

UNITED STATES DISTRICT COURT

FOR THE _____ DISTRICT OF _____
(Enter Geographic Jurisdiction)

_____)
(Your Name))
Petitioner, <i>pro se</i>)
)
v.)
)
ERIC H. HOLDER JR., Attorney) No. _____
General of the United States; JANET) (Leave blank)
NAPOLITANO, Secretary, U.S.)
Department of Homeland Security;) Agency No. A _____
_____, Field Office) (Alien number)
Director for Detention and Removal,)
U.S. Immigration and Customs)
Enforcement; _____,)
_____ County Sheriff;)
DEPARTMENT OF HOMELAND)
SECURITY,)
)
Respondents.)

PRO SE PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. § 2241 AND FOR ORDER TO SHOW CAUSE
WITHIN THREE DAYS PURSUANT TO 28 U.S.C. § 2243

Petitioner, _____ (Insert Your First and Last Name), hereby petitions this Court for a writ of habeas corpus to remedy his/her unlawful detention by Respondents. Petitioner seeks release from detention because there is not a significant likelihood that Petitioner will be removed to Haiti in the reasonably foreseeable future.

CUSTODY

1. Petitioner is currently in the physical custody of Respondents and the U.S. Immigration and Customs Enforcement (“ICE”) agency. Petitioner is detained at _____ (Insert name of detention center), located in _____, _____ (Insert city and state of detention center). Petitioner is under the direct control and custody of Respondents and Respondents’ agents.

JURISDICTION

2. This action arises under the United States Constitution and the Immigration and Nationality Act of 1952, 8 U.S.C. § 1101 *et seq.* (“INA”). This Court has jurisdiction over this petition for writ of habeas corpus under 28 U.S.C. § 2241 (habeas corpus); 28 U.S.C. § 1331 (federal question); 28 U.S.C. § 1361 (mandamus); art. I, § 9, cl. 2 of the U.S. Constitution (“Suspension Clause”); U.S. Const. amend. V (the Due Process Clause of the U.S. Constitution); and jurisdiction over declaratory judgment, brought pursuant to 28 U.S.C. §§ 2201-02.

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 (2001). This Court may grant relief pursuant to 28 U.S.C. §§ 2201-02, 28 U.S.C. § 2241, and the All Writs Act, 28 U.S.C. § 1651.

VENUE

3. Venue in this District is proper under 28 U.S.C. § 1391(e)(2) because the Officer in Charge who makes custody decisions in Petitioner's case is located within this judicial district and Petitioner is detained within this judicial district; and venue is proper under § 1391(b)(2) because a substantial part of the events giving rise to these claims occurred in this District.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

4. Petitioner has been in detention for _____ (Insert #) months and _____ (Insert #) days. Petitioner was ordered removed by an Immigration Judge or the Board of Immigration Appeals (Circle One), on _____ (Insert Date – Month, Day, Year), *see* Order of Removal, attached as Exhibit A.

5. Petitioner does not contest the validity of the order of removal against him, only his continued detention by Respondents, who refuse to release Petitioner even though they are unable to deport him/her in the reasonably foreseeable future.

6. Administrative exhaustion is not required by statute in the context of

post-final-order detention. *See Matthias v. Hogan*, 2008 WL 913522, at *5 (M.D. Pa. 2008) (“Under the immigration laws, exhaustion of administrative remedies is statutorily required only on appeals of final orders of removal.”).

7. Nonetheless, Petitioner has exhausted administrative remedies because a custody review has already occurred or a custody review has been requested.

(Circle One). *See* attached, as Exhibit B.

8. Thus, the only remedy for Petitioner’s continued potentially indefinite detention is by way of this constitutional habeas challenge.

PARTIES

9. Petitioner is a national and citizen of Haiti. Petitioner has resided in the United States since Petitioner’s entry on _____ (Date – Month, Day, Year) and has lived in _____ (Insert last state of residence) since _____. (Date – Month Day, Year) He/she is currently in the physical and legal custody of Respondents at _____ (Insert detention center name) detention facility in _____. (Insert city, state of detention center)

10. Respondent Eric H. HOLDER, Jr. is sued in his official capacity as the Attorney General of the United States. In that capacity, he has responsibility for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103 and is a legal custodian of Petitioner.

11. Respondent Janet NAPOLITANO is sued in her official capacity as Secretary of Homeland Security. In that capacity, she also has responsibility for the administration and enforcement of the immigration laws pursuant to 8 U.S.C. § 1103 and is Petitioner's legal custodian.

12. Respondent _____ (Enter Field Office Director's Name) is sued in his/her official capacity as Field Office Director for Detention and Removal, U.S. Immigration and Customs Enforcement. As Field Office Director for Detention and Removal, he/she is Petitioner's legal custodian.

13. [INCLUDE THIS PARAGRAPH ONLY IF APPLICABLE] Respondent _____ (Enter Name of County Sheriff) is sued in his/her official capacity as _____ (Enter County Name) County Sheriff. As Sheriff of the facility where Petitioner is detained, he/she is Petitioner's legal custodian.

14. Respondent _____ (Enter Name of Warden) is the Warden of _____ (Name of Facility) and is Petitioner's immediate custodian. As Warden for the facility where Petitioner is detained, he/she is sued in his/her official capacity.

15. The DEPARTMENT OF HOMELAND SECURITY is the agency responsible for enforcing the immigration laws and is Petitioner's legal custodian.

STATEMENT OF FACTS

16. Petitioner reserves the right to amend and supplement this statement of

facts after he receives a copy of his file from immigration authorities.

17. Petitioner was born on _____ (Date – Month, Day, Year)
in _____. (City, Country)

18. The following members of Petitioner’s family are either citizens or
green card holders:

(Please indicate either “citizen” or “green card” next to each name)

19. Petitioner was ordered removed from the United States on
_____. (Date – Month Day, Year) *See* Final Order of
Removal, Exhibit A. [**Attach your final order of removal.**]

20. Appeal? _____ (Yes or No) Petitioner’s appeal was denied on
_____. (Date – Month, Day, Year)

21. Petitioner has been detained in the following locations:

22. [IF APPLICABLE] Since Petitioner has been detained, he/she has made various efforts to facilitate his deportation. He/She has:

[Circle all those that apply.]

- a. Written _____ letters to his/her consulate asking for them to issue travel documents. (*If copies, attached as Exhibits __ and __ .*)
- b. Filled out form from the Department of Homeland Security (“DHS”) requesting travel documents to his/her consulate.
- c. Called his/her consulate to ask for issuance of travel document _____ times.

[Provide dates of calls and names of individuals you spoke to:]

- d. Provided his/her deportation officer with the following documents or information to assist with his/her deportation:

23. On Tuesday, January 12, a 7.0-magnitude earthquake struck Haiti,

causing incurring a devastating death toll and crippling the country's government and infrastructure.

24. The earthquake directly affected approximately three million people, or one third of Haiti's population.¹

25. The Haitian Government estimates at least 150,000 people have died, thousands of individuals remain trapped underneath rubble, and more than 600,000 are now homeless, prompting the U.N. High Commissioner for Human Rights to declare that "human rights as a paramount goal cannot be postponed" until more favorable conditions prevail.²

26. Haiti's Presidential Palace, Ministry of Justice, Parliament, other vital government buildings, the Croix de Mission Bridge, and the Toussaint L'Ouverture International Airport have been either damaged or destroyed, along with scores of hospitals and schools.³ Persisting shortages in food, water, housing, electricity, telephone service, and fuel have widened the magnitude of the earthquake's destruction.⁴

27. On January 13, 2010, recognizing that the crisis in Haiti poses unprecedented humanitarian and logistical challenges, the Department of

¹ Press Release, American Red Cross Releases \$10 Million to Help Haiti, Am. Red Cross (Jan. 15, 2010).

² See William Booth & Peter Slevin, *Hundreds of Thousands of Haitians Await Shelter in Makeshift Camps*, WASH. POST, Jan. 25, 2010 at A11; *Haitian Recovery Must Include Strengthening of Human Rights—Top U.N. Official*, U.N. NEWS CTR., Jan. 27, 2010.

³ Designation of Haiti for Temporary Protected Status, 75 Fed. Reg. 3476, 3477 (Dep't of Homeland Security, Jan. 21, 2010) (notice extending TPS to Haitian nationals for a minimum of 18 months).

⁴ *Id.*

Homeland Security (“DHS”) announced that the agency had “halted all removals to Haiti for the time being in response to the devastation caused by [the] earthquake.”⁵

28. On January 21, 2010, DHS established Temporary Protected Status for Haitians in the United States—*for a minimum period of 18 months*—because of the extraordinary conditions that have made it impossible for Haitians to repatriate in safety.⁶

29. To date, Petitioner has spent a total of _____ (# of Days) in administrative immigration detention.

30. In light of DHS’s policy of halting all deportations to Haiti for the indefinite future, and the extraordinary circumstances surrounding the ongoing disaster relief and reconstruction efforts in Haiti, DHS cannot effectuate Petitioner’s removal in the reasonably foreseeable future.

31. Denial of Petitioner’s relief and his continued detention will result in considerable prejudice to his/her liberty interests, and continued separation from immediate family members represents irreparable harm to his/her physical, emotional, and psychological well-being, due to the unreasonable delay that his/her continued detention will cause, and the inherently and indisputably indefinite

⁵ Statement by Deputy Press Secretary Matt Chandler, U.S. Dep’t of Homeland Security, Jan. 13, 2010, available at http://www.dhs.gov/ynews/releases/pr_1263409824202.shtm.

⁶ See *supra* note 3.

timeframe for his/her removal to Haiti.

EQUAL ACCESS TO JUSTICE ACT

32. The Equal Access to Justice Act (“EAJA”), 28 U.S.C. § 2412, permits this Court to award attorney fees and costs to Petitioner if he/she prevails because this action is a civil action brought against agency officials and an agency of the United States.

CLAIMS FOR RELIEF

COUNT ONE

CONTINUED DETENTION OF PETITIONER IS UNAUTHORIZED BY STATUTE BECAUSE PETITIONER’S REMOVAL TO HAITI IS NOT REASONABLY FORSEEABLE

33. Petitioner re-alleges and incorporates by reference all paragraphs above.

34. Petitioner has been in the physical custody of the Immigration and Customs Enforcement agency for _____ (Insert #) days.

35. Petitioner is being detained in direct violation of the governing statutory and regulatory scheme, as interpreted by the Supreme Court.

36. Petitioner’s order of removal/deportation became final on or about _____ . (Date – Month Day, Year)

37. Detention in this instance is governed by “INA” § 241, 8 U.S.C. § 1231, as well as 8 C.F.R. § 241.

38. Petitioner is unlikely to be deported to Haiti in the reasonably foreseeable future, due to the extraordinary circumstances that prompted DHS to indefinitely halt all deportations to Haiti⁷ and render its efforts to repatriate Haitian detainees impossible. Therefore, Petitioner's deportation order cannot be effectuated by ICE within the "removal period." *See* INA § 241(a)(1)(A). Although INA § 241(a)(1)(A)-(B) provides for a 90-day removal period during which non-citizens may be held in detention, the Supreme Court did not foreclose the possibility that the presumptively constitutional removal period would be less.

39. Under *Zadvydas*, the indefinite detention of an alien in Petitioner's circumstances is not authorized by the Immigration and Nationality Act § 241(a)(6). *See Zadvydas*, 533 U.S. at 699. Moreover, the Supreme Court of the United States held that the "presumptively reasonable" period of detention is limited to three months after the removal period; thereafter, the Government must provide evidence sufficient to rebut a showing that removal is not reasonably foreseeable. *Id.* at 701. *See also Clark v. Martinez*, 543 U.S. 371, 386-87 (2005) (holding that six-month period in *Zadvydas* applies equally to individuals declared inadmissible). Although the Court recognized the six-month period as presumptively reasonable, this does not mean that detention for a shorter period of time is always reasonable. *See County of Riverside v. McLaughlin*, 500 U.S. 44,

⁷ Statement by Deputy Press Secretary Matt Chandler, U.S. Dep't of Homeland Security, Jan. 13, 2010, available at http://www.dhs.gov/ynews/releases/pr_1263409824202.shtm.

57 (1991) (noting, in probable-cause hearing context, that even if a hearing is provided within 48 hours, the Government “may nonetheless violate [constitutional promptness requirement] if the arrested individual can prove that his or her probable cause determination was delayed unreasonably”).

40. Respondents must release post-removal order detainees awaiting deportation when removal is no longer reasonably foreseeable. DHS no longer possesses the authority and justification to continue a non-citizen’s detention when removal is not reasonably foreseeable. *See, e.g., Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 424-26 (M.D. Pa. 2004) (ordering Palestinian detainee who could not be deported released given no significant likelihood of removal in the reasonably foreseeable future); *Papayer v. Holder*, 2009 U.S. Dist. LEXIS 58211, at *4 (W.D. Tex. Apr. 7, 2009) (ordering detainee released and holding that despite multiple attempts to deport Haitian thwarted by Hurricanes Gustav and Ike—“unusual circumstances impacting hundreds of other Haitian citizens” ordered removed—detainee’s removal not reasonably foreseeable);⁸ *Khan v. Gonzales*, 481 F. Supp. 2d 638, 643 (W.D. Tex. 2006) (ordering detainee released after finding Bangladeshi consulate unlikely to provide necessary travel documents any time soon, despite detainee’s efforts); *Jabir v. Ashcroft*, 2004 U.S. Dist. LEXIS 346, at *30 (E.D. La. Jan. 8, 2004) (ordering detainee released given lack of functioning

⁸ *See also Papayer v. Holder*, 2009 U.S. Dist. LEXIS 58209 (W.D. Tex Feb. 27, 2009).

government in Iraq and no “foreseeable conclusion” to detention); *Traore v. Gonzales*, 2007 U.S. Dist. LEXIS 46460, at *5 (D.N.J. June 27, 2007) (ordering detainee released since despite his cooperation and respondents’ best efforts to remove him to Ivory Coast, respondents unable to provide any timeframe in which removal expected); *Santiago-Gomez v. Chertoff*, 2007 U.S. Dist. LEXIS 7738, at *18-19 (D.N.J. Jan. 30, 2007) (finding detainee entitled to supervised release after no country would issue travel documents for his removal).

41. DHS’s prior experiences with deporting individuals to a specific country do not relieve the agency of its obligations to conduct on-going assessments of whether a non-citizen’s deportation to a country such as Haiti is “reasonably foreseeable.” *See, e.g. Rajigah v. Conway*, 268 F. Supp. 2d 159, 166-67 (E.D.N.Y. 2003) (ordering detainee released, holding that the fact that a foreign government regularly issued travel documents in the past did not make removal reasonably foreseeable); *Gui v. Ridge*, 2004 U.S. Dist. LEXIS 16959, at *15-16 (M.D. Pa. Aug. 13, 2004) (ordering detainee released, finding statistics regarding past successful repatriations “may actually undermine the government’s position that removal in a particular case will occur in the reasonably foreseeable future”).

42. Although the burden is on Respondents to justify the continued detention of Petitioner, Petitioner can demonstrate that there is no basis for continued detention.

43. DHS has “halted all removals to Haiti for the time being in response to the devastation caused by [the] earthquake.” The indefinite timeframe of this announcement, along with the recognition of the chaos and destruction through the authorization of Temporary Protective Status for Haitians, demonstrates that removal is impossible in the foreseeable future.

44. Section 241(a) of the INA, 8 U.S.C. § 1231(a), which governs Petitioner’s detention, cannot authorize “indefinite, perhaps permanent, detention.” *Zadvydas*, 533 U.S. at 699. “[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.” *Id.*

45. Thus, because removal is not reasonably foreseeable, Petitioner must be released from detention. *See, e.g., Abdel-Muhti*, 314 F. Supp. 2d at 424-26; *Papayer v. Holder*, 2009 U.S. Dist. LEXIS 58211, at *4 (W.D. Tex. Apr. 7, 2009); *Khan*, 481 F. Supp. 2d at 643; *Jabir*, 2004 U.S. Dist. LEXIS 346, at *30.

46. This interpretation of § 241(a)(6) is consistent with international law. Under the doctrine of *Charming Betsy*, courts may not interpret United States statutes in a manner inconsistent with international law. *Murray v. The Schooner Charming Betsy*, 6 U.S. 64, 118 (1804) (“An act of Congress ought never to be construed to violate the law of nations if any other possible construction remains.”); *United States v. Yousef*, 327 F.3d 56, 92 (2d Cir. 2003) (per curiam), *cert. denied*, 540 U.S. 933, 157 L. Ed. 2d 241 (2003) (“While it is permissible for

United States law to conflict with customary international law, where legislation is susceptible to multiple interpretations, the interpretation that does not conflict with 'the law of nations' is preferred") (citing *Charming Betsy*, 6 U.S. at 118). Arbitrary detention is unequivocally prohibited by international law as evidenced by modern sources of international law such as the Universal Declaration of Human Rights ("the Declaration") and the International Covenant on Civil and Political Rights ("the Covenant" or "ICCPR"), which prohibit arbitrary arrest and detention.⁹

Importantly, "arbitrary" in the context of the Declaration, encompasses detentions that, while authorized by law, remain unjust.¹⁰ With respect to the Covenant, the Human Rights Committee, the treaty body established to monitor states' compliance therewith, has observed: "[t]he drafting history of article 9, paragraph 1, confirms that 'arbitrariness' is not to be equated with 'against the law,' but must be interpreted more broadly, to include elements of inappropriateness, injustice, lack of predictability and due process of law" and that it must be "reasonable in all respects." *Womah Mukong v. Cameroon*, Communication No. 458/1991 (Aug. 10, 1994), U.N. Doc. CCPR/C/51/D/458/1991.

⁹ See, e.g., *Universal Declaration of Human Rights*, G.A. Res. 217A (III), U.N. Doc. A/810, at 71 (1948) ("Article 9. No one shall be subjected to arbitrary arrest, detention or exile."); the *International Covenant on Civil and Political Rights*, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171 ("Article 9. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention[.]").

¹⁰ See 3 U.N. GAOR, Pt. I, Third Comm. 247, 248 (1948) (delegate from the United Kingdom noting that "[t]here might be certain countries where arbitrary arrest was permitted" and further that the "object of the article was to show that the United Nations disapproved of such practices").

47. Because Petitioner cannot be removed to Haiti in the reasonably foreseeable future, Respondents do not have the statutory authority to continue detaining him/her.

COUNT TWO

CONTINUED DETENTION OF PETITIONER IS IN DIRECT VIOLATION OF THE DUE PROCESS CLAUSE OF THE CONSTITUTION AS THERE IS NO REASONABLE JUSTIFICATION FOR PETITIONER'S CONFINEMENT

48. Petitioner re-alleges and incorporates by reference all paragraphs above.

49. Petitioner's continued indefinite detention violates his/her right to substantive due process by depriving him/her of his fundamental liberty interest, and raises a serious constitutional problem. *Zadvydas*, 533 U.S. at 690 ("Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that Clause protects.").

50. The U.S. Supreme Court recognized in *Zadvydas* that individuals in Petitioner's circumstances, who are subject to a final order of removal, yet languishing in detention pending their illusory removal to their countries of origin, are protected by the Due Process Clause. *Id.* at 690-95. They may only be detained for a period of time "reasonably necessary" to secure their removal. *Id.* at

689.

51. *Zadvydas* established that although the Government ordinarily secures an alien's removal during a 90-day removal period, the Government has six months during which it is presumptively "reasonable" to detain an alien after the issuance of a final order of removal. *Zadvydas*, 533 U.S. at 701. However, where the detention's goal "is no longer practically attainable, detention no longer 'bear[s][a] reasonable relation to the purpose for which the individual [was] committed.'" *Zadvydas*, 533 U.S. at 690 (citing *Jackson v. Indiana*, 406 U.S. 715, 738 (1972)).

52. The extraordinary circumstances of the crisis in Haiti, and DHS' own policy not to remove Haitians establishes that Petitioner is not likely to be removed in the reasonably foreseeable future. Namely, federal immigration authorities have uniformly and indefinitely halted all deportation to Haiti as of January 12, 2010, and cannot possibly effectuate Petitioner's removal within even six months of Petitioners' post-removal detention order.

53. The Due Process Clause of the Fifth Amendment forbids the Government from indefinitely detaining inadmissible aliens—potentially forever—*without a tenable justification*.

54. Government detention violates the fundamental substantive Due Process rights guaranteed to non-citizens unless it is either ordered in a criminal

proceeding with adequate procedural protections or it falls into “special and narrow non-punitive circumstances where a special justification, such as harm-threatening mental illness, outweighs the individual’s constitutionally protected interest in avoiding physical restraint.” *Zadvydas*, 533 U.S. at 690 (citations omitted).

55. In *Zadvydas*, the Court determined that the detention of aliens by the former Immigration and Naturalization Service is “civil, not criminal, and we assume that [it is] non-punitive in purpose and effect.” *Id.* For a civil detention provision to survive constitutional scrutiny, it must be for a legitimate regulatory purpose and be narrowly tailored so as not to be excessive in relation to its purpose. *United States v. Salerno*, 481 U.S. 739, 746 (1989). However, “the mere invocation of a legitimate purpose will not justify particular restrictions and conditions of confinement amounting to punishment.” *Schall v. Martin*, 467 U.S. 253, 269 (1984) (pretrial detention of juveniles).

51. The *Schall* and *Salerno* standard has been repeatedly adopted in the immigration context. *See Patel v. Zemski*, 275 F.3d 299, 307-11 (3d Cir. 2001) (adopting the *Salerno* “heightened due process scrutiny to determine if [a] statute’s [authorization of detention] . . . is narrowly tailored to serve a compelling state interest”); *Gisbert v. INS*, 988 F.2d 1437, 1442, *as amended*, 997 F.2d 1122 (5th Cir. 1993) (determining that whether incarceration of immigrants constitutes

impermissible punishment “turn[s] on ‘whether an alternative purpose to which [the detention] may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned’”) (citing *Schall* and quoting *Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 168-169 (1963)).

52. Here, ICE has failed to advance a legitimate or even rational purpose for Petitioner’s continued detention where removal is not reasonably foreseeable. The general regulatory goals of post-removal order detention are “[e]nsuring the appearance of aliens at future immigration proceedings” and “preventing danger to the community.” *Zadvydas*, 533 U.S. at 690 (quoting Government’s Brief); *see also Patel*, 275 F.3d at 312 (“The goals of post-removal order detention are] to prevent aliens from absconding or endangering the community.”).

53. Because there is no likelihood of removal and there is no indication that Petitioner is in any way a danger to the community, there cannot be a legitimate purpose of continued detention. As such, detention without a tenable justification is unconstitutional.

54. The Due Process Clause of the Fifth Amendment requires that the deprivation of Petitioner’s liberty be narrowly tailored to serve a compelling government interest. While Respondents would have an interest in detaining Petitioner in order to effectuate removal, that interest does not justify the indefinite detention of Petitioner, who is not significantly likely to be removed in the

reasonably foreseeable future. *Zadvydas* recognized that ICE may continue to detain aliens only for a period reasonably necessary to secure the alien's removal. The presumptively reasonable period during which ICE may detain an alien is only six months. Because Petitioner cannot be removed to Haiti in the reasonably foreseeable future, Petitioner's detention is per se "indefinite," regardless of the length of detention.

55. Any ambiguity on the application of the Due Process Clause of the U.S. Constitution to Petitioner's detention should be interpreted consistently with the international human rights principles set forth above interpreting the meaning and scope of Article 9 of the ICCPR in light of the United States' ratification of the Covenant in 1992, making the treaty part of the "supreme law of the land" in accordance with Article 6, section 2 of the U.S. Constitution. *See supra*, ¶ 46.

COUNT THREE

CONTINUED DETENTION OF PETITIONER IS IN DIRECT VIOLATION OF PETITIONER'S PROCEDURAL DUE PROCESS RIGHTS

56. Petitioner re-alleges and incorporates by reference all paragraphs above.

57. Under the Due Process Clause of the Fifth Amendment, a detainee is entitled to a timely and meaningful opportunity to demonstrate that he or she should not be detained. Petitioner in this case has been denied that opportunity.

ICE does not make decisions concerning detainees' custody status in a neutral and impartial manner. The failure of Respondents to provide a neutral decision-maker to review Petitioner's continued custody violates his/her right to procedural due process.

58. [INCLUDE ONLY IF YOU HAVE NOT RECEIVED A CUSTODY HEARING DECISION:] Further, Respondents have failed to acknowledge or act upon the Petitioner's administrative request for release in a timely manner.

PRAYER FOR RELIEF

WHEREFORE, Petitioner requests that this Court:

1. Assume jurisdiction over this matter;
2. Grant a writ of habeas corpus directing Respondents to immediately release Petitioner from custody under reasonable conditions of supervision; or in the alternative, order a constitutionally adequate custody hearing—or if applicable, a bond hearing—where Respondents must demonstrate that Petitioner's continued detention is justified;
3. Order Respondents to show cause, returnable within three days pursuant to 28 U.S.C. § 2243, as to why the relief requested in this petition should not be granted;
4. Declare that Respondents' continued detention of Petitioner violates

the Immigration and Nationality Act because it exceeds the period authorized by statute, or in the alternative, because Respondents have failed to provide him/her with a hearing where the Government bears the burden of showing that such prolonged detention is justified;

5. Declare that Respondents' detention violates the Due Process Clause of the Fifth Amendment because it bears no reasonable relationship to a legitimate governmental purpose, and/or because Respondents have failed to provide him/her with a hearing where the Government bears the burden of showing that such prolonged detention is justified;

6. Award Petitioner reasonable fees and costs; and

7. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

Date

Sign Name _____
Print Name _____
Pro Se Petitioner
Mailing Address: _____

VERIFICATION

I, _____, hereby declare under penalty of perjury that, to the best of my knowledge and belief, the matters set forth in the foregoing *Pro Se* Petition for Writ of Habeas Corpus are true and correct.

Date

Your Name

Mailing Address

CERTIFICATE OF SERVICE BY MAIL

I certify that I served by mail a true and correct copy of the above Pro Se
Petition for Habeas Corpus to the above captioned Respondents to:

U.S. Attorney's Office, Civil Division

AND

Clerk of Court
United States Courthouse

Date

Name

Addresses for Federal District Courts by Geographic Location

Florida, Louisiana, New Jersey, New York, Pennsylvania, and Texas

Florida

Northern District of Florida

U.S. Courthouse
1 N. Palafox St.
Pensacola, FL 32502
850-435-8440

U.S. District Court
111 N. Adams St.
Tallahassee, FL 32301-7730
850-521-3501

243 Federal Bldg.
401 SE First Ave.
Gainesville, FL 32601-6805
352-380-2400

U.S. Courthouse
30 W. Government St.
Panama City, FL 32401
850-769-4556

Middle District of Florida

Sam M. Gibbons U.S. Courthouse
801 N. Florida Ave. #223
Tampa, FL 33602-3800
813-301-5400

U.S. Courthouse
300 N. Hogan St., Ste. 9-150
Jacksonville, FL 32202
904-549-1900

Young U.S. Courthouse & Fed. Bldg.
80 N. Hughey Ave. #300
Orlando, FL 32801-2278
407-835-4200

U.S. Courthouse & Fed. Bldg.
2110 First St., #2-194
Ft. Myers, FL 33901
239-461-2000

Golden-Collum Memorial
Federal Bldg. & US Courthouse
207 N.W. Second St.
Ocala, FL 34475
352-369-4860

Southern District of Florida
Federal Courthouse Square
301 N. Miami Ave., Ste. 150
Miami, FL 33128
305-523-5100

Louisiana

Eastern District of Louisiana
C-151 U.S. Courthouse
500 Poydras St.
New Orleans, LA 70130-3367
504-589-7650

Middle District of Louisiana
Russell B. Long Fed. Bldg.
777 Florida St., Suite 139
Baton Rouge, LA 70801-1712
225-389-3500

Western District of Louisiana
1167 U.S. Courthouse
300 Fannin St., Ste. 1167
Shreveport, LA 71101

New Jersey

District of New Jersey
M.L.K. Fed. Bldg. & U.S. Courthouse
50 Walnut St., Rm. 4015
P.O. Box 419
Newark, NJ 07101-0419
973-645-3730/4566

Fisher Fed. Bldg. & U.S. Courthouse
402 E. State St., Rm. 2020
Trenton, NJ 08608 609-989-2065

M.H. Cohen U.S. Courthouse
1 John F. Gerry Plaza, Rm. 1050
Fourth & Coopers Streets
P.O. Box 2797
Camden, NJ 08101-2797
856-757-5021

New York

Northern District of New York

James F. Hanley Fed. Bldg.
100 S. Clinton St.
P.O. Box 7367
Syracuse, NY 13261-7367
Attn: Inmate Litigation Unit
315-234-8500 / 800-962-5514

Southern District of New York

U.S. District Court
500 Pearl St.
New York, NY 10007-1312
212-805-0136

Western District of New York

304 U.S. Courthouse
68 Court St.
Buffalo, NY 14202-3498
716-551-4211 or
716-551-5759

2120 U.S. Courthouse
100 State St.
Rochester, NY 14614-1368
585-263-6263

Pennsylvania

Eastern District of Pennsylvania

2609 U.S. Courthouse
601 Market St.
Philadelphia, PA 19106-1797
215-597-7704

Middle District of Pennsylvania

Nealon Fed. Bldg. & U.S. Courthouse
235 N. Washington Ave.
P.O. Box 1148
Scranton, PA 18501
570-207-5680

U.S. Courthouse & Fed. Bldg.
228 Walnut St.
P.O. Box 983
Harrisburg, PA 17108-0983
717-221-3950

P.O. & Fed. Bldg.

240 W. Third Street, Ste. 218
Williamsport, PA 17701-0608
570-323-6380

Western District of Pennsylvania
829 U.S. Post Office and Courthouse
7th Ave. & Grant St.
Pittsburgh, PA 15219
412-208-7500

P.O. Box 1820
Erie, PA 16507-0820
814-464-9600

208 Penn Traffic Bldg.
319 Washington St. 7th Ave. & Grant St.
Johnstown, PA 15901
814-533-4504

Texas

Northern District of Texas
Cabell Federal Bldg.
1100 Commerce St., Rm. 1452
Dallas, TX 75242-1003
214-753-2200

P.O. Box F-13240 (79189-3240)
205 E. Fifth St., #133
Amarillo, TX 79101-1559
806-324-2352

501 W. 10th St., Rm. 3673
Fort Worth, TX 76102-3643
817-850-6600

Fed. Bldg. & U.S. Courthouse
1205 Texas Ave., Rm. 209
Lubbock, TX 79401-4091
806-472-7624

Eastern District of Texas
106 Federal Bldg.
211 W. Ferguson
Tyler, TX 75702
903-590-1000

Federal Bldg.
101 E. Pecan St., Rm. 112
Sherman, TX 75090
903-892-2921

301 U.S. Courthouse & P.O. Bldg.
500 N. Stateline Ave.
Texarkana, TX 75501
903-794-8561

104 Brooks Federal Bldg.
300 Willow St.
Beaumont, TX 77701
409-654-7000

Federal Courthouse
104 N. Third St.
Lufkin, TX 75901
936-632-2739

300 Willow St.
Beaumont, TX 77701
409-654-7000

Southern District of Texas
P.O. Box 61010 (77208-1010)
5401 Casey U. S. Courthouse
515 Rusk Ave.
Houston, TX 77002
713-250-5500

600 E. Harrison St., Ste. 1158
Brownsville, TX 78520
956-548-2500

1133 N. Shoreline Blvd., Rm. 208
Corpus Christi, TX 78401-2349
361-888-3142

P.O. Box 2300 (77553-2300)
411 Post Office Bldg.
Galveston, TX 77550-5507
409-766-3530

P.O. Box 597 (78040-0597)
319 Federal Bldg.
1300 Matamoros St.
Laredo, TX 78042
956-723-354

P.O. Box 5059 (78502-5059)
1011 TX Commerce Bank Twr.
1701 W. Business Hwy. 83
McAllen, TX 78501-5178
956-618-8065

Western District of Texas

G-65 U.S. Courthouse
San Antonio, TX 78206-1198
210-472-6550

130 U.S. Courthouse
200 W. Eighth St.
Austin, TX 78701
512-916-5896

219 U.S. Courthouse
511 E. San Antonio St.
El Paso, TX 79901-2401
915-534-6725

U.S. Courthouse
800 Franklin Ave., Rm. 380
Waco, TX 76701
254-750-1501

107 U.S. Courthouse
200 East Wall St.
Midland, TX 79701
432-686-40001

**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? (Please check Yes or No).

- | | |
|---|--|
| 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 \$ 5.00. 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