

\_\_\_\_\_ [Enter Field Director's Name]  
Field Director of Detention and Removal Operations  
\_\_\_\_\_ [Enter State] Field Office  
U.S. Immigration and Customs Enforcement  
\_\_\_\_\_ [Enter Street Address]  
\_\_\_\_\_ [Enter City, State & Zip Code]

Date: \_\_\_\_\_  
[Enter Date]

Re: \_\_\_\_\_  
[Enter Detainee's Name]  
A#: \_\_\_\_\_  
[Enter Detainee's A#]

**REQUEST FOR RELEASE FROM DETENTION  
PURSUANT TO *ZADVYDAS V. DAVIS***

I, \_\_\_\_\_ [Detainee's Name], *pro se*, hereby request to be released from detention pursuant to the Supreme Court's prohibition against indefinite detention. *See Zadvydas v. Davis*, 533 U.S. 678 (2001). As you are aware, on January 12, 2010, a 7.0-magnitude earthquake struck Haiti, incurring a devastating death toll and crippling the country's government and infrastructure. The International Red Cross estimates that the earthquake directly affected approximately three million people, or one third of Haiti's population.<sup>1</sup> 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.<sup>2</sup> Persisting inadequacies in food, water, housing, electricity, telephone service, and fuel have widened the magnitude of the

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

<sup>2</sup> 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).

earthquake's destruction.<sup>3</sup>

Recognizing that the crisis in Haiti poses unprecedented humanitarian and logistical challenges, the Department of Homeland Security (DHS) announced on January 13, 2010 that the agency had “halted all removals to Haiti for the time being in response to the devastation caused by [the] earthquake.”<sup>4</sup> The following week, DHS established Temporary Protected Status (TPS) 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.<sup>5</sup> I am writing to respectfully request my release given that it is impossible for me to be removed to Haiti in the reasonably foreseeable future.

INA § 241(a), 8 U.S.C. § 1231(a), which governs my detention, cannot authorize “indefinite, perhaps permanent, detention.” *Zadvydas*, 533 U.S. at 699. The Supreme Court has interpreted § 241(a)(6) to authorize detention only where removal is “reasonably foreseeable.” *Id.* (“[O]nce removal is no longer reasonably foreseeable, continued detention is no longer authorized by statute.”). This applies to inadmissible non-citizens as well as those who were admitted. *Clark v. Martinez*, 543 U.S. 371, 386-87 (2005). Across the country, courts have ordered immigration officials to release post-removal detainees awaiting deportation because they lacked the authority and justification they needed to continue their detention. *See, e.g., Benitez v. Wallis*, 402 F.3d 1133, 1135-36 (11th Cir. 2005) (holding that detainee could no longer be detained because removal to Cuba not reasonably foreseeable); *Perez-Aquillar v. Ashcroft*, 130 Fed. Appx. 432, 443-34 (11th Cir. 2005) (same); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 424-26 (M.D. Pa. 2004) (ordering Palestinian detainee who could not be deported

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<sup>3</sup> *See id.*; Glenn Kessler & William Booth, *Haiti Seeks Food and Shelter So Displaced Residents Can Survive the Coming Weeks*, WASH. POST, Jan. 26, 2010 at A8.

<sup>4</sup> 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](http://www.dhs.gov/ynews/releases/pr_1263409824202.shtm).

<sup>5</sup> *See supra* note 2.

to be 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);<sup>6</sup> *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 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).

Nor does DHS’s prior experiences with deporting individuals to a specific country 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 Guyanese 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 Chinese detainee released, finding statistics regarding past

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<sup>6</sup> *See also Papayer v. Holder*, 2009 U.S. Dist. LEXIS 58209 (W.D. Tex. Feb. 27, 2009).

successful repatriations “may actually undermine the government’s position that removal in a particular case will occur in the reasonably foreseeable future”).

The unprecedented damage Haiti sustained as a result of the tragic January 12th earthquake renders it impossible for ICE to deport me to Haiti in the “reasonably foreseeable future.” *Zadvydas*, 533 U.S. at 699.

For these reasons, I seek an immediate custody review and release from custody.

Respectfully submitted,

\_\_\_\_\_  
**[Insert Detainee’s Name]**

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

\_\_\_\_\_  
**[Insert Address]**

**x**  
\_\_\_\_\_  
**[Detainee’s Signature]**

**DECLARATION UNDER PENALTY OF PERJURY PURSUANT TO 28 U.S.C.A. §1746**

1. I am presently in the custody of the Immigration and Customs Enforcement (ICE) agency. I have been detained by ICE since \_\_\_\_\_. **[Enter Date]**

2. I have a final order of removal dated \_\_\_\_\_. **[Attach]**

3. I cannot be removed to Haiti because the United States has indefinitely halted all deportations to Haiti. My removal to Haiti in the reasonably foreseeable future is impossible, and I have no reason to believe another country will accept me.

4. **[If Applicable]** To facilitate my removal, I have **[circle any that apply]** [communicated with the Haitian consulate on \_\_\_\_ number of occasions] or [requested travel documents] or [given ICE my passport] or [willfully participated in all requested interviews by ICE officials] or [completed all necessary forms].

5. **[If Applicable]** I have filed a habeas petition in \_\_\_\_\_ District Court on \_\_\_\_\_. **[Enter Date]** The petition is currently pending.

6. **[If Applicable]** My custody was previously reviewed on \_\_\_\_\_. **[Enter Date]**

7. **[Additional Information]**

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5. Because I have no reason to believe another country will accept me, I should be released immediately. I am willing to comply with all reasonable conditions of supervision.

6. I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Signature**