

INDEFINITE IMMIGRATION DETENTION: HOW TO FILE A LAWSUIT DEMANDING RELEASE

Who is this guide for?

This guide is for immigrants who are detained by Immigration and Customs Enforcement (ICE) and have a **final removal order**. Your removal order becomes final when you stop fighting your case, which means:

- When the immigration judge orders you removed and you give up your right to appeal, or the 30-day period to appeal expires.
- If you appeal, when the Board of Immigration Appeals dismisses your appeal.
- If you petition for review in the Court of Appeals and get a stay of removal, when the Court of Appeals dismisses your petition.

This guide is written specifically for immigrants detained in the region of ICE's San Francisco Field Office. The following detention facilities are under the San Francisco Field Office: the West County Detention Facility in Richmond, the Rio Cosumnes Correctional Center in Elk Grove, the Yuba County Jail in Marysville, and the Mesa Verde Detention Facility in Bakersfield.

How long can ICE hold me?

In a 2001 case called *Zadvydas v. Davis*, the U.S. Supreme Court ruled that ICE cannot hold immigrants **indefinitely** after they are ordered removed. In general, ICE is allowed to hold you for **six months** after your removal order becomes final. After six months, if you can show that it is unlikely that you will be removed in the **reasonably foreseeable future**, you should be released. Some reasons why your removal is unlikely may include, for example: your home country does not have a repatriation agreement with the United States, your home country generally does not accept the deportation of people with certain criminal convictions, your home country does not consider you a citizen, or you are not a citizen of any country.

How do I file a lawsuit to get released?

If you have been detained for more than six months with a final removal order, and you are detained in the region of the San Francisco Field Office, you can file a “petition for writ of habeas corpus” in the U.S. District Court for the Northern District of California.

1. Fill out the attached “Petition for Writ of Habeas Corpus.” You must write in English and you must sign and date the petition. Be sure to fill out paragraph 19, explaining why your removal is unlikely. It is your burden to show that ICE probably cannot remove you.
2. If you want to ask the Court to appoint a free lawyer for you, fill out the attached “Motion for Appointment of Counsel.”
3. Prepare the filing fee of \$5.00 in cash or money order or check (made out to “Clerk, U.S. District Court”). If you cannot pay, see the Court’s official “Instructions for Filing and Application to Proceed In Forma Pauperis,” attached. If you want to be considered for a free lawyer, you must apply to be “in forma pauperis” instead of paying the \$5.00.
4. Mail the originals plus two copies of the documents, and the filing fee, to the address below. Also make an extra copy for yourself.

Clerk’s Office
United States District Court
450 Golden Gate Ave., 16th Fl.
San Francisco, CA 94102

What happens next?

Your case will be assigned to a judge and the government will have a chance to respond to your petition. After you receive the government’s response, you can file an optional “reply.” If you are moved to a different detention facility, be sure to inform the Court. The judge will probably take several months to make a decision.

Asian Americans Advancing Justice – Asian Law Caucus (ALC) created this guide for informational purposes only, not as legal advice. The contents are up-to-date as of February 2016. You can contact ALC at 55 Columbus Avenue, San Francisco, California 94111, at (415) 896-1701, or through the free telephone line in detention.



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Name: _____

A Number: _____

Address: _____

PRO SE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Name: _____,

Case No.

Petitioner,

v.

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

TIMOTHY S. AITKEN, Field Office Director,
San Francisco Field Office, United States
Immigration and Customs Enforcement; SARAH
R. SALDAÑA, Director, United States
Immigration and Customs Enforcement; JEH
JOHNSON, Secretary, United States Department
of Homeland Security; LORETTA LYNCH,
United States Attorney General; and WARDEN
OF IMMIGRATION DETENTION FACILITY,

Respondents.

Petitioner [name] _____ petitions this Court for a writ
of habeas corpus to remedy Petitioner's indefinite detention by Respondents.

JURISDICTION AND VENUE

1. This Court has subject matter jurisdiction and may grant relief under 28 U.S.C. §
2241 (habeas corpus), 28 U.S.C. § 1651 (All Writs Act), and 28 U.S.C. § 1331 (federal question).
This Court also has jurisdiction to hear this case under the Suspension Clause of Article I of the

1 United States Constitution. *INS v. St. Cyr*, 533 U.S. 289 (2001).

2 2. Because Petitioner challenges his or her custody, jurisdiction is proper in this
3 Court. While the courts of appeals have jurisdiction to review removal orders through petitions
4 for review, *see* 8 U.S.C. §§ 1252(a)(1) and (b), the federal district courts have jurisdiction under
5 28 U.S.C. § 2241 to hear habeas petitions by noncitizens challenging the lawfulness of their
6 detention. *See, e.g., Zadvydas v. Davis*, 533 U.S. 678, 687-88 (2001); *Nadarajah v. Gonzales*, 443
7 F.3d 1069, 1075-76 (9th Cir. 2006).

8 3. Petitioner has exhausted any and all administrative remedies to the extent required
9 by law.

10 4. Venue is proper in the Northern District of California pursuant to 28 U.S.C §§
11 1391(b) and (e) because a substantial part of the events or omissions giving rise to these claims
12 occurred in this district. All material decisions have been made at the San Francisco Field Office
13 of Immigration and Customs Enforcement (ICE), which is located in this judicial district.

14 **PARTIES**

15 5. Petitioner is a noncitizen who is currently detained by Immigration and Customs
16 Enforcement (ICE) at the [name of detention facility] _____
17 in [city, state] _____.

18 6. Respondent Timothy S. Aitken is the Field Office Director for the San Francisco
19 Field Office of ICE. Respondent Aitken has the authority to order Petitioner's release or
20 continued detention. As such, Respondent Aitken is a legal custodian of Petitioner.

21 7. Respondent Sarah R. Saldaña is the Director of ICE. As the head of ICE, an
22 agency within the United States Department of Homeland Security that detains and removes
23 certain noncitizens, Respondent Saldaña is a legal custodian of Petitioner.

24 8. Respondent Jeh Johnson is the Secretary of the United States Department of
25 Homeland Security. He is responsible for the implementation and enforcement of the immigration
26 laws and oversees ICE. As such, Respondent Johnson has ultimate custodial authority over
27 Petitioner.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9. Respondent Loretta Lynch is the Attorney General of the United States. As the head of the United States Department of Justice, which oversees the immigration courts, Respondent Lynch shares responsibility for enforcement of the immigration laws with Respondent Johnson.

10. Respondent Warden of Immigration Detention Facility is also a legal custodian of Petitioner.

11. All Respondents are sued in their official capacities.

FACTUAL ALLEGATIONS

12. Petitioner [name] _____ was born in [country] _____.

13. Petitioner entered the United States on or about [date] _____.
Petitioner's immigration history is as follows: _____

14. Petitioner's criminal history is as follows: _____

15. Petitioner was detained by Immigration and Customs Enforcement on or about [date] _____. Petitioner has remained in ICE custody since that date.

16. An Immigration Judge ordered Petitioner removed from the United States on or about [date] _____. Petitioner [circle one] DID / DID NOT appeal the Immigration Judge's decision to the Board of Immigration Appeals (BIA). The BIA dismissed Petitioner's appeal on [date, if applicable] _____.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

17. Petitioner received a document titled “Decision to Continue Detention” from ICE on or about [date] _____. Petitioner received a second “Decision to Continue Detention” from ICE on or about [date] _____.

18. Petitioner has cooperated fully with all of ICE’s efforts to remove Petitioner. Petitioner has cooperated with ICE in the following ways: _____

19. Nonetheless, ICE has been unable to remove Petitioner from the United States. ICE is unlikely to be able to remove Petitioner because: _____

LEGAL FRAMEWORK

20. In *Zadvydas v. Davis*, the Supreme Court held that the immigration statute 8 U.S.C. § 1231(a)(6) does not allow ICE to detain a noncitizen indefinitely while attempting to carry out removal. 533 U.S. 678, 689 (2001). Because of the “serious constitutional problem” posed by indefinite detention, the Court read the statute to limit a noncitizen’s detention to “a period reasonably necessary to bring about that alien’s removal from the United States.” *Id.*

21. The Court also recognized six months as the “presumptively reasonable period” of post-removal order detention. *Id.* at 701. After six months, once the noncitizen provides “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future,” the burden shifts to the government to rebut that showing. *Id.* Moreover, “as the period of prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” *Id.*

22. In *Clark v. Martinez*, the Supreme Court held that its ruling in *Zadvydas* applies equally to noncitizens who have never been admitted to the United States. 543 U.S. 371 (2005).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CLAIM FOR RELIEF

VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT

23. The foregoing allegations are realleged and incorporated herein.

24. Petitioner’s continued detention is unlawful and violates 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. The six-month presumptively reasonable period of detention has expired and Petitioner has provided good reason to believe that his or her removal is not significantly likely to occur in the reasonably foreseeable future. Therefore, Respondents lack authority to continue detaining Petitioner.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that the Court grant the following relief:

- a. Assume jurisdiction over this matter;
- b. Issue an order pursuant to 28 U.S.C. § 2243 directing Respondents to show cause why the writ of habeas corpus should not be granted;
- c. Grant the writ of habeas corpus and order Petitioner’s immediate release from custody;
- d. Grant any other and further relief as the Court deems just and proper.

Date: _____

Signature: _____

Petitioner

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Name: _____

A Number: _____

Address: _____

PRO SE

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

Name: _____,

Case No.

Petitioner,

v.

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

TIMOTHY S. AITKEN, Field Office Director,
San Francisco Field Office, United States
Immigration and Customs Enforcement; SARAH
R. SALDAÑA, Director, United States
Immigration and Customs Enforcement; JEH
JOHNSON, Secretary, United States Department
of Homeland Security; LORETTA LYNCH,
United States Attorney General; and WARDEN
OF IMMIGRATION DETENTION FACILITY,

Respondents.

Petitioner [name] _____ has filed a petition for writ of
habeas corpus under 28 U.S.C. § 2241 challenging Petitioner's indefinite detention by
Respondents. Petitioner was detained by Immigration and Customs Enforcement (ICE) on or
about [date] _____. Petitioner has remained in ICE custody since that
date. An Immigration Judge ordered Petitioner removed and Petitioner's removal order became
final on or about [date] _____, but ICE has been unable to remove

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Petitioner.

In *Zadvydas v. Davis*, the Supreme Court held that the immigration statute 8 U.S.C. § 1231(a)(6) does not allow ICE to detain a noncitizen indefinitely while attempting to carry out removal. 533 U.S. 678, 689 (2001). After six months of presumptively-reasonable detention, if the noncitizen provides good reason to believe that removal is not reasonably foreseeable, the burden shifts to the government to rebut that showing. *Id.* at 701.

Petitioner moves the Court to appoint counsel to represent Petitioner in this case. The Court may appoint counsel in a habeas action when the “interests of justice so require.” 18 U.S.C. § 3006A(a)(2)(B). Here, Petitioner has a strong chance of success on the merits because Petitioner has been held for longer than six months since being ordered removed and Petitioner’s country still refuses to accept him or her. However, given the complexity of the law on immigration detention and Petitioner’s status as a detained immigrant, Petitioner would have great difficulty presenting the case without the assistance of counsel. For these reasons, Petitioner respectfully requests that the Court appoint counsel.

Date: _____

Signature: _____

Petitioner

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

**INSTRUCTIONS FOR FILING AN APPLICATION TO PROCEED
IN FORMA PAUPERIS BY A PRISONER UNDER 28 U.S.C. § 1915**

You must submit to the court a completed Prisoner's Application to Proceed In Forma Pauperis if you are unable to pay the entire filing fee at the time you file your complaint or petition. Your application must include copies of the prisoner trust account statement showing transactions for the last six months and a certificate of funds in prisoner's account, signed by an authorized officer of the institution.

A. Non-habeas Civil Actions

The fee for filing any civil action other than a petition for a writ of habeas corpus is \$400.00 (\$350 filing fee plus \$50 administrative fee). Even if you are granted leave to proceed in forma pauperis, you must still pay the \$350 filing fee (not the \$50 administrative fee), but the filing fee will be paid in several installments. 28 U.S.C. § 1915.

You must pay an initial partial filing fee of 20 percent of the greater of (a) the average monthly deposits to your account for the 6-month period immediately before the complaint was filed or (b) the average monthly balance in your account for the 6-month period immediately before the complaint was filed. The court will use the information provided on the certificate of funds and the trust account statement to determine the filing fee immediately due and will send instructions to you and the prison trust account office for payment if in forma pauperis status is granted.

After the initial partial filing fee is paid, your prison's trust account office will forward to the court each month 20 percent of the most recent month's income to your prison trust account, to the extent the account balance exceeds ten dollars (\$10). Monthly payments will be required until the full filing fee is paid. If you have no funds over ten dollars (\$10) in your account, you will not be required to pay part of the filing fee that month.

If your application to proceed in forma pauperis is granted, you will be liable for the full \$350 filing fee even if your civil action is dismissed. That means the court will continue to collect payments until the entire filing fee is paid.

B. Habeas Actions

The fee for filing a petition for a writ of habeas corpus is \$5 (\$5 filing fee plus \$0 administrative fee). If you are granted leave to proceed in forma pauperis, you will not be required to pay any portion of this fee. If you are not granted leave to proceed in forma pauperis, you must pay the fee in one payment and not in installments.

If you use a habeas form to file a non-habeas civil action, you will be required to pay the fee applicable to all non-habeas civil actions.

2. Have you received, within the past twelve (12) months, any money from any of the following sources:
- a. Business, profession or self employment? **YES** **NO**
 - b. Income from stocks, bonds or royalties? **YES** **NO**
 - c. Rent payments? **YES** **NO**
 - d. Pensions, annuities or life insurance payments? **YES** **NO**
 - e. Federal or state welfare payments,
Social Security or other government source? **YES** **NO**

If the answer is "yes" to any of the above, describe each source of money and state the amount received from each.

3. Are you married? **YES** **NO**

Spouse's Full Name: _____

Spouse's Place of Employment: _____

Spouse's Monthly Salary, Wages or Income:

Gross \$ _____ Net \$ _____

4. a. List amount you contribute to your spouse's support: \$ _____
- b. List the persons other than your spouse who are dependent upon you for support and indicate how much you contribute toward their support. (NOTE: For minor children, list only their initials and ages. Do not include their names.)

5. Do you own or are you buying a home? **YES** **NO**

Estimated Market Value: \$ _____ Amount of Mortgage: \$ _____

6. Do you own an automobile? **YES** **NO**

Make _____ Year _____ Model _____

Is it financed? Yes _____ No _____ If so, Total Due: \$ _____

Monthly Payment: \$ _____

7. Do you have a bank account? YES NO

Name(s) and address(es) of bank (do not include account numbers): _____

Present balance(s): \$ _____

Do you own any cash? YES NO Amount: \$ _____

Do you have any other assets? YES NO

If "yes," provide a description of each asset and its estimated market value.

8. What are your monthly expenses?

Rent: \$ _____ Utilities: _____

Food: \$ _____ Clothing: _____

9. Do you have any charge accounts/credit cards? YES NO

If yes, list them below. (Do not include account numbers.)

<u>Name of Account</u>	<u>Monthly Payment</u>	<u>Total Owed on This Acct.</u>
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____
_____	\$ _____	\$ _____

10. Do you have any other debts? (List current obligations, indicating amounts and to whom they are payable. Do not include account numbers.)

11. Does the complaint you are seeking to file raise claims that have been presented in other lawsuits?

YES NO

If so, please list the case name(s) and number(s) of the prior lawsuit(s), and the name of the court in which they were filed.

I consent to prison officials withdrawing from my trust account and paying to the court the initial partial filing fee and all installment payments required by the court.

I declare under the penalty of perjury that the foregoing is true and correct and understand that a false statement herein may result in the dismissal of my claims.

DATE

SIGNATURE OF APPLICANT

Case Number: _____

**CERTIFICATE OF FUNDS
IN PRISONER'S ACCOUNT**

I certify that attached hereto is a true and correct copy of the prisoner's trust account statement showing transactions of _____ for the last six months at
(Prisoner's Name)
_____, where (s)he is confined.
(Name of Institution)

I further certify that the average deposits each month to this prisoner's account for the most recent six-month period were \$ _____ and the average balance in the prisoner's account each month for the most recent six-month period was \$ _____.

Date: _____ Officer Name: _____

Signature: _____
Authorized Officer of the Institution