**[THIS IS NOT LEGAL ADVICE. BE SURE TO UPDATE THIS RESEARCH AND CASELAW. UPDATED JANUARY 2022]**

**UNITED STATES DISTRICT COURT  
FOR THE [X] DISTRICT OF [STATE]**

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| [FIRSTNAME] [LASTNAME]  Petitioner  v.  [NAME],  as Warden, [Name of Detention Facility];  [NAME],  as Director, [City] Field Office, U.S. Immigration and Customs Enforcement;  [NAME],  as Attorney General of the United States; and  [NAME]  as Secretary, U.S. Department of Homeland Security, Respondents. | Case No. \_\_\_\_\_\_\_\_\_\_\_  **PETITION FOR**  **WRIT** **OF HABEAS CORPUS**  **PURSUANT TO 28 U.S.C. § 2241** |

Petitioner Mr. [Firstname] [Lastname] (“Petitioner” or “[Mr. LastName] ”) brings this petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2241; the All Writs Act, 28 U.S.C. § 1651; and Article I, Section 9, of the Constitution of the United States. Mr. [LastName] has been illegally detained in U.S. Immigration and Customs Enforcement (“ICE”) custody pursuant to 8 U.S.C. § 1231 for over six months in violation of the Constitution, although there is no indication of any significant likelihood of his removal in the reasonably foreseeable future. [*If detained in New Jersey and this has not been overturned by SCOTUS yet:*] Mr. [LastName]’s detention also violates procedural due process because it has become unreasonably prolonged, and because he was not provided an individualized bond hearing that comports with the requirements set forth in *Guerrero-Sanchez v. Warden York Cnty. Prison*, 905 F.3d 208 (3d Cir. 2018).

**INTRODUCTION**

1. Petitioner, Mr. [Firstname] [Lastname], is a citizen of [Country] who has lived in the United States since [year] and is currently [X#] years old. Prior to his detention, he resided in [City], New York, where he [*describe family/occupation, e.g.* “was gainfully employed in construction and auto body work, supporting his U.S. citizen wife and two U.S. citizen children].
2. [Mr. LastName]’s removal order became final on [DATE]. Therefore, as of the filing of this petition, [Mr. LastName] has been detained [X#] days—[X#] months—since his removal order became administratively final.
3. Despite keeping [Mr. LastName] in detention for over [X#] months since his removal order became final, ICE has not demonstrated any significant likelihood that [Mr. LastName] will be removed to [Country] in the reasonably foreseeable future.
4. [Mr. LastName] has fulfilled all legal obligations to cooperate with ICE in the removal process.
5. [Mr. LastName]’s ongoing detention violates both the post-removal-period detention statute, 8 U.S.C. § 1231(a)(6), and the Due Process clause of the Fifth Amendment to the U.S. Constitution. *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001) (finding that detention of more than six months of someone who could not be removed would violate due process).
6. Petitioner respectfully requests that this Court issue a writ of habeas corpus and order his immediate release under any reasonable conditions of supervision.

**PARTIES**

1. Petitioner [Firstname] [Lastname] is a citizen of [Country] and resident of New York since [DATE]. He has been detained by ICE since [DATE] in connection with his removal proceedings at the [Court Name] Immigration Court. He has had a final order of removal since [DATE].
2. Respondent [Name of warden/legal custodian] is named in his official capacity as the [Title] for the [organization, e.g. “Etowah County Sheriff’s Office”] in [City, State]. In this capacity, he is responsible for the oversight and management of the [Detention Center] facility where Petitioner is held. Respondent [Name]’s office is located at [address].
3. Respondent [Name of Field Office Director] is named in his official capacity as the Director of the [City] Field Office for ICE within the United States Department of Homeland Security (“DHS”). He is responsible for the administration and management of ICE Enforcement and Removal Operations in New York City and has jurisdiction over the decision to keep Petitioner in detention. As such, he is the legal custodian of Petitioner. Respondent Decker’s office is located at 26 Federal Plaza, New York, New York.
4. Respondent [Name] is named in her official capacity as the Acting Secretary of the United States Department of Homeland Security. In this capacity, she is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103(a); she routinely transacts business in the [District, e.g. “Southern District of New York”]; she supervises Respondents [Names of above]; and she is legally responsible for the pursuit of Petitioner’s detention and removal. As such, she is a legal custodian of Petitioner. Respondent [Name]’s office is located at the United States Department of Homeland Security, Washington, District of Columbia.

**JURISDICTION**

1. Petitioner is currently detained in the custody of Respondents at [Detention Center], [address]. This Court has jurisdiction over [Mr. LastName]’s Petition for Writ of Habeas Corpus pursuant to 28 U.S.C. §§ 2241 and 1331, based on [Mr. LastName]’s presence in the [District, e.g. Southern District of New York].
2. This Court has subject matter jurisdiction over this Petition pursuant to 28 U.S.C. § 2241, 28 U.S.C. § 1331, and Article I, § 9, cl. 2 of the United States Constitution; and the All Writs Act, 28 U.S.C. § 1651. Additionally, the Court has jurisdiction to grant injunctive relief in this case pursuant to the Declaratory Judgment Act, 28 U.S.C. § 2201. Petitioner’s current detention as enforced by Respondents constitutes a “severe restraint” on [Petitioner’s] individual liberty,” such that Petitioner is “in custody in violation of the . . . laws . . . of the United States.” *See* *Hensley v. Municipal Court*, 411 U.S. 345, 351 (1973).
3. The district courts have jurisdiction to hear habeas corpus claims by non-citizens challenging the lawfulness or constitutionality of their detention by ICE. *See, e.g., Jennings v. Rodriguez*, 138 S. Ct. 830, 841 (2018); *Demore v. Kim*, 538 U.S. 510, 516-17 (2003); *Zadvydas v. Davis*, 533 U.S. 678, 687 (2001).

**VENUE**

1. Pursuant to 28 U.S.C. § 2241(d), venue is proper in the [X District of State] because Petitioner is physically present and in the custody of Respondents within the district.

**EXHAUSTION OF ADMINISTRATIVE REMEDIES**

1. Petitioner has exhausted any and all effective administrative remedies available to him by seeking release from Respondents. [*Describe all requests and steps taken to secure release, e.g.* “Petitioner first requested release through an administrative ICE custody review process. On [DATE], Petitioner submitted a packet of evidence for his 180-day post-order custody review, seeking release under 8 C.F.R. § 241.13(g)(1). This regulation requires ICE to “promptly make arrangements for the release of the alien subject to appropriate conditions” if it determines that there is no significant likelihood of removal in the reasonably foreseeable future. Mr. LastName] has received no response to this request. Additionally, Petitioner requested immediate release from detention by letter and exhibits to the DHS Headquarters Custody Determination Unit via Federal Express on [DATE] pursuant to 8 C.F.R. § 241.13. [Mr. LastName] has not received a response to this request, either.”].
2. Even if meaningful administrative remedies were promptly available, Petitioner, as a noncitizen challenging the lawfulness of his ongoing immigration detention, is not required to exhaust those remedies under 8 U.S.C. § 2241. *See, e.g.*, *Louisaire v. Muller*, 758 F. Supp. 2d 229, 234 (S.D.N.Y. 2010); *Garcia v. Shanahan*, 615 F. Supp. 2d 175, 180 (S.D.N.Y. 2009).

**STATEMENT OF FACTS**

1. [*Describe your client’s history, putting any challenging facts in context, e.g.* “[Mr. LastName] was trafficked into the United States as a child in [year]. He worked in restaurants as a minor for 13-14 hours a day in order to pay the smuggler who brought him to this country. He had no parental supervision and started committing crimes as a teenager. On [DATE], [Mr. LastName] pled guilty to two counts of robbery conspiracy and was sentenced to a mandatory term of 28 years. In [DATE], however, the Honorable Judge [Name] drastically reduced [Mr. LastName]’s sentence citing [Mr. LastName]’s record of rehabilitative efforts and his genuine expression of remorse and maturity.”].
2. [*Descirbe your client’s immigration proceedings, e.g.* “[Mr. LastName] was released from federal custody in [DATE] and placed on probation. Since his release, he never violated the terms of his probation. On [DATE], [Mr. LastName] was arrested by ICE at his probation check-in and transferred to [Detention Center]. That same day, he signed DHS Form I-826 admitting he was present in the United States unlawfully. He waived his right to a hearing before an Immigration Judge. Nevertheless, [Mr. LastName] was put into removal proceedings and promptly accepted an order of removal on [DATE]].
3. [*Describe where your client would live if released, e.g.* “[Mr. LastName] has a U.S. citizen mother, [Name], who is 60-years-old. Before he was placed into ICE custody, [Mr. LastName] resided in [City, State]. Should he be released from ICE custody, he would live with his U.S. citizen mother, at [address]].
4. On [Date], ICE Officer [Name] served [Mr. LastName] with a “Notice to Alien of File Custody Review.” The Notice contained instructions on how to submit a custody review at 90 days of detention.
5. [*Describe efforts taken to obtain travel documents, e.g*. “On [Date], [Mr. LastName] mailed a letter to the [Country] Embassy at [Address] in New York City requesting a travel document so as “to proceed with the removal process.” In the letter, [Mr. LastName] included his place and date of birth. On [Date], [Mr. LastName] submitted a similar letter to the [Country] Embassy in Washington, D.C. Both letters were written in English and [Language] and included contact information for his Deportation Officer. [Mr. LastName] also made multiple telephone calls to the [Country] Embassy while detained. He received no response to either his letters or phone calls.”].
6. [*Describe efforts to request administrative release*, e.g. “On [Date], immigration counsel for [Mr. LastName] submitted a Post Order Custody Review request with Deportation Officer [Name] via hand delivery. The release request demonstrates that [Mr. LastName] is a completely rehabilitated and transformed individual who is deeply remorseful and has a demonstrated history of compliance with law enforcement. The packet also included a stable address where [Mr. LastName] would live upon release and cited multiple job offers available to him. Finally, the packet included multiple articles about how [Country] is considered by DHS to be a “recalcitrant country” that does not cooperate with the U.S. government’s attempts to obtain travel documents or remove individuals.”]
7. [*Describe any responses from ICE, e.g.* “On [DATE], [Mr. LastName] received a Decision to Continue Detention explaining that “it has been determined that you will not be released from the custody of the U.S. Immigration and Customs Enforcement (ICE) at this time.” The letter included a list of [Mr. LastName]’s criminal history and stated that “you are to remain in ICE custody pending the procurement of a travel document.” The letter also indicated that should he still be in custody by [DATE], the Headquarters Post Order Custody Review Unit (“HQ POCRU”) “will make a final determination regarding your custody.” The letter did not mention [Mr. LastName]’s voluminous release request.”]
8. [*If applicable*:] ICE has never produced any travel documents for [Mr. LastName] or represented that the travel documents are forthcoming. Additionally, ICE has never told [Mr. LastName] or his counsel what the timeline is for his removal.
9. [*If applicable*:] It has been well-documented that [Country] does not cooperate with United States officials in effectuating deportations. [Country] is considered by the United States as a “recalcitrant country” and immigration officials have reported that there is a backlog of almost [X#] [Country] immigrants awaiting deportation, some of whom have had final orders of removal for over a decade.

**LEGAL FRAMEWORK**

***Post-Removal Order Detention for Over Six Months is Unreasonable, Unlawful, and Unconstitutional***

1. The Supreme Court has held, in the context of post-removal immigration detention, that if the “detention’s goal is no longer practically attainable,” detention becomes unreasonable and violates the detained person’s Fifth Amendment right to due process. *Zadvydas*, 533 U.S. at 690. “[I]f removal is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” *Id.* at 699-700.
2. Six months is the presumptively reasonable period during which ICE may detain non-citizens in order to effectuate their removal. *Id.* at 701. After six months of detention, if “the [noncitizen] provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing” or else a Constitutional violation occurs. *Id.* Moreover, “an inversely proportional relationship is at play: the longer a[] [noncitizen] is detained, the less he must put forward to obtain relief.” *Alexander v. Att’y Gen. U.S.*, 495 F. App’x 274, 276-77 (3d Cir. 2012).

**CLAIMS FOR RELIEF**

**FIRST CAUSE OF ACTION:**

**VIOLATION OF THE IMMIGRATION AND NATIONALITY ACT – 8 U.S.C. § 1231(a)(6) DOES NOT AUTHORIZE PROLONGED DETENTION BEYOND A REASONABLE PERIOD**

1. Petitioner repeats and incorporated by reference the allegations in the preceding paragraphs as fully set forth herein.
2. Petitioner’s continued detention by Respondents is unlawful and violates 8 U.S.C. § 1231(a)(6) as interpreted by the Supreme Court in *Zadvydas*. Petitioner’s 90-day statutory removal period and six-month presumptively reasonable period for continued removal efforts have both expired. Petitioner has been detained for over [X#] months in total, over [X#] months after his removal order became final, and there is no indication that his removal to [Country] is significantly likely to occur in the reasonably foreseeable future. [Mr. Lastname] has cooperated with ICE in all respects, but ICE has failed to demonstrate that it has any ability to arrange for his removal within a constitutionally meaningful time frame.

**SECOND CAUSE OF ACTION:**

**UNCONSTITUTIONAL DENIAL OF SUBSTANTIVE DUE PROCESS UNDER THE FIFTH AMENDMENT**

1. Petitioner repeats and incorporated by reference the allegations in the preceding paragraphs as fully set forth herein.
2. Petitioner’s continued detention violates his right to substantive Due Process because it deprives him of his core liberty interest in freedom from bodily restraint. The Due Process clause of the Fifth and Fourteenth Amendments requires that the deprivation of Petitioner’s liberty be narrowly tailored to serve a compelling government interest. While Respondents may have an interest in detaining [Mr. LastName] to effectuate his removal, that interest does not justify indefinite detention.
3. [Mr. LastName] is not significantly likely to be removed in the reasonably foreseeable future. *Zadvydas* recognized that ICE may continue to detain non-citizens only for a period reasonably necessary to secure that person’s removal. The presumptively reasonable period of detention is six months, and [Mr. LastName] has already been detained for over [X#] months after his removal order became administratively final with no foreseeable likelihood of removal.

**THIRD CAUSE OF ACTION:**

**UNCONSTITUTIONAL DENIAL OF PROCEDURAL DUE PROCESS**

1. Petitioner repeats and incorporated by reference the allegations in the preceding paragraphs as fully set forth herein.
2. Under the Due Process clause of the Fifth Amendment, a non-citizen is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. [Mr. LastName] has been denied that opportunity. ICE does not make decisions concerning a noncitizen’s custody status in a neutral and impartial manner. *See* 8 C.F.R. § 241.13 (explaining that ICE reviews a detainee’s custody status and that “There is no administrative appeal from the HQPDU decision denying a request from an alien under this section.”). The failure of Respondents to provide a neutral decision-maker to review [Mr. LastName]’s continued detention violates his right to procedural Due Process. Further, Respondents have failed to acknowledge or act upon Petitioner’s administrative request for release in a timely manner. Respondents have yet to provide counsel for [Mr. LastName] with an initial response to his request for release as required within ten business days under 8 C.F.R. § 241.13(e) and have not contacted [Mr. LastName] or his counsel about the status of his request for release. Respondents have not scheduled an interview with [Mr. LastName], 8 C.F.R. § 241.13(e)(5), or referred his case to the State Department, 8 C.F.R. § 241.13(e)(3). There is no administrative mechanism in place for [Mr. LastName] 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 respectfully requests that this Court:

(1) Assume jurisdiction over this matter;

(2) Issue a Writ of Habeas Corpus ordering Respondents to release Petitioner immediately on his own recognizance or under reasonable conditions of supervision;

(3) Award Petitioner his costs and reasonable attorneys’ fees in this action as provided for by the Equal Access to Justice Act, 28 U.S.C. § 2412, or other statute; and

(4) Grant such further relief as the Court deems just and proper.

Dated: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Respectfully submitted,

[City], [State]

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

/s/ Attorney Name

Organization

Street Address  
City, STATE Zip code  
T:   
E:

*Counsel for Petitioner*