30303 404-215-1600 (1657#) (2094#)
45	Cobb County Jail Marietta, GA	Georgia	Northern District Court of Georgia Atlanta Division Richard B. Russell Federal Building and United States Courthouse 75 Ted Turner Drive Room 2217 Atlanta, GA 30303 404-215-1600 (1657#) (2094#)
46	Hall County Jail Gainesville, GA	Georgia	Northern District Court of Georgia Gainesville Division United States Courthouse 121 Spring Street SE Room 201 Gainesville, GA 30501 678-450-2760
47	Whitfield County Jail Dalton, GA	Georgia	Northern District Court of Georgia Rome Division United States Courthouse 600 East First Street Room 304 Rome, GA 30161-3149 (706) 378-4060

48	Dale G. Haile Detention Center Caldwell, ID	Idaho	Idaho District Court James A. McClure Federal Building and United States Courthouse 550 West Fort Street Boise, ID 83724 208-334-1361
49	Elmore County Jail Mountain, ID	Idaho	Idaho District Court James A. McClure Federal Building and United States Courthouse 550 West Fort Street Boise, ID 83724 208-334-1361
50	Jefferson county Jail Rigby, ID	Idaho	Idaho District Court James A. McClure Federal Building and United States Courthouse 550 West Fort Street Boise, ID 83724 208-334-1361
51	Minicassia Detention Center Burley, ID	Idaho	Idaho District Court James A. McClure Federal Building and United States Courthouse 550 West Fort Street Boise, ID 83724 208-334-1361
52	Rock island County Correctional Center Rock Island, IL	Illinois	Illinois Central District United States Courthouse U.S. Clerk's Office 211 19th Street Rock Island, IL 61201 309-793-5778
53	Sangamon County Jail Springfield, IL	Illinois	Illinois Central District United States Courthouse U.S. Clerk's Office 211 19th Street Rock Island, IL 61201 309-793-5778
54	Elgin Police Department Elgin, IL	Illinois	Illinois Northern District (Kane and Cook Co) Eastern Division Everett McKinley Dirksen United States Courthouse 219 South Dearborn Street 20th Floor Chicago, IL 60604 312-435-5670
55	McHenry County Correctional Facility Woodstock, IL	Illinois	Illinois Northern District Western Division Stanley J. Roszkowski United States Courthouse 327 South Church Street Rockford, IL 61101 815-987-4355
56	Pulaski County Jail Ullin, IL	Illinois	Illinois Southern District United States Courthouse Attention: Clerk's Office 301 West Main Street Benton, IL 62812 618-439-7760
57	Clay County Jail Brazil, IN	Indiana	Indiana Southern District Court Terra Haute Division United States Courthouse 921 Ohio Street Room 104 Terre Haute, IN 47807 812-231-1840

58	Marion County Jail Indianapolis, IN	Indiana	Indiana Southern District Court Birch Bayh Federal Building and United States Courthouse 46 East Ohio Street Room 105 Indianapolis, IN 46204 317-229-3700
59	Hardin County Jail Eldora, IA	Iowa	Iowa Northern District Cedar Rapids Division United States Courthouse 111 Seventh Avenue SE Cedar Rapids, IA 52401 319-286-2300 (5709#)
60	Linn County Jail Cedar Rapid, IA	Iowa	Iowa Northern District Cedar Rapids Division United States Courthouse 111 Seventh Avenue SE Cedar Rapids, IA 52401 319-286-2300 (5709#)
61	Marshall County Jail Marshalltown, IA	Iowa	Iowa Southern District Central Division United States Courthouse 123 East Walnut Street Room 300 Des Moines, IA 50309 515-284-6248 (5710#)
62	Polk County Jail Des Moines, IA	Iowa	Iowa Southern District United States Courthouse 123 East Walnut Street Room 300 Des Moines, IA 50309 515-284-6248 (5710#)
63	Pottawattamie County Jail Council Bluffs, IA	Iowa	Iowa Southern District Western Division United States Courthouse 8 South Sixth Street Room 313 Council Bluffs, IA 51501 712-328-0283
64	Butler County Jail El Dorado, KS	Kansas	Kansas District Court Frank Carlson Federal Building and United States Courthouse 444 Southeast Quincy Street Room 490 Topeka, KS 66683 785-338-5400
65	Chase County Detention Center Cottonwood, KS	Kansas	Kansas District Court Frank Carlson Federal Building and United States Courthouse 444 Southeast Quincy Street Room 490 Topeka, KS 66683 785-338-5400
66	Shawnee County Department of Corrections Topeka, KS	Kansas	Kansas District Court Frank Carlson Federal Building and United States Courthouse 444 Southeast Quincy Street Room 490 Topeka, KS 66683 785-338-5400
67	Boone county Jail Burlington, KY	Kentucky	Kentucky Eastern District Court United States Courthouse 35 West Fifth Street Room 287 Covington, KY 41011 859-392-7925

68	Grayson County Jail Leitchfield, KY	Kentucky	Kentucky Western District Court Federal Building 241 East Main Street Room 120 Bowling Green, KY 42101 270-393-2500
69	Saint Tammany Parish Jail Covington, LA	Louisiana	Louisiana Eastern District Court Hale Boggs Federal Building United States Courthouse 500 Poydras Street Room C-151 New Orleans, LA 70130 504-589-7650 (1771#)
70	Allen Parish Public Safety Complex Oberlin, LA	Louisiana	Louisiana Western District Court United States Courthouse 800 Lafayette Street Suite 2100 Lafayette, LA 70501 337-593-5000 (9154#)
71	Jena/Lasalle Detention Facility Jena, LA	Louisiana	Louisiana Western District Court United States Court House 300 Fannin Street Suite 1167 Shreveport, LA 71101 318-676-4273 (1706#)
72	Pine Prairie Correctional Center Pine Prairie, LA	Louisiana	Louisiana Western District Court E United States Court House 300 Fannin Street Suite 1167 Shreveport, LA 71101 318-676-4273 (1706#)
73	Tensas Parish Detention Center Waterproof, LA	Louisiana	Louisiana Western District Court United States Court House 300 Fannin Street Suite 1167 Shreveport, LA 71101 318-676-4273 (1706#)
74	Cumberland County Jail Portland, ME	Maine	Maine District Court Edward T. Gignoux Federal Courthouse 156 Federal Street Portland, ME 04101 207-780-3356
75	Frederick County Detention Center Frederick, MD	Maryland	Maryland District Court Edward A. Garmatz Federal Building and United States Courthouse 101 West Lombard Street Room 4228 Baltimore, MD 21201 410-962-2600
76	Howard County Detention Center Jessup, MD	Maryland	Maryland District Court Edward A. Garmatz Federal Building and United States Courthouse 101 West Lombard Street Room 4228 Baltimore, MD 21201 410-962-2600
77	Worcester County Jail Snow Hill, MD	Maryland	Maryland District Court Edward A. Garmatz Federal Building and United States Courthouse 101 West Lombard Street Room 4228 Baltimore, MD 21201 410-962-2600

78	Bristol County Detention Center North, MA	Massachusetts	Massachusetts District Court John Joseph Moakley United States Courthouse One Courthouse Way Suite 2300 Boston, MA 02210 617-748-9152 (9139#)
79	Franklin House of Corrections Greenfield, MA	Massachusetts	Massachusetts District Court 300 State Street Room 1-120 Springfield, MA 01105 413-785-6800
80	Norfolk County Jail Dedham, MA	Massachusetts	Massachusetts District Court John Joseph Moakley United States Courthouse One Courthouse Way Suite 2300 Boston, MA 02210 617-748-9152 (9139#)
81	Plymouth County Correctional Facility Plymouth, MA	Massachusetts	Massachusetts District Court John Joseph Moakley United States Courthouse One Courthouse Way Suite 2300 Boston, MA 02210 617-748-9152 (9139#)
82	Suffolk County House of Corrections Boston, MA	Massachusetts	Massachusetts District Court John Joseph Moakley United States Courthouse One Courthouse Way Boston, MA 02210 617-748-4223
83	Dearborn Police Department Dearborn, MI	Michigan	Michigan Eastern District Court Theodore Levin United States Courthouse 231 West Lafayette Boulevard 5 th Floor Detroit, MI 48226 313-234-5005 (9215#)
84	Monroe County Detention Dorm Monroe, MI	Michigan	Michigan Eastern District Court Michigan Eastern District Court Theodore Levin United States Courthouse 231 West Lafayette Boulevard 5 th Floor Detroit, MI 48226 313-234-5005 (9215#)
85	Saint Clair County Jail Port Huron, MI	Michigan	Michigan Eastern District Court Michigan Eastern District Court Theodore Levin United States Courthouse 231 West Lafayette Boulevard 5 th Floor Detroit, MI 48226 313-234-5005 (9215#)
86	Calhoun County Correctional Center Battle Creek, MI	Michigan	Michigan Western District Court Gerald R. Ford Federal Building 110 Michigan Street, NW Room 399 Grand Rapids, MI 49503 616-456-2381
87	Chippewa County SSM Sault Sainte, MI	Michigan	Michigan Western District Court Gerald R. Ford Federal Building 110 Michigan Street, NW Room 399 Grand Rapids, MI 49503 616-456-2381

88	Kent County Jail Grand Rapids, MI	Michigan	Michigan Western District Court Gerald R. Ford Federal Building 110 Michigan Street, NW Room 399 Grand Rapids, MI 49503 616-456-2381
89	Carver County Jail Chaska, MN	Minnesota	Minnesota District Court United States Courthouse 300 South Fourth Street Minneapolis, MN 55415 612-664-5000 (1658#)
90	Freeborn County Adult Detention Center Albert Lea, MN	Minnesota	Minnesota District Court United States Courthouse 300 South Fourth Street Minneapolis, MN 55415 612-664-5000 (1658#)
91	Nobles County Jail Worthington, MN	Minnesota	Minnesota District Court United States Courthouse 300 South Fourth Street Minneapolis, MN 55415 612-664-5000 (1658#)
92	Ramsey County Adult Detention Center St. Paul, MN	Minnesota	Minnesota District Court Warren E. Burger Federal Building 316 North Robert Street St. Paul, MN 55101 651-848-1100
93	Sherburne County Jail Elk River, MN	Minnesota	Minnesota District Court Minnesota District Court United States Courthouse 300 South Fourth Street Minneapolis, MN 55415 612-664-5000 (1658#)
94	Lincoln County Detention Center Troy, MO	Missouri	Missouri Eastern District Court Thomas F. Eagleton United States Courthouse 111 South Tenth Street Room 3.300 St. Louis, MO 63102-1116 314-244-7900
95	Montgomery County Jail Montgomery, MO	Missouri	Missouri Eastern District Court Thomas F. Eagleton United States Courthouse 111 South Tenth Street Room 3.300 St. Louis, MO 63102-1116 314-244-7900
96	Caldwell County Detention Center Kingston, MO	Missouri	Missouri Western District Court Charles Evans Whittaker United States Courthouse 400 East Ninth Street Kansas City, MO 64106 816-512-5000
97	Christian County Jail Ozark, MO	Missouri	Missouri Western District Court United States Courthouse 222 North John Q. Hammons Parkway Room 1400 Springfield, MO 65806-2515 417-865-3869
98	Morgan County Adult Detention Center Versailles, MO	Missouri	Missouri Western District Court Christopher S. Bond United States Courthouse 80 Lafayette Street Jefferson City, MO 65101-1557 573-636-4015

99	Platte County Detention Center Platt City, MO	Missouri	Missouri Western District Court Charles Evans Whittaker United States Courthouse 400 East Ninth Street Kansas City, MO 64106 816-512-5000
	Adams County Correctional Center Natchez, MS	Mississippi	Southern District of Mississippi United States District Court United States Courthouse 109 South Pearl Street, 2nd Floor Natchez, MS 39120 601-897-6945
100	Cascade County Jail Great Falls, MT	Montana	Montana District Court Missouri River Courthouse 125 Central Avenue West Suite 110 Great Falls, MT 59404 406-727-1922
101	Cass County jail Plattsmouth, NE	Nebraska	Nebraska District Court Roman L. Hruska United States Courthouse 111 South 18th Plaza Suite 1152 Omaha, NE 68102 402-661-7350 (5713#)
102	Dakota county Jail Dakota City, NE	Nebraska	Nebraska District Court Roman L. Hruska United States Courthouse 111 South 18th Plaza Suite 1152 Omaha, NE 68102 402-661-7350 (5713#)
103	Douglas County Department of Omaha, NE	Nebraska	Nebraska District Court Roman L. Hruska United States Courthouse 111 South 18th Plaza Suite 1152 Omaha, NE 68102 402-661-7350 (5713#)
104	Hall County Department of Corrections Grand Island, NE	Nebraska	Nebraska District Court Robert V. Denney United States Courthouse 100 Centennial Mall North Room 593 Lincoln, NE 68508 402-437-1900
105	Phelps County Jail Holdrege, NE	Nebraska	Nebraska District Court Robert V. Denney United States Courthouse 100 Centennial Mall North Room 593 Lincoln, NE 68508 402-437-1900
106	Henderson Detention Center Henderson, NV	Nevada	Nevada District Court Lloyd D. George United States Courthouse 333 Las Vegas Boulevard South First floor Las Vegas, NV 89101 702-464-5400
107	Nevada Southern Detention Center Pahrump, NV	Nevada	Nevada District Court Lloyd D. George United States Courthouse 333 Las Vegas Boulevard South First floor Las Vegas, NV 89101 702-464-5400

108	Washoe County Jail Reno, NV	Nevada	Nevada District Court Bruce R. Thompson United States Courthouse and Federal Building 400 South Virginia Street Room 301 Reno, NV 89501 775-686-5800
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109	Strafford County Corrections Dover, NH	New Hampshire	New Hampshire District Court Warren B. Rudman United States Courthouse 55 Pleasant Street, Room 110 Concord, NH 03301 603-225-1423
110	Bergen County Jail Hackensack, NJ	New Jersey	New Jersey District Court New Jersey District Court Martin Luther King, Jr. Federal Building and United States Courthouse 50 Walnut Street Newark, NJ 07102 973-645-3730 (1659#)
111	Elizabeth Contract Detention Facility Elizabeth, NJ	New Jersey	New Jersey District Court New Jersey District Court New Jersey District Court Martin Luther King, Jr. Federal Building and United States Courthouse 50 Walnut Street Newark, NJ 07102 973-645-3730 (1659#)
112	Essex County Correctional Facility Newark, NJ	New Jersey	New Jersey District Court Martin Luther King, Jr. Federal Building and United States Courthouse 50 Walnut Street Newark, NJ 07102 973-645-3730 (1659#)
113	Hudson County Correctional Center Kearney, NJ	New Jersey	New Jersey District Court New Jersey District Court Martin Luther King, Jr. Federal Building and United States Courthouse 50 Walnut Street Newark, NJ 07102 973-645-3730 (1659#)
114	Salem County Correctional Facility Woodstown, NJ	New Jersey	New Jersey District Court Mitchell H. Cohen United States Courthouse 400 Cooper Street Camden, NJ 08102 856-757-5021 (1679#)
115	Cibola County Correctional Center, Milan, NM	New Mexico	New Mexico District Court Pete V. Domenici United States Courthouse 333 Lomas Boulevard Room 270 Albuquerque, NM 87102 505-348-2000
115a	Otero County Processing Center Chaparral, NM	New Mexico	New Mexico District Court Pete V. Domenici United States Courthouse 333 Lomas Boulevard Room 270 Albuquerque, NM 87102 505-348-2000
116	Torrance County Detention Facility Estancia, NM	New Mexico	New Mexico District Court Pete V. Domenici United States Courthouse 333 Lomas Boulevard Room 270 Albuquerque, NM 87102 505-348-2000
117	Albany County Jail Albany, NY	New York	Northern District Court of New York James T. Foley United States Courthouse 445 Broadway Albany, NY 12207 518-257-1800 (2198#)

118	Clinton County Jail, Pittsburg, NY	New York	Northern District Court of New York Northern District Court of New York James T. Foley United States Courthouse 445 Broadway Albany, NY 12207 518-257-1800 (2198#)
119	Orange County Jail Goshen, NY	New York	Southern District Court of New York Charles L. Brieant, Jr. United States Courthouse 300 Quarropas Street Room 120 White Plains, NY 10601 914-390-4100
120	Allegany County Jail Belmont, NY	New York	Western District Court of New York Robert H. Jackson Courthouse 2 Niagara Square Room 200 Buffalo, NY 14202 716-551-1700 (1652#) (2176#)
121	Buffalo (Batavia) Service Processing Center Batavia, NY	New York	Western District Court of New York Robert H. Jackson Courthouse 2 Niagara Square Room 200 Buffalo, NY 14202 716-551-1700 (1652#) (2176#)
122	Chautauqua County Jail Mayville, NY	New York	Western District Court of New York Robert H. Jackson Courthouse 2 Niagara Square Room 200 Buffalo, NY 14202 716-551-1700 (1652#) (2176#)
123	Ontario County Jail Canandaigua, NY	New York	Western District Court of New York Kenneth B. Keating Federal Building 100 State Street Room 2120 Rochester, NY 14614 585-613-4000 (2177#)
124	Wayne County Jail Lyons, NY	New York	Western District Court of New York Kenneth B. Keating Federal Building 100 State Street Room 2120 Rochester, NY 14614 585-613-4000 (2177#)
125	New Hanover County Jail Castle Hayne, NC	North Carolina	North Carolina Eastern District Court Terry Sanford Federal Building 310 New Bern Avenue Raleigh, NC 27601 919-645-1700 (9005#)
126	Wake County Sheriff Department Raleigh, NC	North Carolina	North Carolina Eastern District Court Terry Sanford Federal Building 310 New Bern Avenue Raleigh, NC 27601 919-645-1700 (9005#)
127	Forsyth County Jail Winston-Salem, NC	North Carolina	North Carolina Middle District Court L. Richardson Preyer Federal Building 324 West Market Street Greensboro, NC 27401 336-332-6000

128	Mecklenburg County Detention Center Charlotte, NC	North Carolina	North Carolina Western District Court Charles R. Jonas Federal Building 401 West Trade Street Room 210 Charlotte, NC 28202 704-350-7400
129	Grand Forks County Correctional Grand Forks, ND	North Dakota	North Dakota District Court Quentin N. Burdick United States Courthouse 655 First Avenue North Room 130 Fargo, ND 58102 701-297-7000
130	Geauga County Jail Chardon, OH	Ohio	Northern District Court of Ohio Carl B. Stokes United States Court House 801 West Superior Avenue Cleveland, OH 44113 216-357-7000
131	Seneca County Jail Tiffin, OH	Ohio	Northern District Court of Ohio James M. Ashley and Thomas W. L. Ashley United States Courthouse 1716 Spielbusch Avenue Room 114 Toledo, OH 43604 419-213-5500
132	Morrow County Correctional Facility Mount Gilead, OH	Ohio	Southern District Court of Ohio Joseph P. Kinneary United States Courthouse 85 Marconi Boulevard Room 121 Columbus, OH 43215 614-719-3000
133	Butler County Jail Hamilton, OH	Ohio	Southern District Court of Ohio Potter Stewart United States Courthouse 100 East Fifth Street Room 103 Cincinnati, OH 45202 513-564-7500
134	Tulsa County Jail (David L. Moss Justice Tulsa, OK	Oklahoma	Northern District Court of Oklahoma Page Belcher Federal Building and United States Courthouse 333 West Fourth Street Room 411 Tulsa, OK 74103 918-699-4700
135	Garvin County Detention Center Pauls Valley, OK	Oklahoma	Western District Court of Oklahoma United States Courthouse 200 Northwest Fourth Street Room 1210 Oklahoma City, OK 73102 405-609-5000
136	Josephine County Jail Grants Pass, OR	Oregon	Oregon District Court Wayne Lyman Morse United States Courthouse 405 East Eighth Avenue Eugene, OR 97401 541-431-4100
137	Northern Oregon Correctional Facility The Dalles, OR	Oregon	Oregon District Court John F. Kilkenny United States Post Office and Courthouse 104 S.W. Dorion Pendleton, OR 97801 503-326-8000

138	Delaware County Jail (George W. Hill) Thornton, PA	Pennsylvania	Eastern District Court of Pennsylvania James A. Byrne United States Courthouse 601 Market Street Room 2609 Philadelphia, PA 19106 215-597-7704 (1560#)
139	Clinton County Correctional Facility Lock Haven, PA	Pennsylvania	Middle District Court of Pennsylvania Middle District Court of Pennsylvania Ronald Reagan Federal Building 228 Walnut Street Harrisburg, PA 17108 717-221-3920 (1564#)
140	Pike County Correctional Facility Lords Valley, PA	Pennsylvania	Middle District Court of Pennsylvania Middle District Court of Pennsylvania Ronald Reagan Federal Building 228 Walnut Street Harrisburg, PA 17108 717-221-3920 (1564#)
141	York County Prison York, PA	Pennsylvania	Middle District Court of Pennsylvania Ronald Reagan Federal Building 228 Walnut Street Harrisburg, PA 17108 717-221-3920 (1564#)
142	Erie County Jail Erie, PA	Pennsylvania	Western District Court of Pennsylvania 17 South Park Row Room A-150 Erie, PA 16501 814-464-9600
143	Charleston County Detention Center North, SC	South Carolina	South Carolina District Court Hollings Judicial Annex 85 Broad Street Charleston, SC 29401 843-579-1401
144	Lexington County Jail Lexington, SC	South Carolina	South Carolina District Court Matthew J. Perry Jr. United States Courthouse 901 Richland Street Columbia, SC 29201 803-765-5816
145	York County Detention Center York, SC	South Carolina	South Carolina District Court Matthew J. Perry Jr. United States Courthouse 901 Richland Street Columbia, SC 29201 803-765-5816
146	Pennington County Jail Rapid City, SD	South Dakota	South Dakota District Court Federal Building and United States Courthouse 515 Ninth Street Rapid City, SD 57701 605-399-6000
147	Davidson County Sheriff Nashville, TN	Tennessee	Middle District Court of Tennessee Estes Kefauver Federal Building and United States Courthouse 801 Broadway Room 800 Nashville, TN 37203 615-736-5498
148	Western Tennessee Detention Facility Mason, TN	Tennessee	Western District Court of Tennessee Clifford Davis and Odell Horton Federal Building 167 North Main Street Room 242 Memphis, TN 38103 901-495-1200 (1774#)

149	Polk County Adult Detention Facility Livingston, TX	Texas	Eastern District Court of Texas Ward R. Burke United States Courthouse 104 North Third Street Lufkin, TX 75901 936-632-2739
150	Bedford Municipal Detention Center Bedford, TX	Texas	Northern District Court of Texas Eldon B. Mahon United States Courthouse 501 West Tenth Street Room 310 Fort Worth, TX 76102 817-850-6601
151	Eules City Jail Eules, TX	Texas	Northern District Court of Texas Northern District Court of Texas Eldon B. Mahon United States Courthouse 501 West Tenth Street Room 310 Fort Worth, TX 76102 817-850-6601
152	Johnson County Law Enforcement Cleburne, TX	Texas	Northern District Court of Texas Earle Cabell Federal Building and United States Courthouse 1100 Commerce Street Room 1452 Dallas, TX 75242 214-753-2200
153	Lubbock County Detention Center Lubbock, TX	Texas	Northern District Court of Texas George H. Mahon Federal Building and United States Courthouse 1205 Texas Avenue Room 209 Lubbock, TX 79401 806-472-1900
154	Randall County Jail Amarillo, TX	Texas	Northern District Court of Texas J. Marvin Jones Federal Building 205 East Fifth Avenue Room 103 Amarillo, TX 79101 806-468-3800
155	Rolling Plains Detention Center Haskell, TX	Texas	Northern District Court of Texas United States Courthouse 341 Pine Street Room 2008 Abilene, TX 79601 325-677-6311
156	Brooks County Detention Center Falfurrias, TX	Texas	Southern District Court of Texas United States Courthouse 1133 North Shoreline Boulevard Room 208 Corpus Christi, TX 78401 361-888-3142
157	East Hidalgo Detention Center La Villa, TX	Texas	Southern District Court of Texas Bentsen Tower 1701 West Business Highway 83 Room 1011 McAllen, TX 7850 956-618-8065
158	Houston Contract Detention Facility Houston, TX	Texas	Southern District Court of Texas Bob Casey United States Courthouse 515 Rusk Street Room 5300 Houston, TX 77002 713-250-5500

159	Joe Corley Detention Facility Conroe, TX	Texas	Southern District Court of Texas Bob Casey United States Courthouse 515 Rusk Street Room 5300 Houston, TX 77002 713-250-5500
160	LaSalle County Regional Detention Encinal, TX	Texas	Southern District Court of Texas United States Courthouse 1300 Victoria Street First floor Laredo, TX 78040 956-723-3542
161	Laredo Processing Center Laredo, TX	Texas	Southern District Court of Texas United States Courthouse 1300 Victoria Street First floor Laredo, TX 78040 956-723-3542
162	Port Isabel Los Fresnos, TX	Texas	Southern District Court of Texas Federal Building and United States Courthouse 600 East Harrison Street Room 1158 Brownsville, TX 78520 956-548-2500
163	Rio Grande Detention Center Laredo, TX	Texas	Southern District Court of Texas United States Courthouse 1300 Victoria Street First floor Laredo, TX 78040 956-723-3542
164	Willacy County Regional Detention Facility Raymondville, TX	Texas	Southern District Court of Texas Federal Building and United States Courthouse 600 East Harrison Street Room 1158 Brownsville, TX 78520 956-548-2500
165	Burney County Jail Burnet, TX	Texas	Western District Court of Texas United States Courthouse 501 West 5th Street Austin, TX 78701 512-916-5896
166	Central Texas Detention Facility San Antonio, TX	Texas	Western District Court of Texas John H. Wood, Jr. United States Courthouse 655 East Cesar E. Chavez Boulevard Room G-65 San Antonio, TX 78206 210-472-6550
167	El Paso Processing Center El Paso, TX	Texas	Western District Court of Texas Albert Armendariz, Sr. United States Courthouse 525 Magoffin Avenue Room 105 El Paso, TX 79901 915-534-6725
168	Jack Harwell Detention Center Waco, TX	Texas	Western District Court of Texas United States Courthouse 800 Franklin Avenue, 3rd Floor Waco, TX 76701 254-750-1501

169	Karnes County Correctional Center Karnes City, TX	Texas	Western District Court of Texas John H. Wood, Jr. United States Courthouse 655 East Cesar E. Chavez Boulevard Room G-65 San Antonio, TX 78206 210-472-6550
170	South Texas Detention Complex Pearsall, TX	Texas	Western District Court of Texas John H. Wood, Jr. United States Courthouse 655 East Cesar E. Chavez Boulevard Room G-65 San Antonio, TX 78206 210-472-6550
171	Val Verde Correctional Facility Del Rio, TX	Texas	Western District Court of Texas United States Courthouse 111 East Broadway Street Room L-100 Del Rio, TX 78840 830-703-2054
172	West Texas Detention Facility Sierra Blanca, TX	Texas	Western District Court of Texas Lucius D. Bunton, III United States Courthouse 410 South Cedar Street 1st Floor Pecos, TX 79772 432-445-4228
173	Utah County Jail Spanish Fork, UT	Utah	Utah District Court 351 S West Temple Room 1.100 Salt Lake City, UT 84101 801-524-6100
174	Washington County Jail (Purgatory) Hurricane, UT	Utah	Utah District Court 351 S West Temple Room 1.100 Salt Lake City, UT 84101 801-524-6100
175	Northwest State Correctional Center Swanton, VT	Vermont	Vermont District Court Federal Building PO Box 945 Burlington, VT 05402 802-951-6301 (9079#)
176	Immigration Centers of America Farmville, VA	Virginia	Eastern District Court of Virginia Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse 701 East Broad Street Suite 3000 Richmond, VA 23219 804-916-2200
177	Virginia Peninsula Regional Jail Williamsburg, VA	Virginia	Eastern District Court of Virginia Spottswood W. Robinson III & Robert R. Merhige, Jr., U.S. Courthouse 701 East Broad Street Suite 3000 Richmond, VA 23219 804-916-2200
178	Yakima county Department of Yakima, WA	Washington	Eastern District Court of Washington William O. Douglas Federal Building 25 South Third Street Yakima, WA 98901 509-573-6600
179	Northwest Detention Center Tacoma, WA	Washington	Western District Court of Washington United States Courthouse 1717 Pacific Avenue Tacoma, WA 98402 253-882-3800

180	Northern Regional Jail Moundsville, WV	West Virginia	Northern District Court of West Virginia Federal Building and United States Courthouse 1125 Chapline Street Wheeling, WV 26003 304-232-0011
181	South Central Regional Jail Charleston, WV	West Virginia	Southern District Court of West Virginia Robert C. Byrd United States Courthouse 300 Virginia Street East Room 2400 Charleston, WV 25301 304-347-3000
182	Dodge County Jail Juneau, WI	Wisconsin	Eastern District Court of Wisconsin United States Courthouse and Federal Building 517 East Wisconsin Avenue Room 362 Milwaukee, WI 53202 414-297-3372
183	Kenosha County Detention Center Kenosha, WI	Wisconsin	Eastern District Court of Wisconsin United States Courthouse and Federal Building 517 East Wisconsin Avenue Room 362 Milwaukee, WI 53202 414-297-3372
184	Natrona County Jail Casper, WY	Wyoming	Wyoming District Court Ewing T. Kerr Federal Building and United States Courthouse 111 South Wolcott Street Casper, WY 82601 307-232-2620