



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 Golden State Annex in McFarland 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 covered by 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. If you are detained in the region covered by another field office, you will need to file in a different court and modify the sample petition.

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 judge will order the government to respond to your petition by a certain date. After you receive the government’s response, you can file an optional “reply” by the date set by the judge. 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 2023. You can contact ALC at 55 Columbus Avenue, San Francisco, California 94111, at (415) 896-1701, or through the free telephone line in detention.

What happens if the government seeks to transfer my case to a different court?

In response to your petition, the government may argue that the detention center where you are held is not located within the geographic region covered by the U.S. District Court for the Northern District of California. Therefore, the government may argue that your case should be transferred to a different “venue,” the U.S. District Court for the Eastern District of California, because the detention center where you are held is located in that district.

If you face these arguments, you can respond that the U.S. District Court for the Northern District of California is the correct venue for your case because the federal official who has authority to release you from detention is the Director of the ICE Field Office for San Francisco, and San Francisco is located within the Northern District. If the government seeks to transfer your case to the Eastern District of California, please contact us using the phone number or mailing address below to discuss how to further respond.

If the Court accepts your argument, you will be able to proceed with your case in the Northern District of California. If the Court, instead, accepts the government’s argument, your case will be automatically transferred to the U.S. District Court for the Eastern District of California.



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Name: _____

A Number: _____

Address: _____

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

Name: _____,

Petitioner,

v.

Field Office Director, San Francisco Field Office,
United States Immigration and Customs
Enforcement; Director, United States
Immigration and Customs Enforcement;
Secretary, United States Department of
Homeland Security; and United States Attorney
General,

Respondents.

Case No.

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

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 has authority over the detention of
14 Petitioner and is located in this judicial district. *See, e.g., Salesh P. v. Kaiser*, No. 22-CV-03018-
15 DMR, 2022 WL 17082375, at *5 (N.D. Cal. Nov. 18, 2022) (holding the Northern District is the
16 proper forum for habeas petition filed by noncitizen detained at Golden State Annex facility
17 under the purview of the San Francisco FOD); *Ameen v. Jennings*, No. 22-CV-00140-WHO, 2022
18 WL 1157900, at *4-5 (N.D. Cal. Apr. 19, 2022) (collecting cases) (same); *Zepeda Rivas v.*
19 *Jennings*, 445 F. Supp. 3d 36, 39 (N.D. Cal. 2020) (same with regards to petitioners held at Mesa
20 Verde Detention Facility and Yuba County Jail under the purview of the San Francisco FOD).

21 **PARTIES**

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

25 6. Respondent Field Office Director for the San Francisco Field Office of ICE (“SF
26 FOD”) has the authority to order Petitioner’s release or continued detention. As such, Respondent
27 SF FOD is a legal custodian of Petitioner.

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7. Respondent Director of ICE (“ICE Director) is the head of ICE, an agency within the United States Department of Homeland Security that detains and removes certain noncitizens. Respondent ICE Director is a legal custodian of Petitioner.

8. Respondent Secretary of the United States Department of Homeland Security (“DHS Secretary”) is responsible for the implementation and enforcement of the immigration laws and oversees ICE. As such, Respondent DHS Secretary has ultimate custodial authority over Petitioner.

9. Respondent Attorney General of the United States (“U.S. A.G.”) is the head of the United States Department of Justice, which oversees the immigration courts. Respondent U.S. A.G. shares responsibility for enforcement of the immigration laws with Respondent DHS Secretary.

10. All Respondents are sued in their official capacities.

FACTUAL ALLEGATIONS

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

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

13. Petitioner’s criminal history is as follows: _____

14. Petitioner was detained by Immigration and Customs Enforcement on or about

1 [date] _____. Petitioner has remained in ICE custody since that date.

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

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

9 17. Petitioner has cooperated fully with all of ICE’s efforts to remove Petitioner.
10 Petitioner has cooperated with ICE in the following ways: _____
11 _____
12 _____

13 18. Nonetheless, ICE has been unable to remove Petitioner from the United States.
14 ICE is unlikely to be able to remove Petitioner because: _____
15 _____
16 _____
17 _____
18 _____

19 **LEGAL FRAMEWORK**

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

25 20. The Court also recognized six months as the “presumptively reasonable period” of
26 post-removal order detention. *Id.* at 701. After six months, once the noncitizen provides “good
27 reason to believe that there is no significant likelihood of removal in the reasonably foreseeable
28

1 future,” the burden shifts to the government to rebut that showing. *Id.* Moreover, “as the period of
2 prior postremoval confinement grows, what counts as the ‘reasonably foreseeable future’
3 conversely would have to shrink.” *Id.*

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

6 **CLAIM FOR RELIEF**

7 **VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT**

8 22. The foregoing allegations are realleged and incorporated herein.

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

14 **PRAYER FOR RELIEF**

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

- 16 a. Assume jurisdiction over this matter;
- 17 b. Issue an order pursuant to 28 U.S.C. § 2243 directing Respondents to show cause
18 why the writ of habeas corpus should not be granted;
- 19 c. Grant the writ of habeas corpus and order Petitioner’s immediate release from
20 custody;
- 21 d. Grant any other and further relief as the Court deems just and proper.
- 22

23 Date: _____

Signature: _____

24 Petitioner

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Name: _____

A Number: _____

Address: _____

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

Name: _____,

Petitioner,

v.

Field Office Director, San Francisco Field Office,
United States Immigration and Customs
Enforcement; Director, United States Immigration
and Customs Enforcement; Secretary, United
States Department of Homeland Security; United
States Attorney General; and WARDEN OF
IMMIGRATION DETENTION FACILITY,

Respondents.

Case No.

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

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 Petitioner.

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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. The court will consider as part of your application the transactions in your prison trust account statement for the last six months. If you are housed at a California Department of Corrections and Rehabilitation (CDCR) facility, the court's application form includes your authorization for CDCR to provide a certified copy of your trust account statement directly to the court. But if you are housed at a non-CDCR facility (such as a local jail), you must have your institution complete the certification at the end of the application form and attach a certified copy of your trust account statement.

A. Civil Actions other than Habeas Actions

The fee for filing any civil action other than a petition for a writ of habeas corpus is \$402 (\$350 filing fee plus a \$52 administrative fee). If you are not granted leave to proceed *in forma pauperis*, you must pay the \$402 fee in one payment.

If you are granted leave to proceed *in forma pauperis*, you must still pay the \$350 filing fee (not the \$52 administrative fee), but the filing fee will be paid in several installments. 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 six-month period immediately before the complaint was filed. The court will use the information provided on your trust account statement to determine the filing fee immediately due and will send instructions to you and the prison trust account office for payment.

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 civil action other than a habeas action, you will be required to pay the fee applicable to civil actions other than habeas actions.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Plaintiff,

v.

Defendant(s).

CASE NUMBER _____

**PRISONER'S APPLICATION AND
DECLARATION TO PROCEED
IN FORMA PAUPERIS**

I, (print your name) _____, declare under penalty of perjury that I am the plaintiff in this case; I believe I am entitled to relief; and I am unable to pay the costs of this proceeding or give security thereof.

In support of this application, I provide true, correct and complete answers to all of the following questions:

1. Are you presently employed in prison? Yes No

The number of hours you work per week: _____ The hourly rate of pay: _____

2. For the past twelve months, list the amount of money you have received from any of the following sources.

a. Business, profession or self-employment \$ _____

b. Income from rent, interest or dividends \$ _____

c. Pensions, annuities or life insurance payments \$ _____

d. Disability, Social Security or other government source \$ _____

e. Gifts or inheritances \$ _____

f. Describe any other source of income: _____ \$ _____

3. List the amount for each of the following (include prison account funds):

Cash on hand \$

Checking account \$

Savings account \$

4. Do you own or have any interest in any real estate, stocks, bonds, notes, retirement plans, automobiles, or other valuable property (excluding ordinary household furnishings and clothing)?

If Yes, describe the property and state its approximate value:

Yes

No

\$

5. Do you have any other assets?

If Yes, list the asset(s) and the approximate value:

Yes \$

No

6. Does anyone depend upon you for financial support?

If Yes, state their relationship to you, and indicate how much you contribute towards their support each month. Use initials (not names) to refer to minor children.

Yes \$

No

This form must be dated and signed below for the court to consider your application.

I hereby authorize the institution having custody of me to provide a certified copy of my trust account statement for activity covering the last six months to the court. Additionally, once eligibility is established, I further authorize the institution having custody of me to collect from my trust account and forward to the court payments in accordance with 28 U.S.C. § 1915(b)(2).

 Signature of Prisoner Prisoner's CDCR Number Date

CERTIFICATION FOR PRISONERS *NOT* IN CDCR CUSTODY

CERTIFICATE OF FUNDS IN PRISONER'S ACCOUNT
(to be completed by authorized officer)

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

PRISONER'S NAME

NAME OF NON-CDCR INSTITUTION

 Signature of Authorized Officer Officer's Name (printed) Date