

**HOW TO GET OUT OF
DETENTION AFTER YOU'VE
BEEN
ORDERED DEPORTED:
A Guide to Post-Order Custody Reviews and
Habeas Corpus for Immigration Detainees and
their Families**

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**Updates by Political Asylum/Immigration Representation (PAIR) Project,
Boston MA**

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Acknowledgments

This manual was prepared by the Catholic Legal Immigration Network (CLINIC) in July 2004 and updated in August of 2007. It was updated again by the Political Asylum/Immigration Representation (PAIR) Project in February 2010. CLINIC is a non-profit charitable organization that provides legal assistance to noncitizens, without regard to religion, race, ethnicity, nationality, or gender. PAIR is the core provider of *pro bono* legal services to low-income asylum-seekers and immigration detainees in Massachusetts. CLINIC and PAIR are not affiliated with the United States Department of Homeland Security, Immigration and Customs Enforcement, the Immigration Court, or the United States District Court, which are not responsible for the contents of this manual.

Immigration law changes frequently, so do not rely solely on this pamphlet as a summary of current law. Because immigration law is extremely complicated, we recommend that you seek the assistance of a lawyer if possible.

WELCOME

Is this manual for me?

This manual is written for immigration detainees in Massachusetts, Rhode Island, Maine, Vermont or New Hampshire who have already been ordered deported (“removed”),¹ are no longer challenging their deportation, and are trying to get out of detention -- either by being released in the United States or by being sent back to their home countries. It is designed to help you and your family members try to get you released from detention or sent back to your home country as quickly as possible, so that you do not have to be detained any longer than necessary.

The procedures explained in this manual also apply to immigrants who have been granted withholding or deferral of removal under the Convention Against Torture and who nonetheless remain detained while the government is attempting to remove them to a third country.

But what if I am a Mariel Cuban, or I was charged as an “Arriving Alien”?

If you were charged as an “arriving alien,” this manual will still be helpful to you. In *Clark v. Martinez*, 543 U.S. 371 (2005), the Supreme Court of the U.S. decided that Mariel Cubans, “arriving aliens,” and others who have not made an “entry” into the U.S. can also be released from custody if their deportation is not foreseeable. “Entered” is a technical legal term. If you were charged as an “arriving alien,” meaning that you were first caught by ICE at a border, port, or airport, then you have not technically “entered” the United States and the *Clark* decision applies to you.

This manual does not discuss all of the special rules governing the release of Mariel Cubans who were paroled into the United States.² If you are a Mariel Cuban who has been detained for a long time, please write the PAIR Project.

¹ If you have not been ordered deported and are seeking advice about how to represent yourself before the Immigration Court, please ask us for a free copy of the “Self-Help Manual for People Detained by the Immigration Service,” prepared by the Political Asylum/Immigration Representation Project and the Boston College Immigration and Asylum Project.

² See 8 C.F.R. § 212.14.

OVERVIEW

Under federal law, Immigration and Customs Enforcement (ICE) must deport most people within 90 days after they are ordered deported (“removed”)³ from the United States.⁴ The law requires that people ordered removed remain in detention during this 90-day period.⁵ This 90-day period does not begin until your removal order becomes “final.” The meaning of “final” will be discussed later in this book.

If ICE is unable to return you to your country within 90 days after your removal order became final, then ICE begins a process to decide whether you can be removed in the “reasonably foreseeable future,” and whether you should be released from detention in the meantime.⁶ This process also applies to you if an Immigration Judge granted you withholding or deferral of removal under the Convention Against Torture, and you are still detained.⁷

In June 2001, the U.S. Supreme Court held that in most cases, it is illegal to detain someone with a final order of removal if they are unlikely to be deported to their home country or any other country in the near future. The standard is whether one’s deportation is “reasonably foreseeable.”⁸ The Supreme Court held that a six (6)-month period of detention is “presumptively reasonable,” which means that it is very hard to show that you should be released because your deportation is not “reasonably foreseeable” if you have been detained less than six months. In practice, there are exceptions for people from certain countries that do not accept deportees (e.g. Cuba, Laos, and Vietnam), which are discussed more fully below.

Even if you have been in detention for six (6) months, ICE may decide to keep you in detention if they believe that your deportation is “reasonably foreseeable.” You may also be kept in detention if you do not cooperate with the immigration service’s (ICE’s) efforts to secure your travel documents and to deport you,⁹ or if you are if your case involves “special circumstances” to be discussed later.¹⁰

Although the rules are strict, occasionally people with final orders do get themselves released. Often people with final orders succeed in getting themselves sent home to their countries of origin more quickly.

³ “Removal” is the legal term for “deportation” or “exclusion” in cases begun after April 1, 1997. Because informally, many people still say “deported,” this book uses the terms “removed” and “deported” interchangeably.

⁴ 8 U.S.C. § 1231(a)(1), Immigration and Nationality Act (INA) § 241(a)(1).

⁵ 8 U.S.C. § 1231(a)(2), INA § 241(a)(2).

⁶ 8 C.F.R. § 241.4(h).

⁷ 8 C.F.R. § 241.4(b)(3).

⁸ *Zadvydas v. Davis*, 533 U.S. 678 (2001)

⁹ 8 U.S.C. § 1231(a)(1)(C), INA § 241(a)(1)(C), 8 C.F.R. § 241.4(g)(1)(ii), 8 C.F.R. § 241.4(g)(5)(i).

¹⁰ 8 C.F.R. § 1241.14.

THE FIRST SIX MONTHS: THE POST-ORDER CUSTODY REVIEW

In its 2001 decision in *Zadvydas*, the U.S. Supreme Court decided that it is illegal for ICE to keep most people in detention if they have a final order of removal but cannot be deported in the “reasonably foreseeable future.” After this decision, ICE adopted new custody review rules which are found at 8 C.F.R. § 241.13.

How long will it take for me to get deported?

It’s hard to know how long it will take for ICE to deport you. The answer depend on what country you are from, whether you have a passport or other identity documents that make it relatively easy for ICE to secure your travel papers, how cooperative your home country is in issuing travel papers, and how busy ICE is with other cases. Many people are deported within the 90 day removal period. However, many others end up waiting longer. If you want to get deported as fast as possible, the best thing you can do is make sure you have given ICE all the information it has requested. You can also write your consulate to urge them to issue your travel documents to ICE more quickly. There will be more information on what to say in your letters to ICE and your consulate later in this packet.

How do I know whether my deportation is “reasonably foreseeable?”

Whether your deportation is “reasonably foreseeable” depends on what country you are from and the individual circumstances of your case.

In recent years, the U.S. government has been unable to deport almost anyone to **Laos** and **Cuba**, and has only been able to deport a few people a year to **Vietnam** and **Cambodia**. If you are from one of these countries and you have been in immigration custody for more than 90 days after your removal order became final, please write to the PAIR Project.

Sometimes detainees cannot be sent home because their countries of origin do not recognize them as citizens. This can happen to people born in refugee camps or people from countries that no longer exist. Sometimes this can happen if your home country does not have any record of your citizenship.

On very rare occasions, countries refuse to accept their citizens for deportation for humanitarian reasons. For instance, occasionally home countries refuse to accept citizens with life-threatening illnesses when medical treatment in the home country is not available. Occasionally home countries also refuse to accept nationals who have no real connections to the home country, for example if they have never lived there, or were adopted by U.S. citizen parents. The decision in these cases is made by the home country, not ICE, often against considerable pressure from the United States. This situation is extremely rare. ICE will try very hard to deport you if it is at all possible.

Other countries are just really slow in sending the United States government the paperwork needed to secure your travel documents. Sometimes ICE is at fault for long delays – it hasn't tried diligently enough to secure your travel documents. Although it is harder to show that your deportation is not "reasonably foreseeable" in these situations, sometimes you can get released, especially if you have been detained for a very long time. The Supreme Court stated in *Zadvydas* that the longer the period you have been detained, the shorter the amount of time that is considered "reasonably foreseeable." So, for instance, if you have been waiting for one year to be deported, you might have a very strong case, even if your country has taken lots of other people back.

If I am not deported, can I get released within my first 90 days?

Probably not. ICE takes the position that even if your removal is not "reasonably foreseeable," you must be detained for a minimum of 90 days. In practice, it is often difficult to be released until you have been detained for more than six months. However, there are definitely steps you can take to try to get released after 90 days. These steps are discussed in depth below.

I have the money to buy my plane ticket. Can't I get released if I promise to leave?

No, unless you have been granted voluntary departure. Voluntary departure is a form of relief that the Immigration Judge can give you at your immigration hearing if you qualify for it. Unfortunately, once you have been ordered deported, you cannot ask for voluntary departure unless you somehow manage to reopen your case. If you have not yet been ordered deported and would like more information on voluntary departure or other forms of relief, please ask for a free copy of the Self-Help Manual prepared by PAIR.

Can ICE deport me to a country where I am not a citizen?

ICE can deport you to another country if it finds another country that will take you. In practice, this is often hard to do because other countries do not want to take people who are deported from the United States and who are not their citizens. If ICE tries to send you to a country where you are not a citizen and you do not want to go, please contact PAIR.

What happens if I refuse to cooperate with ICE's attempts to deport me?

You cannot be released from detention unless you cooperate with ICE efforts to apply for your travel documents.¹¹ This means that you must try to apply for travel or other documents necessary to your departure (such as signing your travel document application and other papers to carry out your deportation).¹² If you do not cooperate, ICE may suspend its 90-day deadline for your deportation, and it does not have to release you from custody. In addition, ICE can decide to prosecute you criminally for failure to cooperate.

¹¹ 8 U.S.C. § 1231(a)(1)(C), INA § 241(a)(1)(C), 8 C.F.R. § 241.4(g)(1)(ii), 8 C.F.R. § 241.4(g)(5)(i).

¹² 8 U.S.C. § 1231(a)(1)(C), INA § 241(a)(1)(C), 8 C.F.R. § 241.4(g)(1)(ii), 8 C.F.R. § 241.4(g)(5)(i).

To prevent ICE from accusing you of this, you should take careful notes of all of your communications with ICE or your consulate so that you will have them as a record.

Can ICE deport me if I refuse to sign my travel documents?

Yes. Refusing to sign your travel documents might slow down your deportation, but it will not prevent your deportation altogether. Eventually, ICE will deport you if it is able, regardless of whether you have signed your documents. In addition, as mentioned above, ICE can decide to prosecute you criminally for failure to comply.

When do my “90 days” and “6 months” begin?

Your removal period does not begin until your removal order is considered “final.” Your removal order becomes final when no appeal is reserved or pending, or your appeal has already been denied.¹³ Your removal order can also be made final by an Immigration Judge if you fail to appear for your immigration hearing and you are ordered removed *in absentia*, if you fail to file an appeal within the allotted time, or if you waive the right to appeal.¹⁴ If your removal order is reviewed by a federal court and the court orders a stay of removal, the order becomes final on the date of the court’s final order affirming the Board of Immigration Appeals (BIA’s) decision.¹⁵

Finally, if you are in non-immigrant detention, including criminal custody, your removal period does not begin until you are released into the custody of ICE.¹⁶

How do I know when my final order was issued?

Call EOIR (Executive Office for Immigration Review) at **1-800-898-7180** to check on the status of your case. The automated system will ask you for your alien registration number, which is the number that appears on almost all of your immigration documents. It will have 8 digits, and begin with the letter “A.” If you do not know your “A-number,” ask a jail officer for your “A-number” or “INS reference number.” Enter this number into the system and it will tell you whether you have been ordered deported, and on what date.

If you were ordered deported, you probably had a hearing before an Immigration Judge. The Immigration Judge would have told you that he or she was ordering you deported and would have given you a written order. Once an Immigration Judge orders you deported, you do not get a second chance unless you appeal your case within thirty days from the date of the decision or formally reopen your case later. If the Immigration Judge ordered you deported many years ago, and you have not reopened or appealed your case, you still have a deportation order: it does not matter whether you have lived in the United States for many years since then.

¹³ 8 C.F.R. § 1241.1.

¹⁴ 8 C.F.R. § 1241.1.

¹⁵ 8 C.F.R. § 241.4(g)(1)(i)(B).

¹⁶ 8 U.S.C. § 1231(a)(1)(B)(iii), INA § 241(a)(1)(B)(iii).

If you had an immigration hearing that you did not attend, then you were almost certainly ordered deported *in absentia* (in your absence) on that date. Many people do not know that they have deportation orders against them because they never received notice of their hearing, either through their failure to provide the immigration service and the immigration court with their updated address, or through the immigration service's error. If you missed your hearing and were ordered deported *in absentia*, you should consult an immigration attorney as soon as possible because it may be possible to reopen your case, depending on your circumstances.

If you were serving a prison sentence for a criminal conviction, you may have seen the judge while you were still in jail, perhaps through a teleconferenced hearing. If this is the case, ICE probably put a "detainer" on you so that once your criminal sentence ended you would be transferred to immigration custody. In any case, you should call the number above to confirm your case status.

What happens if I have been ordered removed but I am still serving my criminal sentence?

As mentioned above, your "removal period" does not begin until you are transferred from criminal prison into immigration custody. If you want to be deported as soon after you finish serving your criminal sentence as possible, you should write to ICE and provide them with copies of any identity documents you have, such as your passport, birth certificate, or national identification card. You can also write your consulate to try to get these documents.

Who decides whether I will be released?

Your first "90-day review" will be done by the local ICE office in Boston, Massachusetts. This is a "file review," so you will probably not be present or meet with the ICE officer. Instead, the ICE officer will look over your file and any documents you have sent and make a decision. Any reviews you have in the future will be done by a special office at ICE Headquarters in Washington, D.C., which is called the Headquarters Case Management Unit (HQCMU).

What should I do to prepare for my "90-day review"?

Thirty (30) days before your "90-day review," ICE should give you a written notice to tell you the date of your review, and to give you an address where you can send any letters, certificates, or other papers you would like ICE to consider.¹⁷ At this stage, the local ICE office makes its decision based on whether you present a **flight risk** or a **danger to public safety**. Nonetheless, you should also give ICE information about why it is very unlikely that your home country would accept you for deportation. This will be discussed in more detail below.

¹⁷ 8 C.F.R. § 241.4(h)(2).

If the local ICE office decides to keep you in detention after your first custody review, your case will be referred to HQCMU in Washington, D.C. You will first get a written decision from the ICE Field Office Director in Boston, Massachusetts, then a notice referring your file to HQCMU for all future custody reviews. After that referral notice, it is HQCMU that will decide whether you must be released under the *Zadvydas* decision, or whether you deserve release under the flight risk/danger to public safety test.

In your initial custody review with the local ICE office, you must demonstrate by “clear and convincing” evidence that you are not a danger to public safety and that you are not a significant flight risk. This means you must show ICE that you will not run away to avoid being deported, you will let ICE know where you are, you are nonviolent, and you will not commit any new crimes. ICE will consider factors including your behavior record in prison and detention, your criminal history, your mental health, your immigration history, educational and counseling programs you have completed, and the support of your family and community in the U.S.

Under ICE’s custody review rules, you should ask to be released in writing.¹⁸ This means you should write a letter explaining why you should be released from detention. **Form 1** of this manual is a sample letter, which you may use as an example for writing your own release request on a separate sheet of paper. Be sure to type your request, or write very neatly if there is not a typewriter or computer available at your detention center.

Your release request should include proof that your country is unlikely to accept you for deportation. Include copies of any identification documents you have, and of any letters or passport applications you have sent to your consulate. Your release request should describe what you have done to help ICE deport you: telling your Deportation Officer when and where you were born, giving ICE a copy of your birth certificate or passport, having your picture and fingerprints taken, signing your travel document application, etc. You should also tell ICE if you have tried to contact your embassy or consulate yourself about being deported. If possible, you might give ICE a letter from your consulate confirming that you will not be accepted for deportation, or that your home country does not recognize you as a citizen.

You should also give ICE documents that show you deserve to be released, and show where you will go after your release. The following papers are helpful to send to ICE:

1. A letter from your “sponsor,” the person you will live with. This could be a family member, or a community program (such as a halfway house or resettlement agency).
2. A letter from an employer, written on business letterhead, confirming that you will have a job or job interview upon your release.

¹⁸ 8 C.F.R. § 241.13(d)(1).

3. Certificates from educational or job-training classes you have completed in prison or detention.
4. Certificates or letters showing that you have completed counseling, anger management, drug treatment, or other behavioral programs in prison or detention.
5. Reference letters from former employers, responsible family members, church leaders and prison chaplains, jail/detention officers who know you personally, etc, and who can attest to the fact that you are not dangerous and that you will not flee if you are released from detention. If the people who write on your behalf are United States citizens, they should say so in the letter.

All of the letters you send to ICE must be in English, or you must attach a translation. If someone is writing a letter on your behalf, ask them to write it clearly, and to include your full name and Alien Number (“A-Number”).

If you have proof that your country will not accept you within the reasonably foreseeable future, or there is a special reason why your country will not accept you even though other people are deported there, be sure to explain it.

We recommend that you send all of this information together in a nicely-organized packet. Do not send originals, as you will not get them back. Keep a copy for your files in case ICE loses the information you send.

We recommend that you send the information in plenty of time, just in case the review takes place earlier than the date provided on the notice.

What should I write in my letter to my consulate?

You should explain to your consulate that you would like to know the status of your case, particularly whether travel documents have been issued, and whether or not they expect to issue documents soon. You should also ask them to explain any reason why they might not be willing to issue travel documents to you. Finally mention that you are willing to cooperate with them to obtain your travel documents.

How do I find out whether ICE will release me from detention?

ICE is required to give you notification in writing of the results of your 90-day and six-month (HQPDU) custody reviews. In practice, these reviews are often delayed and detainees often do not receive notification of either the reviews or the results of the reviews in a timely fashion. If you do not receive timely notification, you should contact ICE and keep a record of your communications with them. You will use these records if you choose to file a legal petition requesting your release.

You or your family can contact your Deportation Officer at ICE Detention and Removal in Boston, Massachusetts for information about your case. The contact information for

ICE Detention and Removal in Boston is included in the “Useful Addresses” section of this manual. There should be a specific deportation officer assigned to your case. To find out the name of this person, call the local ICE office and ask for the individual officer assigned to your case (your A-number).

Once your case has been transferred to HQPDU, the local ICE office might not have specific information about your case, but they will know whether your case has been transferred, and they will be notified of any decision in your case. To find out more information, you can try writing HQPDU directly. Its address is included in the “Useful Addresses” section of this pamphlet.

What should I do if I never receive my 90-day or six month review?

If you do not receive notice of your 90-day or six month reviews in a timely fashion, you should request review in writing. In at least one case, the District Court of Rhode Island has denied a detainee’s petition for habeas relief because the detainee did not request a six-month HQPDU review.¹⁹ Although this decision might not be correct as a legal matter, it is not worth taking any chances.

What should I do if I am not released, and my case is referred to Headquarters (HQPDU) (“Six Month Review”)?

If your case is referred to HQPDU, ICE will first decide whether travel documents for you are not available, or immediate removal is not practicable or not in the public interest.²⁰ This means that for you to be released, ICE must find that there is not a good chance that you could be returned to your home country or a third country.²¹ ICE will almost never find that this is true unless it has already been six months since your removal order became final. Your case usually will not be referred to HQPDU until about six months after your final order of removal.

To decide whether you are likely to be removed, ICE will look at its efforts to get your travel documents, whether the U.S. government has been able to deport other people to your country, and any proof you provide that your country will not accept you for deportation. ICE will not release you if you are not cooperating with their efforts to deport you. You also will not qualify for release under these rules if the only reason you cannot be deported is because of action you have taken, such as directly challenging your removal order in federal court. A habeas corpus petition is not a direct challenge to your removal order because it is a challenge to detention and therefore it should not stop ICE from reviewing your case. Habeas petitions will be more fully explained later in this packet.

¹⁹ See *Podoprigora v. Chadbourne*, 2004 WL 725057, *5 (D.R.I. March 2, 2004) (denying detainee’s habeas petition for “failure to exhaust administrative remedies” where detainee filed habeas without having applied for a custody review, even though detainee wrote various letters to then-INS)

²⁰ 8 C.F.R. §241.4(e)(1).

²¹ 8 C.F.R. § 241.4(k)(1)(ii) and (2)(ii).

ICE claims that it can get travel documents for almost every country, even countries that do not often accept their citizens for deportation. You should give ICE any available proof that your country has refused to accept you, or that you and ICE have tried unsuccessfully to apply for your travel documents.

Even if HQPDU decides that they may be able to remove you in the future, they can still consider you for release under another set of rules if you are not about to be deported immediately.²² Under the rules ICE followed before *Zadvydas*, you must show HQPDU by clear and convincing evidence that you are not a danger to public safety and that you are not a significant flight risk. This is the same test the local ICE used in your first custody review. It can be difficult to show ICE that you deserve release under this standard if you have a criminal conviction.

²² 8 C.F.R. § 241.4(d)(2).

AFTER SIX MONTHS:
PETITIONING FOR A WRIT OF HABEAS CORPUS

If it has been more than **six months** since you were ordered removed and you have not received a decision from HQPDU (but have requested one in writing), or HQPDU has ordered your continued detention and you do not agree with its decision, there is no administrative way to appeal or make ICE give you a decision. This is a common problem for many ICE detainees: ICE usually does not refer your case to HQPDU until at least six months after your removal order.

In this situation, ICE detainees have the right to ask a federal district court to review their detention. You may do this by filing a petition for a **writ of habeas corpus**.

What is a Writ of Habeas Corpus?

A “habeas corpus” proceeding is a way to challenge your detention in federal court. By filing a habeas corpus petition, you argue that you are being held in violation of the law and your constitutional rights. Legal arguments in a habeas corpus case are usually done through written motions.

The kind of habeas corpus petition described in this pamphlet is not an appeal of your deportation order or Immigration Court case. You are not arguing that you should not be deported. **You are only asking to be released from detention until you can be deported.** The court **will not** go back and look at the issue of whether you should have been ordered deported in the first place.

Petitioning for a writ of habeas corpus can be complicated, so it is best to file a habeas petition with the help of a lawyer. However, many ICE detainees successfully file their habeas corpus petitions without a lawyer, or “*pro se*.” If you choose to file *pro se*, please make sure to read the instructions below carefully and to adapt the sample provided to the particular facts of your case.

When can I file a Petition for a Writ of Habeas Corpus?

If you file a petition for a writ of habeas corpus too early, there is a chance that it will be dismissed “with prejudice” and you will not be allowed to file a new one. For this reason, it is best not to file a petition for a writ of habeas corpus unless you have been detained for **six months**. Most courts will not grant habeas corpus petitions until the six-month “presumptively reasonable” period for detention has passed, although you *might* be able to win earlier if you are from Laos or Vietnam or Cuba (and you are not a Mariel Cuban).

In addition, you should not file a petition unless you have either received your 6 month HQPDU review, or you have requested such review in writing. On at least one occasion, the District Court of Rhode Island has dismissed a petition for “failure to exhaust

administrative remedies” where the detainee did not request a HQPDU review in writing.²³

Will filing a Petition for a Writ of Habeas Corpus cause the government to keep me in detention longer?

No.

Will filing a Petition for a Writ of Habeas Corpus get me released?

Maybe. In order for you to be released, you must convince the court that your removal is not “reasonably foreseeable.” Even if your removal is not reasonably foreseeable, ICE may continue to detain you if the court finds that you fit certain special circumstances. The court will also deny your petition if it finds that you have failed to cooperate in your removal.

Moreover, if ICE is able to deport you but just has not done it because it has been busy with other cases, it might respond to your petition by telling the court that it will deport you quickly. To do this, it might decide to put your case “at the top of the pile” and focus on deporting you more quickly so that it won’t have to release you. It is hard to know in advance whether filing a petition for a writ of habeas corpus will cause the government to try to deport you more quickly, but it is a risk you must be aware of.

What are special circumstances?

In some cases there are “special circumstances” which allow ICE to continue detaining someone even though their deportation is not reasonably foreseeable. If ICE can show that you have a highly contagious disease, are specially dangerous, that your release would have serious negative consequences on foreign policy, or endanger national security they may be able to detain you even though you can show that your deportation is not foreseeable. ICE may decide you are “specially dangerous” if: a) you have committed one or more violent crimes in the past, b) if due to a mental condition or personality disorder, you are likely to commit violent actions in the future, and c) if there are no conditions of release that would be sufficient to ensure the safety of the public.

Before ICE can claim you are “specially dangerous,” ICE must have you evaluated by a doctor, provide you with copies of the evaluations, and hold a hearing before an immigration judge. Your deportation hearing from before does not count – you should have a separate hearing on the issue of whether you are “specially dangerous.” You will get a form I-863, Notice of Referral to the Immigration Judge, if ICE wants to say that you are “specially dangerous.” The hearing will happen about 10 days later.²⁴ If you get a notice of such a hearing, please contact the PAIR Project for more help.

²³ See *Podoprigora v. Chadbourne*, 2004 WL 725057, *5 (D.R.I. March 2, 2004) (denying detainee’s habeas petition for “failure to exhaust administrative remedies” where detainee filed habeas without having applied for a custody review, even though detainee wrote various letters to then-INS)

²⁴ 8 C.F.R. § 241.14(f)-(j).

What should my petition say?

A sample habeas petition for people detained in Massachusetts is included in this book as **Form 2**. You must write your own petition using the sample as a starting point, taking care to fill in the particular facts of your own case. **You cannot just mail in this sample.**

In writing your habeas petition, keep in mind the judge is most interested in the facts of your case. Concentrate on making the facts of your case clear and accurate and providing the documentation to support the facts you assert. You must show that even though you followed the custody review rules described earlier in this pamphlet, ICE has not released you, and that this is in violation of the law.

As you describe the facts of your case, make sure the details are accurate. Write down exactly what you did to ask for your release, and what ICE has done. For example, if you sent a letter to ICE asking for your release, write down when you mailed the letter and where. If you talked to your Deportation Officer about applying for travel documents, write down when you spoke to him or her and what information you gave. If you got a letter from ICE denying your release or transferring your case to HQPDU, describe the letter, and when you received it. Attach copies of letters you have written to or received from ICE or your consulate. It is very important that you keep records of all your communications with ICE/HQPDU.

Be sure that your petition is easy to read. It is best to **type** all of the papers you send to the court, but if you cannot type, be sure to write very neatly in blue or black ink.

You must sign and date your petition. Above your signature you should write: "I declare under penalty of perjury that the foregoing is true and correct." This means that you swear that what you have written is the truth, just like when you testify in court.

You must send a copy of everything that you send to the court to the U.S. Attorney, the lawyer for the government in this case. The address for the U.S. Attorney is included in the sample habeas petition included in this book. Along with your petition, you must complete, sign, and date the "Certificate of Service," which is your promise that you have mailed a copy of everything that you send to the court to the U.S. Attorney, which is the lawyer for the government in this case. The court will not accept your petition if you do not include a Certificate of Service.

Do I have to pay to file my habeas corpus petition?

Yes. There is a **\$5.00 fee** to file a habeas corpus petition. The courts require a check or money order payable to "United States District Court." Ask your counselor or an officer at your detention center how to withdraw this money from your account.

If you cannot afford the \$5.00 fee when you file your petition, you should include an application to file *in forma pauperis*. This means that you are asking the court to waive the fee so you do not have to pay it. To proceed In Forma Pauperis, you should send in a

separate motion or letter titled “Motion to Proceed in Forma Pauperis” explaining why you have no access to money to pay the \$5.00 fee.

In addition, you can submit a record of all transactions of your institutional account (including receipts, expenditures, and balances) for the past six months. If you have had more than one account in the past six months (for example if you have been in multiple institutions) you should include records from each. The records must be official documents from the institution. If there are other documents that explain your financial situation and why you cannot pay, please attach those to the motion as well.

How do I file my petition?

- 1) File one copy of your habeas petition, the supporting documents, the \$5.00 filing fee (or motion to file *in forma pauperis*), and the forms described above, by mailing them all to the clerk’s office of United States District Court for the state where you are detained. The court addresses are listed in the “Useful Addresses” section of this pamphlet. If possible, use a punch hole to double-hole punch everything you file at the top of each page.
- 2) Send a copy of everything you send to the court to the U.S. Attorney, whose address is on the Certificate of Service.
- 3) Always keep a copy for your own records. You can also mail a copy to the PAIR Project if you want us to help you track your case.

What happens after I mail my petition to the court?

Once the judge receives your petition, the judge will usually give the government up to 20 days to file a response. This is the government’s chance to challenge your petition. If they think your detention is legal, they will explain why. If they think you have filed your petition with the wrong court, they will also say why. The government’s return may be titled “Government’s Response to Petition for Writ of Habeas Corpus.” Instead of a return, the government may also file a “Motion to Dismiss,” which means the government is asking the judge to throw your petition out of court.

If the government files a Response or a Motion to Dismiss, make sure that you answer the government’s motion within **fourteen (14) days** from the date it is filed. (Note: the court must *receive* your answer within 14 days, so send it out early). Your answer will have the same basic format as the government’s Motion to Dismiss, but it should be titled, “Petitioner’s Opposition to Motion to Dismiss.”

If you disagree with the government’s response, it is your responsibility to say why the government’s facts and legal position are wrong. The court rules allow you, under oath, to deny any facts the government has included in its return, or to allege any new facts supporting your case.²⁵ We are not including a sample Opposition to Motion to Dismiss

²⁵ 28 U.S.C. § 2243.

in this packet because the response will depend so much on the individual facts in your case and what the government wrote in their motion. **If the government files a Motion to Dismiss in your case, write to or call the PAIR Project for information and sample oppositions.**

It is your responsibility to notify the court clerk in writing if your address changes. You should write to the court clerk if you are moved to another jail, or if you are released. If you don't do this, you won't know to answer the government's response, and your petition will be dismissed.

Based on all of the papers you and the government send, the judge will decide whether your detention is legal. It could take the judge several months to issue a decision. If the judge agrees that you should be released, he or she will issue a written order, telling ICE to release you. If you win your case, it is possible but unlikely that the government will appeal your case to the First Circuit Court of Appeals in Boston, Massachusetts, and ask the First Circuit court to keep you in detention while the case is on appeal.

Can I work after I am released?

Yes. You will need to fill out form I-765, Application for Employment Authorization Document, and send it to U.S. Citizenship and Immigration Services (CIS), P.O. Box 805887, Chicago, IL, 60680-4120. Make sure to write "C(18)" in the eligibility classification box, write in your current status as "Order of Supervision," and enclose a copy of the Order of Supervision in the application. The PAIR Project has sample applications for people on orders of supervision.

I've read this book but I really need more help. How do I find a lawyer to help me?

When you file a habeas petition you have the right to ask the court to appoint a lawyer for you if you cannot afford one, this request is called a **motion for appointment of counsel**. The judge does not have to provide a lawyer but can if he/she feels it is necessary. In Massachusetts you may attach your motion for appointment of counsel to other documents or file it alone. In Rhode Island, however, the motion must be filed separately and cannot be included as a portion of another motion.

If you are detained in Massachusetts, Maine, Vermont, New Hampshire, or Rhode Island, you may write to the PAIR Project if you would like a referral to a low-fee private attorney or more information about how to represent yourself. PAIR handles a small number of cases itself. If you have been detained for more than six months after your final order, please let the PAIR Project know. You may write to the PAIR Project at:

**Political Asylum/Immigration Representation Project
254 Friend Street, 5th Floor
Boston, MA 02114
(617) 742-9296**

USEFUL ADDRESSES

ICE/CIS Offices

If you are detained in Massachusetts, Rhode Island, Maine or New Hampshire, you can contact your local district office or send requests for release after 90 days at:

U.S. Department of Homeland Security
Immigration and Customs Enforcement
Detention & Removal Operations
10 New England Executive Park
Burlington, MA 01803
(617) 565-3304

If you have already had your 90-day custody review and your case has been transferred to ICE Headquarters in Washington, D.C. (HQPDU), then they are responsible for your case. You may write to them at this address:

U.S. Department of Homeland Security
Immigration and Customs Enforcement
Headquarters Case Management Unit (HQCMU)
500 12th Street SW
Washington, DC 20536
(202) 305-2734

If you write to HQCMU about your case, you should ALSO send a copy of your letter to your local ICE case officer in Burlington, Massachusetts. On your letter write "180-Day Custody Review Material"

If you are applying for work authorization after being released, send your application to:

U.S. Citizenship and Immigration Services
P.O. Box 805887
Chicago, IL 60680-4120

Federal Courts

File your petition for a writ of habeas corpus with the district court that covers the district where you are detained:

In Massachusetts

Clerk's Office
John Joseph Moakley
U.S. Courthouse
1 Courthouse Way, Suite 2300
Boston, MA 02210

In Rhode Island

Clerk's Office
United States District Court
District of Rhode Island
One Exchange Terrace
Federal Building and Courthouse
Providence, RI 02903

**GUIDE TO USING THE SAMPLE CUSTODY REVIEW LETTER
AND SAMPLE HABEAS CORPUS PETITION**

PAIR has prepared a sample 90-day custody review letter and a sample habeas corpus petition. **When you see the following code letter, you should write in the following information:**

(A): Your full name

(B): Name of the jail where you are being held

(C): The country of which you are a citizen

(a): Date you were taken into custody

(b): Date of your final order of removal

(c): Number of months you have been in custody

(d): Date of 90-day custody review

(e): Date of ICE's 6-month decision that you will be kept in custody

(f): Your date of birth

(g): Number of months between your final order and your 6-month review

(h): Number of months since your last custody review

(i): Date of your original NTA

(j): Date of 90 day custody review decision

If you don't have exact dates, just make your best guess and say that it is approximate.

FORM 1

SAMPLE LETTER ASKING ICE FOR 90-DAY REVIEW AND RELEASE FROM CUSTODY

Name: ____ (A) ____
A#: _____
Mailing address: _____

Date: _____

ICE Detention and Removal Office (DRO)
U.S. Department of Homeland Security
10 New England Executive Park
Burlington, MA 01803

(or if you've already had one custody review)

ICE Headquarters Case Management Unit
U.S. Department of Homeland Security
500 12th Street SW
Washington, DC 20536

I request that ICE review my custody status because I believe that I qualify for an order of supervision. Specifically, I have been in detention more than 90 days after being ordered removed, and it is unlikely that I will be deported to ____ (C) ____ in the reasonably foreseeable future. I am not a danger to public safety, and I am not a flight risk.

I entered the United States on date: _____. I have the following family members in the United States:

[Here you should give the names and addresses of family members who are lawful permanent residents or U.S. citizens. It is only helpful to list your permanent resident or United States citizen family's names and addresses].

My home country will not accept my deportation because:

[In this section, give the reason why ICE has been unable to deport you. For example, you may know that your home country does not have a repatriation agreement with the United States. Or you may have met with representatives from your home country, who may have told you that they do not believe that you are a citizen or that you will not be able to return there. Or you may know of other

detainees from your home country who also have not been deported. You should mention any of these things.]

I have cooperated with ICE efforts to remove me from the United States.

[In this section, say what you and your Deportation Officer have done to get your travel documents or your home country's permission for you to return. You should mention any papers you have signed, any conversations you have had with representatives of your home country (at the embassy or consulate) and whether you have given ICE any photograph, fingerprints or identity papers. You should include copies of any relevant letters or documents you have sent or received.]

I am not a danger to public safety because:

[In this section, you must convince ICE that you will not commit further crimes or otherwise present a danger upon your release. You should mention as many reasons as you can, and be specific about those reasons. For example, you should mention where you will live and who you will live with when you are released and explain why that person has a stable home. If you will live in a community where you have ties, you should mention those connections and that network of support – like your family members, church or other organizational memberships, community groups that you know will help you after you are released. If you have had a good disciplinary record while in prison, you should mention that, and potentially have someone from your detention center write you a letter about that. You should also mention any rehabilitation you received while in prison or detention, like alcohol or drug addiction counseling, or anger management or life skills training, and you should include any certificates of completion that you may have received. If you know that you will have a job when you are released, you should mention that, and if possible get a letter from your future employer. If your past criminal conduct occurred when you were young, or a long time ago, you should mention that and explain why you are not at risk of doing the same thing again. If you were part of a gang or associated with a group of people who had a negative effect on you, you should plan to live far from those individuals, and you should make your intention clear. You might want to mention how you realize that you have made mistakes in the past, but have learned from those mistakes and want to be a productive member of society.]

I am not a flight risk because I will live at [your address and phone number after release] with my [family member, if applicable]. When I am released, I will concentrate on working and supporting my family.

[In this section, you must convince ICE that, if released, you will not flee the area and you will comply with all restrictions imposed on you

as part of your release. If you violated your probation, or if you ever missed a court hearing or ICE appointment, you should explain why, and tell ICE why it will not happen again.]

I will abide by any and all conditions placed on my release.

For the reasons stated above, I respectfully request that I be released under an order of supervision so that I may join my family, return to gainful employment, and no longer be a financial burden to society.

Sincerely,

(signature)

Name: ____ (A) ____

A#: _____

[If you are sending this letter to ICE Headquarters, you should also send a copy to your Deportation Officer in Boston for your local ICE file.]

FORM 2

SAMPLE HABEAS PETITION FOR PEOPLE DETAINED IN MASSACHUSETTS OR RHODE ISLAND

This is a sample habeas petition you can use as a model. Do not submit this form to the court as it is! Instead, retype this sample, filling in the blanks with the details of your own case. Use the “Guide To Using the Sample Habeas Petition” on page 20 to know which information to fill in. If a section does not apply to you, just cut it from your version.

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS***

____(A)____)	
A# _____)	
)	
Petitioner,)	Civ No. _____
)	
v.)	
____[Name of Sheriff]____)	
)	PETITION FOR A WRIT OF
Warden of)	HABEAS CORPUS PURSUANT TO
____(B)____)	28 U.S.C. § 2241, BY A PERSON
)	SUBJECT TO INDEFINITE
Respondent)	IMMIGRATION DETENTION.
_____)	

BACKGROUND

Petitioner, ____ (A) ____, hereby petitions this Court for a writ of habeas corpus to remedy Petitioner’s unlawful detention, and to enjoin Petitioner’s continued unlawful detention by the Respondent. In support of this petition and complaint for injunctive relief, Petitioner alleges as follows:

PARTIES

1. Petitioner, ____ (A) ____, is a native and citizen of ____ (C) ____ . Petitioner was taken into custody on **date** __ (a) __ and received a final order of removal from the

United States on **date** __**(b)**__. Petitioner is currently detained at ____**(B)**_____.

Petitioner has been continuously detained by the Bureau of Immigration and Customs Enforcement (ICE) for over __**(c)**__ **months**.

2. Respondent is the Warden of ____**(B)**____. As such, Respondent is responsible for the operation of the ____**(B)**____, where Petitioner is detained. Because ICE contracts with state prisons such as ____**(B)**____ to house immigration detainees such as Petitioner, Respondent has immediate physical custody of the Petitioner.

JURISDICTION

3. This action arises under the Constitution of the United States, 28 U.S.C. §2241(c)(1), and the Immigration and Nationality Act, as amended (“INA”), 8 U.S.C. § 1101 et seq. This Court has subject matter jurisdiction under 28 U.S.C. § 2241, Art. I § 9, cl. 2 of the United States Constitution (“Suspension Clause”), and 28 U.S.C. § 1331, as the 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, 688 (2001)(“We conclude that §2241 habeas corpus proceedings remain available as a forum for statutory and constitutional challenges to post-removal-period detention.”); INS v. St. Cyr, 533 U.S. 289, 301 (2001)(“at its historical core, the writ of habeas corpus has served as a means of reviewing the legality of executive detention, and it is in that context that its protections have been strongest.”); Clark v. Martinez, 543 U.S. 371 (2005)(holding that Zadvydas applies to aliens found inadmissible as well as removable).

VENUE

4. Venue lies in the District of Massachusetts because Petitioner is currently detained in the territorial jurisdiction of this Court, at the ____ **(B)** _____. 28 U.S.C. § 1391.

EXHAUSTION OF REMEDIES

5. Petitioner has exhausted his administrative remedies to the extent required by law, and his only remedy is by way of this judicial action. After the Supreme Court decision in Zadvydas, the Department of Justice issued regulations governing the custody of aliens ordered removed. See 8 C.F.R § 241.4. Petitioner received final order of removal on **date** ____ **(b)** _____. At his “90-day” custody review on or about **date** ____ **(d)** ___, ICE decided to continue his detention. Subsequently, in a decision **dated** ____ **(e)** ___, ICE’s Headquarters Post-Detention Unit (“HQPDU”) informed Petitioner that it would continue to keep him in custody despite having been detained for six-months after a final order of removal. The custody review regulations do not provide for appeal from a HQPDU custody review decision. See 8 C.F.R. § 241.4(d).

6. No statutory exhaustion requirements apply to Petitioner’s claim of unlawful detention.

[If you filed a habeas petition in the past, then include an additional paragraph:

**On date _____, Petitioner filed a petition for writ of habeas corpus *pro se*.
The district court [describe district court’s decision and reasoning].
However, more than ___ months have passed since Petitioner’s *pro se* habeas petition was filed and Petitioner still remains detained without any indication from the governments of the United States or _____ **(C)** _____ that**

Petitioner’s repatriation is reasonably foreseeable. A new habeas petition is proper in light of these new facts.]

STATEMENT OF FACTS

7. Petitioner, ___(A)___, was born in ___(C)___ on ___(f)___.

[In this paragraph, briefly describe personal background: the date and your age when you came to the United States, the reason you came to United States, your immigration status when you first came to the United States, your immigration status right before you were ordered deported, where you lived before you were taken into custody, people with whom you lived (spouse, parents), names of close relatives in the United States and their immigration status, whether you had a passport from your country of origin when you came to the United States, whether you lived in another country before coming to the United States.]

8. On date ___(i)_, ICE charged ___(A)___ with being **[inadmissible or deportable – give the reason you were ordered deported]**. He was ordered removed to ___(C)___ by the Immigration Judge (IJ) on date ___(b)___ . He did not appeal the decision of the IJ.

[This paragraph is different for every person. Here you should briefly describe the reason you were ordered deported from the United States. This paragraph will help the judge to understand the background on your case. Ideally you should include the date you were first ordered charged by ICE (and the reason) and the date you were ordered deported. You should try to include the specific section of the law that the government used to deport you (this will be on your original Notice to Appear from the government). If you appealed the Immigration Judge’s decision, you should tell the judge that, and provide the date your appeal was denied or the date you withdrew or abandoned your appeal. If you were ordered deported because you were convicted of a crime, you should include that information also.]

9. On **date** __(a)___, ICE took Petitioner into custody to await his deportation. Petitioner received a final removal order on **date** __(b)___. Since that time, Petitioner has been continuously detained by Immigration and Customs Enforcement (ICE) for over __(c)___ months.

10. ICE first reviewed Petitioner's detention status on or about **date** __(d)___ pursuant to Post-Order Custody Review procedures at 8 C.F.R. § 241.4. In a letter **dated** __(j)___, ICE denied Petitioner's request for release stating that he was **a danger to the community or a flight risk.**²⁶ See Ex. 1.

11. **On or about six months** after Petitioner's removal order became final, ICE conducted another review. In a letter dated __(e)___, ICE informed Petitioner that Petitioner would not be released because Petitioner's deportation was "reasonably foreseeable." ICE did not specify how many individuals from __(C)___ it had in fact repatriated, indicate whether it had contacted the government of __(C)___ with respect to Petitioner's case, or mention whether it had received any information from __(C)___ regarding the status of Petitioner's travel documents. Nor did it give an indication of when it expected Petitioner's travel documents would issue. Indeed, it gave no information concerning the existence or status of efforts to deport Petitioner.

²⁶ Though under Zadvydas, Petitioner has the right to be free from indefinite detention regardless of whether ICE considers him a danger to the community or a flight risk, Petitioner contests ICE's determination of dangerousness and flight risk. **[In this footnote you can explain why you are not dangerous and not a flight risk. Talk about any rehabilitation classes you have successfully completed in prison and where you would live and what you would do if you were released. It helps to attach letters from family members, friends, community leaders (like religious or social service providers) and potential employers showing that if you are released, you will have a place to live, a job, and will not flee or get into trouble.]**

12. In the (h) **months** that have passed since Petitioner’s last custody review, ICE has not notified Petitioner of any progress in Petitioner’s repatriation.

13. To Petitioner’s knowledge, the government of (C) has not issued travel documents for him. Indeed, neither ICE nor (C) have provided any indication that (C) would accept Petitioner in the reasonably foreseeable future.

14. ICE has never asserted that Petitioner has failed to cooperate in his deportation. To the contrary, Petitioner on his own initiative, and through the help of friends and family, has tried to expedite his repatriation to (C) and release from custody.

[This is a very important part of your petition. Make sure that everything here is true; if not, change it. For example, if ICE has accused you of failing to cooperate, show why this is not true, and attach proof of your efforts to cooperate. You should list here all the communications you or your family members have had with ICE or with your consulate in an attempt to speed up your deportation. Give the dates and a description of all correspondence, and be sure to state whether ICE or your consulate responded to your inquiries. For example, you could write something like: “December 10, 2008: sent letter to Cambodian consulate asking about travel documents. No response” or “January 5, 2009: mother called Cambodian embassy about travel documents. No response.” Attach a photocopy of every letter you have sent to or received from ICE or your consulate. If you have had phone conversations, be sure to include the date and the name of the person you spoke with. It is helpful to have copies of as much written correspondence as possible. Always make sure that your written correspondence is polite and respectful (even if you are angry that you haven’t yet been deported) because the court will be more inclined to find your case sympathetic.]

15. For all the reasons stated within, Petitioner’s removal is not reasonably foreseeable.

LEGAL FRAMEWORK FOR RELIEF SOUGHT

16. In Zadvydas, the Supreme Court held that 8 U.S.C. § 1231(a)(6), when “read in light of the Constitution’s demands, limits an alien’s post-removal-period detention to a period reasonably necessary to bring about that alien’s removal from the United States.” 533 U.S. at 689. A “habeas court must [first] ask whether the detention in question exceeds a period reasonably necessary to secure removal.” Id. at 699. If the individual’s removal “is not reasonably foreseeable, the court should hold continued detention unreasonable and no longer authorized by statute.” Id. at 699-700.

17. In determining the length of a reasonable removal period, the Court adopted a “presumptively reasonable period of detention” of six months. Id. at 701. After six months, the government bears the burden of disproving an alien’s “good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future.” See Zhou v. Farquharson, 2001 U.S. Dist. LEXIS 18239, *2-*3 (D. Mass. Oct. 19, 2001) (quoting and summarizing Zadvydas). Moreover, “for detention to remain reasonable, as the period of prior post-removal confinement grows, what counts as the ‘reasonably foreseeable future’ conversely would have to shrink.” Zadvydas, 533 U.S. at 701. ICE’s administrative regulations also recognize that the HQPDU has a six-month period for determining whether there is a significant likelihood of an alien’s removal in the reasonably foreseeable future. See 8 C.F.R. § 241.4(k)(2)(ii).

18. Evidence showing successful repatriation of other persons to the country at issue is not sufficient to meet the government’s burden to establish that an alien petitioner will be deported within the reasonably foreseeable future. See Thompson v. INS, 2002 U.S. Dist. LEXIS 23936 (E.D. La. September 16, 2002) (government failed to show that

alien's deportation to Guyana was reasonably foreseeable where the government offered historical statistics of repatriation to Guyana, but failed to show any response from Guyana on the application for travel documents that INS and the petitioner had requested). Rather, for the government to meet its burden of showing that an alien's repatriation is reasonably foreseeable, it must provide some meaningful evidence particular to the individual petitioner's case.

19. An alien who has been detained beyond the presumptive six months should be released where the government is unable to present documented confirmation that the foreign government at issue will agree to accept the particular individual in question. See Agbada v. John Ashcroft, 2002 U.S. Dist. LEXIS 15797 (D. Mass. August 22, 2002) (court "will likely grant" habeas petition after fourteen months if ICE "is unable to present document confirmation that the Nigerian government has agreed to [petitioner's] repatriation"); Zhou, 2001 U.S. Dist. LEXIS 18239 (ordering that the writ of habeas corpus issue within 60 days, given petitioner's 13-month detention and the INS's inability to assure the court that the paperwork from China was on its way); Abdu v. Ashcroft, 2002 U.S. Dist. LEXIS 19050 at *7 (W.D. Wash. February 28, 2002) (government's failure to offer specific information regarding how or when it expected to obtain the necessary documentation or cooperation from the foreign government indicated that there was no significant likelihood of petitioner's removal in the reasonably foreseeable future).

CLAIMS FOR RELIEF

COUNT ONE

STATUTORY VIOLATION

20. Petitioner re-alleges and incorporates by reference paragraphs 1 through 19 above.

21. Petitioner's continued detention by the Respondent violates 8 U.S.C. § 1231(a)(6), as interpreted in Zadvydas. Petitioner's six-month presumptively reasonable period for continued removal efforts passed more than (h) months ago. For the reasons outlined above in paragraphs 1 to 20, Petitioner's removal to (C) is not reasonably foreseeable. The Supreme Court held in Zadvydas that the continued detention of someone after six months where deportation is not reasonably foreseeable is unreasonable and in violation of 8 U.S.C. § 1231(a). 533 U.S. at 701.

COUNT TWO

SUBSTANTIVE DUE PROCESS VIOLATION

22. Petitioner re-alleges and incorporates by reference paragraphs 1 through 21 above.

23. Petitioner's continued detention violates his right to substantive due process by depriving him of his core liberty interest to be free from bodily restraint. See, e.g., Tam v. INS, 14 F.Supp.2d 1184 (E.D. Cal 1998)(aliens retain substantive due process rights). The Due Process Clause requires that the deprivation of petitioner's liberty be narrowly tailored to serve a compelling government interest. See Reno v. Flores, 507 U.S. 292, 301-02 (1993). While the respondents would have a compelling government interest in detaining petitioner in order to effect his deportation, that interest does not exist if Petitioner cannot be deported. The Supreme Court in Zadvydas thus interpreted

8 U.S.C. § 1231(a) to allow continued detention only for a period reasonably necessary to secure the alien's removal because any other reading would go beyond the government's articulated interest -- to effect the alien's removal. See Kay v. Reno, 94 F.Supp.2d 546, 551 (M.D. Pa. 2000)(granting writ of habeas corpus because petitioner's substantive due process rights were violated, and noting that "If deportation can never occur, the government's primary legitimate purpose in detention--executing removal--is nonsensical").

COUNT THREE

PROCEDURAL DUE PROCESS VIOLATION

24. Petitioner re-alleges and incorporates by reference paragraphs 1 through 23 above.

25. Under the Due Process Clause of the United States Constitution, an alien is entitled to a timely and meaningful opportunity to demonstrate that he should not be detained. The Petitioner in this case has been denied that opportunity as there is no administrative mechanism in place for the Petitioner 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 prays that this Court grant the following relief:

- 1) Assume jurisdiction over this matter;
- 2) Grant Petitioner a writ of habeas corpus directing the Respondents to immediately release the Petitioner from custody, under reasonable conditions of supervision;

- 3) Order Respondents to refrain from transferring the Petitioner out of the jurisdiction of the ICE Boston District Director during the pendency of these proceedings and while the Petitioner remains in Respondent's custody; and
- 4) Grant any other and further relief which this Court deems just and proper.

I affirm, under penalty of perjury, that the foregoing is true and correct.

Respectfully submitted this ____ day of _____, 20__.

_____ [signature]

____(A)____, *Pro Se*

[Your address]

Certificate of Service

I, (A) , certify that a true copy of the above document (Petition for Writ of Habeas Corpus) together with attached documents, was served on date _____, upon the following:

[If you are detained in Massachusetts]:

U.S. Attorney's Office
John Joseph Moakley U.S. Courthouse
1 Couthouse Way, Suite 9200
Boston, MA 02210

[If you are detained in Rhode Island]:

U.S. Attorney's Office
District of Rhode Island
50 Kennedy Plaza, 8th Floor
Providence, RI 02903

by placing a copy of the above in the mail system at the facility where I am detained.

_____ [signature]

____(A)____, *Pro Se*

List of Sheriffs and Wardens

Massachusetts:

Bristol County Jail and House of Correction (N. Dartmouth)

Thomas M. Hodgson, Sheriff

Suffolk County House of Correction

Andrea J. Cabral, Sheriff

MCI-Shirley

Paul M. Verdini, Superintendent

Rhode Island:

Wyatt Detention Facility

Wayne Salisbury, Warden

Maine:

Cumberland County Jail

Mark N. Dion, Sheriff

Connecticut:

Hartford Correctional Center

Charles Lee, Warden

York Correctional Institution Institution

Lori Ricks, Warden

Plymouth County Correctional Facility

Joseph D. McDonald, Sheriff

MCI-Shirley

Luis Spencer, Superintendent

Norfolk County Sheriff's Office and Correctional Center

Michael Bellotti, Sheriff

Osborn Correctional Institution

David Strange, Warden

Danbury Federal Correctional

William Willingham, Warden