NATIONAL IMMIGRATION PROJECT

Lawyers for the Movement

HABEAS EXPLAINER PACKET

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*You can also use our **free, online DetentionHelp tool**, built in partnership with the Asylum Seeker Advocacy Project (ASAP) and Human Rights First to help people in immigration detention ask a federal court to release them — without a lawyer. This updated version of the habeas explainer packet follows the same structure as the online tool, using addendum sheets for each claim. Thanks to ASAP for developing this structure and portions of the accompanying text.*

COMMUNITY EXPLAINER

HABEAS
FREQUENTLY ASKED QUESTIONS

Note that this FAQ is not and does not replace legal advice. Every situation is different, and this FAQ cannot provide advice about what you should do or file in your individual case. Please also note that this habeas packet is intended for adults in ICE custody.

What is a habeas petition?

A habeas petition (formally known as a petition for habeas corpus) asks the court to order the person filing it (the "petitioner") released from custody because that custody is unlawful. The unlawful custody could be in jail, prison, or immigration detention. Here, we are talking about habeas petitions filed in federal district court for release from immigration detention.

What is mandatory detention?

Mandatory detention means that the immigration court cannot hold a bond hearing or grant someone bond in order to get out of detention. There are three groups of people whom the Immigration and Nationality Act (abbreviated as "INA") generally subjects to mandatory detention. These three groups of people are described in three different parts of the INA:

a. **236(c) –** People in removal proceedings (the immigration court process where the government tries to deport someone) who have certain criminal convictions; some people who entered without permission may also be subject to mandatory detention under this section for certain criminal charges (even if not convicted).

b. **235(b) –** People in removal proceedings who are "applicants for entry" and who are "arriving" to the United States; historically this has referred to people who present themselves at a port of entry (at the border or an airport) and are arrested and detained there (but see below for a discussion of how this group has been expanded under the case *Yajure Hurtado*).

c. **241(a) –** People who have final orders of removal, meaning that they either did not appeal the immigration judge's decision to order them removed or their appeal was also denied by the Board of Immigration Appeals. This section also applies to people who have old orders of removal, including expedited or in absentia removal orders, as well as to people who were granted withholding of removal or protection under the Convention Against Torture. Those two forms of relief result in a removal order to the person's country of origin that ICE is not permitted to carry

out; under this administration, ICE has instead been detaining people with those forms of relief and attempting to deport them to third countries. People who fall under this category are subject to *mandatory* detention for only the first 90 days after the removal order becomes final unless ICE argues that the person is preventing their own deportation by failing to comply with ICE's requests to deport them. Once the 90 days is up, a person does not automatically get released or get a bond hearing; instead, ICE conducts what are called "Post-Order Custody Reviews" that are routinely denied. This means a person often needs to file a habeas petition – which they can do 180 days after the order is final – to get another court to review whether they are likely to be deported soon. If removal is not significantly likely in the reasonably foreseeable future, these people should be released.

Who is eligible for a bond hearing?

Historically, people who do not belong to any of these categories and instead fall under another section known as 236(a) of the INA have been eligible for a bond hearing. Until recently, this group has always included those who crossed the border undetected and without permission, as well as those who entered legally, say, with a visa. In September of 2025, the Board of Immigration Appeals (BIA) issued a decision, *Yajure Hurtado*, that says that immigration judges must deny a bond hearing to anyone who entered without permission, because they are still "arriving" and "applicants for entry." In other words, the BIA made a huge number of people who have always been eligible for a bond hearing under 236(a) subject to mandatory detention under 235(b).

Unless you are in the Fifth Circuit or the Eighth Circuit (see below for people detained in Texas, Louisiana, Mississippi, Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, or South Dakota), you CAN use our *Yajure Hurtado* template to challenge your detention because of this decision.

Unfortunately, the Fifth Circuit issued a bad decision agreeing with *Yajure Hurtado* on Feb. 6, 2026, called *Buenrostro-Mendez v. Bondi,* and on March 26, 2026, the Eighth Circuit issued a similar bad decision called *Avila v. Bondi.* If you are in the Fifth Circuit, or the Eighth Circuit, you CANNOT use our template for the *Yajure Hurtado* scenario, but you CAN use our template for the due process scenario to challenge your detention.

When can I file a habeas petition to get out of immigration detention?

In its attempt to detain and deport as many people as possible, ICE has been violating the law, and detaining people they would not have in prior administrations. As ICE and the Trump administration expand detention, the potential legal claims challenging detention and the law around detention have also rapidly expanded and changed.

If you believe that your detention is unfair, or if it is negatively affecting you (e.g., you do not have adequate medical care, or access to hygiene, or are unable to practice your religion) you can try to use a habeas petition to seek release. You can definitely file a habeas petition if you are experiencing a medical emergency. You may have a greater chance of success if your situation matches one or more of the claims we discuss below. We suggest that ***everyone* who files a habeas petition include a claim**

that their detention violates the Fifth Amendment, which guarantees due process and fundamental fairness (referred to as "General due process" below).

Additionally, you should include **all** of the additional claims **that match your situation**. **Please review them carefully**; no one is eligible for all of the below claims, but it is common that someone may be eligible for more than one. **There may be claims that are valid that we don't yet have template language for – this is an evolving document.**

a. **General due process (FOR EVERYONE): anyone who is in detention and believes their detention is unfair can use this claim.** Due process means the steps that the government has to take before it can take one of your rights away, like your freedom. Those steps are meant to make the government's actions fair. When you make this claim you are saying that the government took away your liberty in a way that was not fair. **There is no guarantee that you will win using this argument or any other.** But everyone who is filing a habeas petition can include this claim and we recommend that you do.

   This claim is **especially important to include** if you previously encountered ICE and were released on your own recognizance or as an

   i. unaccompanied child and ICE re-detained you;
   ii. you have SIJS (visa juvenil);
   iii. none of the other scenarios apply, but you have an emergency medical issue that requires your release; or
   iv. you are **in the Fifth Circuit or the Eighth Circuit** and your most recent arrest was not at or very near the border or very soon after you entered (that is, you would be in the *Yajure Hurtado* scenario, but you can't use that template because of the bad decision in *Buenrostro* or *Avila*).

b. **Medical Emergency:** You have a medical emergency and you are not receiving adequate medical care in ICE detention.

c. ***Yajure Hurtado:*** ICE is using the wrong authority to deny you a bond hearing, most commonly in the *Yajure Hurtado* scenario described above; or your most recent arrest was in the U.S. and not right at the border when you arrived, but the immigration judge refuses to grant you a bond hearing. If the immigration court refuses to hold a hearing at all – which is not the same as the court denying your bond or setting a bond amount that you cannot afford after a hearing where they consider evidence – then you can file a habeas petition. We **do** have an annotated form for this scenario. **Because of bad court decisions, if you are in the Fifth Circuit (Texas, Louisiana, or Mississippi) or the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, or South Dakota),** you can still file a habeas petition but it will just use the "For Everyone" Addendum sheet (plus any other claims you have).

d. **Prolonged Detention:** You do not have a final order of removal, and you are subject to mandatory detention, but your detention has become prolonged, meaning that it has gone on for so long that it violates your constitutional rights. Usually detention becomes prolonged if you have been detained for a period of six months or more.

e. **Post Final Order:** You have a final order of removal, but it is not likely that ICE will be able to remove you for the foreseeable future, usually because there is no progress on your deportation after you have been detained for six months or more.

f. **OSUP Revocation:** You were previously released on an Order of Supervision (OSUP), which is for people who have a final removal order, and ICE re-detained you without following its own rules for revoking an OSUP, which require a) providing you notice beforehand; b) giving you an opportunity to respond to ICE's reasons for revoking your OSUP; and c) there being changed circumstances in your case (like violating the terms of your release or ICE arranging for your deportation).

g. **Parole Revocation:** You were previously released on parole and ICE re-detained you or detained you for the first time without any reason for doing so (such as violating the terms of your release), and (if this is true in your case) with no written notice before revoking your parole.

h. **DACA (Deferred Action for Childhood Arrivals), other forms of deferred action (SIJS deferred action, U, T, or VAWA deferred action, DALE):** You have current valid DACA or other deferred action.

i. **TPS (Temporary Protected Status):** You either have valid and current valid TPS and possibly if you submitted an eligible application on time.

j. **Fourth Amendment Violations:** If ICE arrested you in public without an administrative warrant and without reason to believe that you are in the country unlawfully or violated federal criminal law, or without reason to believe that you would flee before they could get a warrant (for example, if they did not ask you any questions or if you refused to answer their questions and they arrested you anyway), OR if ICE arrested you by entering your home without a judicial warrant or your consent to enter.

What can't I use a habeas petition for?

You can't use a habeas petition to challenge how the immigration court ruled on your immigration case. For example, if you lost your asylum case in immigration court, you could not bring a habeas petition to get the federal court to review that decision, even if that decision was a long time ago and you still have a fear of return. Those kinds of challenges have to go through the appeals process, first to the BIA within 30 days of the immigration judge's removal order and then through a petition for review process to the U.S. Court of Appeals that has jurisdiction, or authority, where the immigration court is located. Sometimes you can challenge the decision of the immigration judge or the BIA through a Motion to Reopen to either the immigration judge or the BIA, but strict rules apply to these. You also generally can't use a habeas petition to challenge an immigration judge's decision to deny you release on a bond if you had a bond hearing.

Where do I file a habeas petition?

You file a habeas petition with the federal district court that has jurisdiction where you are detained.

For example, if you are detained in Otay Mesa, California, you would file your habeas petition in the Southern District of California; if you are detained in Jena, Louisiana, you would file your habeas petition in the Western District of Louisiana. In order to figure out what district court you should file in, enter the address of the detention center where you are located here, at https://www.uscourts.gov/federal-court-finder/find. The search will return multiple kinds of federal courts; you want the "District" court. Once you know that, you can search your district court for the clerk office address.

Who is the opposing party?

When you file a habeas petition, you become the petitioner. The "respondent" is the person you are saying is holding you illegally – meaning ICE, but also the warden of the detention center where you are being held. It is generally a good idea to put as respondents:

- The warden
- The Area Field Office Director of ICE
- The Director of ICE
- The Attorney General

It's okay if you don't know the names of some or all of these people. You can just write in their titles.

How do I file a habeas petition?

Every district court has different rules for how exactly to file things. You can use the habeas petition form from the federal courts website (usable in all federal courts) and then mail **at least two copies** (some courts require 3) to the clerk's office of the appropriate district court. We also recommend filing a **motion to proceed in forma pauperis and a motion for the appointment of counsel**. **See our attached instructions and annotated forms for more information.** The motion to proceed in forma pauperis excuses the filing fee by letting the court know that you do not have enough money; you can alternatively pay the filing fee, which is $5, but some courts require the motion to proceed in forma pauperis in order to appoint counsel (meaning assign a free lawyer to represent you). You must usually pay the $5 fee by check or money order.

The court will handle service for you if your motion to proceed in forma pauperis is granted. Otherwise, you may also need to serve your habeas petition and other motions, meaning that you must send copies of them to the local Assistant U.S. Attorney's office and the warden. You may also need to send them to the Area Field Office for ICE, and the Attorney General. Sometimes you need to mail these copies when you file and include a certificate of service, which is a written statement, dated and signed under penalty of perjury that you mailed copies to the offices mentioned above. Sometimes the court will serve the respondents for you regardless of whether or not you are proceeding in forma pauperis, just because you are pro se (meaning without an attorney); and sometimes the court will issue a summons, a document that alerts the government that you have filed a habeas petition, that you must then send to those offices.

When in doubt, call the clerk for the district court where you are filing! Clerk's offices for the federal district court are usually very helpful and will have all the information about the rules and how to file the petition correctly.

How long do habeas petitions take?

Sometimes the court will order the government to respond quickly, and sometimes the court will give them more time, up to 21 or 30 days. Once the government responds, you will have the opportunity to reply, meaning you can write to the court and say what the government got wrong. (You don't have to do this.) There won't usually be a hearing in a habeas case if you remain pro se. Because the government has to have the opportunity to respond to your habeas petition and then you have the opportunity to reply to the government, a decision can take several months.

Are there risks to filing a habeas petition?

YES, if you already have a final order of removal or if you receive one while your habeas petition is pending, ICE may speed up its efforts to deport you, and/or may deport you to a third country. Once you are deported, you are out of detention, and so ICE can tell the court that your petition is moot, meaning there is no point to it anymore.

I want to be deported more quickly – will filing a habeas petition help?

Maybe. As noted above, if you have a final order of removal, ICE may speed up its efforts to deport you (including to a third country) rather than respond to your habeas petition in court.

INSTRUCTIONS FOR USING HABEAS TEMPLATES

1. Collect your blank forms, blank sheets of paper, and the annotated form.

Gather the materials you will need:

- blank versions of a habeas form,
- the in forma pauperis (IFP) form, and
- the. motion to appoint counsel, as well as the annotated habeas form and several blank sheets of paper.

The IFP form and the motion to appoint counsel should be completed in the same manner for everyone for all three scenarios; some portions of the habeas form will also be filled out the same way regardless of which claims you add.

2. Fill out the habeas form.

The habeas form has 15 questions, as well as the caption, or the spaces at the top of the form. For each scenario, we have checked boxes that will be true for everyone. The habeas form is used for people in a lot of different situations, and will have questions that are not relevant to you. **We have also provided suggested answers that you can copy as they appear for Question 8, Question 9, Question 13, Grounds for Your Challenge, Ground One, and Question 15, Request for Relief.**

Caption: You are the petitioner and your name goes above that line. On the line under the v., where it says "name of warden or authorized person having custody of petitioner," you should write the title of the following people: the warden of the facility where you are held, the Area Field Office Director for ICE, the Director of ICE, and the Attorney General. If you know the names of these people, you can include them, but if you do not, the title alone should be sufficient.

Question 1(a): Write your full name here
Question 1(b): Write any other names you have used (for example, your maiden name if you are married)
Question 2(a): Write the name of the detention center where you are being held
Question 2(b): Write the address of the detention center where you are being held
Question 3: Check the box for "Federal authorities"
Question 4: Check the box for "Being held on an immigration charge"
Question 5: Check the box for "Immigration detention"

Question 6(a): If you never requested a bond hearing because you know that you will not receive one because you are being held under mandatory detention, or post-final order, the name and location of the agency is the ICE Area Field Office and their address. If you asked for a bond hearing from the immigration court and were denied a hearing (usually a decision that says the court did not have jurisdiction), then you are challenging the immigration court's order denying the bond hearing taking place, and you should give the name and address of the immigration court that denied you a bond hearing.
Question 6(b): This is your A number
Question 6(c): If you never asked for a bond hearing, you are challenging ICE's custody determination and any custody reviews that you have had. If you asked for a bond hearing and were denied, you are challenging the immigration court's decision to deny you a bond hearing.

Question 7 First Appeal (a)(1)–(6): Only check yes if you appealed an immigration court's denial of a bond hearing (or bond) to the Board of Immigration Appeals. Otherwise, check no. If you appealed the immigration court's denial of a bond hearing to the Board of Immigration Appeals (BIA), then the name of the court is the Board of Immigration Appeals, the date is when you filed your appeal, the case number is your A number, the result is either a denial or "pending," the date is when they denied or "pending," and the issues raised are what you said in your appeal.
Question 7 First Appeal (b): If you only ever received custody determinations from ICE, you can say "Not applicable." If you received a negative decision from an immigration judge and did not appeal, you can say "See Addendum."

Question 8 Second Appeal: Check "no" and under 8(b), you can say "not applicable."
Question 9 Third Appeal: Check no and under 9(b), write "not applicable."
Question 10: Mark "No"

Question 11: Mark "Yes"
Question 11(a): Put down the date that ICE arrested you.
Question 11(b): Put down the date you received a reinstatement of removal order; the date that you waived appeal; or the date that the BIA denied your appeal. If you do not have a final order, write "No final order; immigration judge ordered removed on [DATE]" and include the date the IJ ordered you removed. If you don't have a removal order at all, write "No removal order, case pending."
Question 11(c): If you have appealed to the BIA, check "Yes," if not, check "No"; if "No," skip 11(c)(1)-(5).
Question 11(c)(1)-(5): The date is the date that you filed your appeal of your immigration case - not your bond hearing - with the BIA; the case number is your A number; for result, write whether the BIA granted or denied your appeal or, if you don't have a decision yet, write "pending"; date of result is the date of the decision or "pending"; and for issues raised, you should write all of the applications for immigration relief that you were denied and are appealing (for example, asylum, or cancellation of removal), as well as a brief summary of what you wrote in your appeal (for example, the immigration judge did not fully consider your evidence).

Question 11(d): If you have filed a petition for review (PFR) with the federal U.S. Court of Appeals, mark "Yes"
Question 11(d)(1)-(5): The date is the date that you filed your PFR; the case number is whatever the court assigned; for result, write whether your PFR was granted or denied or is pending; for date of result, write the date of the court's decision or "pending"; and for issues raised, write a brief summary of what you wrote in your appeal. **If you applied for a stay of removal, have an an automatic stay in place, or if the court granted your stay motion, you should include that information.**

If you have won at the BIA or U.S. Court of Appeals and then had to appeal to either or both again, note this in your addendum, including all of the dates of relevant decisions.

Question 12: Check "No"

Question 13: Write "See Addendum."

Question 14: Write "See Addendum."

Question 15: Write "See Addendum."

3. Decide which addendum sheets will apply to you and pull them from the template.

You should include the Addendum sheet labeled "FOR EVERYONE." If none of the scenarios below apply to you, then this will be your only addendum sheet.

Otherwise, choose which of the following claims apply to you, and include in your habeas petition **all of the claims that apply to you** [note that it is not possible for every single claim to apply to one person]. **There is no guarantee that any of these claims will work – the law can change rapidly and vary from place to place in ways we cannot capture in this guide. These are offered to provide you the best chance of getting out of detention:**

***Yajure Hurtado* Claim**: You should use this addendum sheet if ICE and the immigration court are denying you a bond hearing because they claim that you are detained under 235(b), but your most recent arrest **was not** at or very near the border at the time of or immediately after your crossing and you **are not in the Fifth Circuit (Texas, Louisiana, and Mississippi) or the Eighth Circuit (Arkansas, Iowa, Minnesota, Missouri, Nebraska, North Dakota, or South Dakota)**. For example, you may have been arrested in your home years after your entry, but because you did not enter with a visa or other permission, ICE says you are an "applicant for entry" and "arriving." You can use this form **if you asked for a bond hearing and the IJ denied your request** (meaning that you did not even get to have a hearing about bond where the IJ considered evidence, not that the IJ denied you bond after concluding you were either a flight risk or a danger to society), but you don't need to have asked for a bond hearing to use the form.

Prolonged Detention Claim: You should use this addendum sheet if you:

- have *never* had a bond hearing because you have certain criminal convictions or charges, or
- you were arrested at or near the border, passed a credible fear interview, and have never been released, and you don't have a final removal order.

Your detention is generally not prolonged until you have spent **six months or more** in immigration detention (but if you're in Georgia, Florida, or Louisiana, for example, you may need to wait for **12 months**).

Post-Final Order Claim: You should use this addendum sheet if you already have a final order of removal, meaning that you lost your case before the immigration judge and either did not appeal or also lost before the Board of Immigration Appeals, and if you do not have a stay of removal from a federal U.S. Court of Appeals in place. Once 180 days (six months) have passed after you received your final order (usually the date when you waived appeal or when the Board of Immigration Appeals denied your appeal), the court will assume that it is not reasonable for ICE to continue to detain you unless ICE can show that they are about to deport you or have another very good reason to hold you. **Filing a habeas petition may cause ICE to deport you faster or to attempt to deport you to a third country.**

OSUP Revocation Claim: You should use this addendum sheet if you were previously released on an Order of Supervision (OSUP) after a removal order and ICE re-detained you without a) providing you notice beforehand; b) giving you an opportunity to respond to ICE's reasons for revoking your OSUP; and c) when there were no changed circumstances in your case (like violating the terms of your release or ICE arranging for your deportation). People who are released on OSUPs usually have final orders of removal, and **filing a habeas petition may cause ICE to deport you faster or to attempt to deport you to a third country.**

Parole Revocation Claim: You should use this addendum sheet if you were originally granted parole (likely in order to pursue asylum) and ICE re-detained you or has detained you for the first time.

TPS Claim: If you have TPS, you cannot be detained or deported. If you have been granted TPS and it is still active, or if you applied on time to renew your TPS and the renewal is pending, include this

claim. If you applied on time for TPS and met all the requirements, but your application has remained pending and was never granted or denied, you should include the version of this claim for people with a pending TPS decision.

DACA or Other Deferred Action: If you have current and valid DACA or other deferred action (such as for a U visa, T visa, VAWA, DALE, or SIJS), you cannot be deported and your detention serves no lawful purpose, and you should include this claim.

Fourth Amendment Violation: The Fourth Amendment and ICE's own regulations require that ICE have sufficient evidence that gives them "reason to believe" that someone has violated immigration laws before they make an arrest. If you are in public and ICE has an administrative warrant naming you, then ICE may arrest you. **Without an administrative warrant**, ICE generally must ask questions or be able to observe other kinds of evidence that gives them this reason to believe you have violated immigration laws **AND**, additionally, must have reason to believe – again based on evidence – that you will flee before ICE can get an administrative warrant. ICE also may not enter your home without a judicial warrant or your consent, even if they have an administrative warrant for your arrest. You may include this claim if ICE arrested you without an administrative warrant in public or without a judicial warrant in your home.

4. Fill out your Addendum sheets.

FOR EVERYONE:

At the top of the for everyone addendum sheet, you will see the following language:

"Addendum to Petition for a Writ of Habeas Corpus
Under 28 U.S.C. § 2241

AO 242, Section: Your Earlier Challenges of the Decision or Action

There is no statutory exhaustion requirement for habeas petitions challenging the lawfulness or constitutionality of immigration detention. *Montano v. Texas*, 867 F.3d 540, 542 (5th Cir. 2017). Also, requiring exhaustion is not appropriate when the petitioner could suffer irreparable harm, or when it would be futile. *McCarthy v. Madigan*, 503 U.S. 140, 144-49 (1992). Continued unlawful detention is an irreparable harm. It would also be futile to raise appeals about the constitutionality of detention before the Department of Homeland Security (DHS) or the Executive Office for Immigration Review (EOIR), including the immigration courts and the Board of Immigration Appeals.

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ONE

My detention violates both the substantive and procedural due process requirements of the Fifth Amendment of the U.S. Constitution."

You can copy this language directly onto your Addendum sheet. Once you get to "**Supporting Facts**," write in that header and then beneath it, write two sections. In the first section, write background information about yourself. Please write a paragraph or more explaining who you are, who depends on you, and how you contribute to your local community. Write in your own voice ("I was...", "I tried...", etc.). **Please do not include private information (for example, the names of children) that you do not want other people to know.**

Consider including the following information if it applies in your case:

- Your age, the city and state where you live, and if you have lived in the U.S. for a long time
- Children or family members who are U.S. citizens and U.S. permanent residents
- People in the U.S. who depend on you, and how you help them
- If you have a work permit, describe your work
- Your participation in local organizations, like church, schools, and volunteering
- If you have NEVER been arrested or convicted of a crime, it is helpful to include that fact
- If you currently have lawful immigration status (including DACA or other deferred action or TPS) or a pending immigration application (like SIJS), it is helpful to include that information
- **If you were previously released on your own recognizance** after any time in ICE or CBP custody (if you were given the form I-220A), you should say that
- **If you were previously released from ORR custody (a shelter) as an unaccompanied child, you should say that**
- If you have complied with your immigration requirements, such as immigration court hearings, ICE check-in, or other processes, it is helpful to include that information
- Other facts that show you have positive community ties to the United States and that you are not a flight risk

After you have completed the first background information section, please write a paragraph or more explaining any **difficulties you have had in detention or mistreatment by immigration officials**. Write in your own voice ("I was...", "I tried...", etc.). **Please do not include private information (for example, the names of children) that you do not want other people to know.**

Consider including the following information if it applies in your case:

- Any mistreatment by immigration officials at the time of your arrest
- Any mistreatment by immigration officials during your detention
- Any difficult conditions you have experienced in the detention center
- Any health issues you have experienced while detained
- Any problems receiving medication and adequate medical treatment
- Any problems with basic necessities such as food, hygiene, or sleep
- Any difficulties communicating with or supporting loved ones while detained
- Any emotional distress you have experienced due to your detention
- Any attempts to get ICE to release you and why they were not successful
- Other facts that show the hardships you have experienced as a result of your detention and arrest

Once you have completed your paragraphs that provide the facts related to your case, you can add:

"Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Legal Memorandum

The Fifth Amendment of the U.S. Constitution guarantees the right to due process to people in the United States, regardless of their immigration status. Under procedural due process, the government cannot deprive a person of their liberty without a fair process. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under substantive due process, the government must have a legitimate purpose for immigration detention – specifically, preventing flight risk or preventing danger to the community. Immigration detention is not supposed to be a form of punishment. *Zadvydas v. Davis*, 533 U.S. 678 (2001)."

Additional potential claims

You should also create addendum sheets for any additional claims that apply to you. We have provided template addendum pages following the template form, and you can use those instead of or alongside these instructions. For each claim that matches your situation, you can use the legal language provided below and write in supporting facts for each. The claim that everyone should make is labeled "GROUND ONE"; additional claims should be numbered to follow (for example, if you have one additional claim and it is *Yajure Hurtado*, you would write "GROUND TWO" for that addendum; if you have two additional claims, the next claim would start as "GROUND THREE").

Every additional addendum sheet should be formatted similarly to the first one that everyone should include, described above. At the top of each sheet, write:

"Addendum to Petition for a Writ of Habeas Corpus
Under 28 U.S.C. § 2241

AO 242, Section, Grounds for Your Challenge in This Petition

GROUND [and here you should put whatever number comes next, depending on how many claims you include]

[Then under GROUND X, you can write the legal language that corresponds to each claim as specified below.]

Supporting Facts

See facts listed under Ground One. Additional facts are listed below:

[Describe the parts of your case that the bullets for the claim you are using ask for. When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know.]"

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Possible claims:

Medical Emergency:

Legal language: My detention is an unreasonable risk to my health and safety, in violation of the Fifth Amendment of the U.S. Constitution.

Supporting Facts:

- The medical problems you are having
- Any problems you have had receiving adequate treatment or medications
- Any attempts you have made to get better medical care in detention
- Why the medical problems you are having are an emergency
- Why remaining in detention would be a threat to your health or safety

Yajure Hurtado:

Legal language: I am detained under 1226(a), not 1225(b), because I was not "arriving" or "seeking admission" when I was arrested by ICE, since I am not a recent entrant. My continued detention without a bond hearing violates the Immigration and Nationality Act and the Fifth Amendment of the Constitution.

Supporting Facts:

- The circumstances of your arrest by ICE, including the geographical location and how long it had been since you entered the United States.
- How long you have lived in the U.S.

Prolonged detention:

Legal language: My detention has become unconstitutionally prolonged and violates the 5th Amendment of the Constitution.

Supporting Facts:

- The length of your detention (for example, "I have been detained in ICE custody for 7 months.")
- Any delays caused by the government (for example, how long did it take to get an initial hearing and subsequent hearings? Did ICE ever ask for more time between your immigration court hearings?)
- The reason for any delays that you caused (for example, "I requested a brief continuance to seek counsel, but I have not unreasonably delayed the immigration court process.")

Post-final order:

Legal language: Because my deportation to any country is not significantly likely in the reasonably foreseeable future, my detention no longer serves a legitimate purpose and violates the Immigration and Nationality Act (8 U.S.C. § 1231) and the Fifth Amendment of the Constitution.

Supporting Facts:

- How long you have been detained **since receiving your final order of removal**
- How you have complied with ICE's attempts to deport you (did you sign what they asked you to; did you communicate with your consulate etc.)
- Why you think that it is not likely that ICE will deport you in the near future (for example, you have not heard any updates in X amount of time, you know that your country of origin will not take you back, you have claimed that you fear deportation to a third country, etc.)

OSUP revocation:

Legal language: This claim has multiple grounds. Label each one with whatever number comes next. For the first ground: "Immigration and Customs Enforcement violated the Administrative Procedure Act, the Accardi doctrine, and the Fifth Amendment when it failed to follow its own regulations governing the revocation of an order of supervision, 8 C.F.R. §§ 241.4, 241.13: they did not provide me with any notice or an interview that would allow me to contest the reasons for revocation. ICE also did not revoke it for a permissible reason under the agency's own regulations, because I have not violated the terms of my release and no change in circumstances has made my removal significantly likely in the reasonably foreseeable future."

Supporting Facts:

For supporting facts, you want to show that ICE gave you no notice and/or did not interview you before or after re-detaining you, by describing what happened when ICE detained you. You also want to show that no circumstances have changed since you received your OSUP that would justify your re-detention. Some things that might count as changed circumstances are if ICE has arranged for your deportation, something in your country of deportation has changed and so **you** can now be deported there (not just that some people can be), ICE has gotten travel documents or made travel arrangements for your deportation, or a third country that you may have no ties to has agreed to accept **you**. Failing to comply with the terms of your release, like missing a check-in, would also be a changed circumstance.

- Were you given any written paperwork explaining the reasons for re-detaining you?
- Did the officers ask you any questions or offer you any explanation?
- Describe how nothing has changed in your case that means that your removal is likely in the near future:
  - Has ICE gotten travel documents for you or made travel arrangements?
  - Has a third country agreed to accept you?
- Describe how you complied with the terms of your release before your re-detention:
  - How frequent were your check-ins, how long have you had check-ins, and did you attend all of them? If you missed one, when did that happen and what were the circumstances?
- If you have not had any new convictions or contacts with law enforcement, you should write that. If you have had any new convictions or contacts with law enforcement, you can consider explaining why they should not have led to redetention (based on the severity of the offense, rehab, etc.) and that you were still entitled to notice and an interview before re-detention regardless.

- Provide any information about why you can't be deported to your country. If you have had check-ins for a long time, explain that ICE has had a number of years to try to deport you but they haven't been able to.

Legal language for the next ground: "My re-detention violates both the substantive and procedural due process requirements of the Fifth Amendment of the Constitution."

Supporting Facts:

For supporting facts, you want to show that your interest in being free is more important than the government's interest in detaining you, and that you received no notice or opportunity to respond to ICE's reasons for revoking your OSUP before you were redetained.

- How much time were you free before your re-detention?
- How much time did you initially spend in immigration detention before you were released?
- Describe how your life has developed since you left detention the first time: write about your family (and if you are the primary caregiver to someone, say that), your work, your ties to the community, any volunteer work you have done, etc.
- You can briefly re-state any health issues you suffer from, your age, and how detention has been affecting you.

Legal language for the next ground: "Because my deportation to any country is not significantly likely in the reasonably foreseeable future, my detention no longer serves a legitimate purpose and violates the Immigration and Nationality Act (8 U.S.C. § 1231) and the Fifth Amendment of the Constitution."

Supporting Facts:

For supporting facts, be sure to include:

- How long you have been detained **since receiving your final order of removal**
- How you have complied with ICE's attempts to deport you (did you sign what they asked you to; did you communicate with your consulate; etc.)
- Why you think that it is not likely that ICE will deport you in the near future (for example, you have not heard any updates in X amount of time, you know that your country of origin will not take you back, you have claimed that you fear deportation to a third country, etc.)

Parole revocation:

This claim has multiple grounds. Label each one with whatever number comes next. For the first ground: "My re-detention violates both the substantive and procedural due process requirements of the Fifth Amendment of the Constitution."

Supporting Facts:

For supporting facts, you want to show that your interest in being free is more important than the government's interest in detaining you, and that you did not get any notice or opportunity to challenge your re-detention.

- How much time were you free before your re-detention?
- How much time did you spend in ICE or CBP custody before you were released the first time, if any?

- Describe how your life has developed since you left detention or were granted parole the first time: write about your family (and if you are the primary caregiver to someone, say that), your work, your ties to the community, any volunteer work you have done, etc.
- You can also briefly restate any health issues you suffer from, your age, and how detention has been affecting you.

Legal language for the next ground: "ICE had no valid reason to revoke my parole and re-detain [or detain, if you were never in ICE or CBP custody, even briefly] me; it is not in the public interest and ICE acted arbitrarily and capriciously when it re-detained me, in violation of the Administrative Procedure Act."

Supporting Facts:

For supporting facts, you want to show how you have complied with the terms of your release prior to your re-detention.

- Do you have any new convictions or contacts with law enforcement (if so, explain)?
- Were you required to check in, and if so, did you comply?
- How long have you been living freely in the U.S. since you were granted parole?
- Have you applied for asylum and appeared at all of the appointments you were required to? Where are you in the process?
- You can also briefly re-iterate why you are not a danger to society (e.g., no criminal history) or a flight risk (your community ties).

Legal language for the next ground, **if you did not get any written notice of the reasons that ICE revoked your parole**: "Immigration and Customs Enforcement violated the Administrative Procedure Act, the Accardi doctrine, and the Fifth Amendment when it failed to provide me written notice of individualized reasons before revoking my parole, as required by 8 CFR § 212.5(e)(2)(i)."

Supporting Facts:

For supporting facts, you want to show that ICE gave you no written notice of its reasons for revoking your parole before or after re-detaining you.

- Describe what happened when ICE detained you:
  - Were you given any written paperwork stating that your parole was revoked? If you were given written notice, did that notice explain the reasons for revoking your parole? If you were given written notice, did it include information that was specific to you, or did it just make general statements that could apply to anyone?
  - Did the officers ask you any questions or offer you any explanation?

DACA, SIJS Deferred Action, DALE, or U, T, or VAWA Deferred Action (including post-final order):

Legal language: "My detention serves no lawful purpose because I have deferred action and I cannot be deported from the United States. Therefore, my detention violates the due process requirements of the Fifth Amendment of the Constitution."

Supporting Facts:

- Explain when you were granted deferred action and how long it is in place until.
- If you have DACA, explain when you were first granted DACA, how many times it's been renewed since then, when your current DACA expires, and whether you plan to renew it.
- If you have another form of deferred action, explain when it was granted and when it expires.

Temporary Protected Status (TPS):

Legal language **if you were granted TPS**: My detention serves no lawful purpose because I have Temporary Protected Status and I cannot be detained or deported from the United States. Therefore, my detention violates the due process requirements of the Fifth Amendment of the Constitution. It also violates the Administrative Procedure Act and the Immigration and Nationality Act because ICE detained me in violation of statutory protection from detention due to my receipt of Temporary Protected Status, 8 U.S.C. §§ 1254a(a)(1)(A), (d)(4).

Legal language **if you submitted your TPS application on time and it met all the requirements, but you are waiting on a decision**: My detention serves no lawful purpose because I have prima facie eligibility for Temporary Protected Status and I cannot be detained or deported from the United States. 8 U.S.C. §§ 1254a(a)(1)(A), (d)(4). Therefore, my detention violates the due process requirements of the Fifth Amendment of the Constitution. It also violates the Administrative Procedure Act and the Immigration and Nationality Act because ICE detained me in violation of the temporary treatment benefits I receive under statute and regulations, 8 U.S.C. § 1254a(d)(4)(B); 8 C.F.R. §§ 244.5(b), 244.10(a).

Supporting Facts:

- Explain when you were granted Temporary Protected Status (TPS) and the country for which it was issued or when you applied for TPS.
- If you were granted Temporary Protected Status and you applied to renew it in time, you should say that.
- If you applied for Temporary Protected Status and completed an application that met all requirements, but it has never been decided (neither granted or denied), you should say that; you should also say if you attended your biometrics appointment.

Fourth Amendment

Legal language **if you were arrested in public and without an administrative warrant**: The ICE officers who arrested me did not have an administrative warrant or reason to believe that I was a noncitizen unlawfully in the U.S. or that I had committed a federal crime at the time of my arrest. The ICE officers also did not have reason to believe that I would flee before they could get a warrant for my arrest. 8 U.S.C. § 1357(a)(2). [if true] The officers also failed to identify themselves as ICE agents and explain why I was under arrest even though it was safe and practicable for them to do so. ICE made an unreasonable seizure when arresting me, violating the Fourth Amendment of the United States, the

INA, and the agency's own regulations, 8 C.F.R. § 287.8(c)(i)-(iii). Because my current detention is the direct result of the agency's illegal and unconstitutional actions, my detention is also unlawful and a petition for habeas corpus is the appropriate vehicle and release the appropriate remedy.

Legal language **if you were arrested in your home and ICE entered your home without a judicial warrant or your consent**: The ICE officers who arrested me did so by entering my home without a judicial warrant or my consent to enter. It is per se unreasonable to enter a home without a warrant, with only a few, narrow exceptions not present here. An administrative warrant does not give ICE authority to enter a home because those warrants are issued by the same agency responsible for enforcement, without any neutral arbiter evaluating the evidence they are based on. ICE made an unreasonable seizure when arresting me, violating the Fourth Amendment of the United States. Because my current detention is the direct result of the agency's illegal and unconstitutional actions, my detention is also unlawful and a petition for habeas corpus is the appropriate vehicle and release the appropriate remedy.

Supporting Facts:

- Describe the circumstances of your arrest by ICE, including where it happened, what you were doing, and the time of day.
- If you were arrested in public without an administrative warrant and the officers didn't ask you any questions; or you refused to answer their questions and they arrested you anyway, that could be evidence that they based their arrest of you solely on your race, ethnicity, or language, and did not have enough reason to arrest you. If the officers did not ask you any questions at the time of your arrest or arrested you without knowing your immigration status or citizenship, you should say that.
    - If you told immigration officers that you are not a citizen and are not in possession of valid status, this claim will likely not apply to you unless there are other circumstances like those identified below.
- If the ICE officers did not identify themselves as ICE at the time of your arrest, they may have violated the law. Were the officers wearing masks? Were they in plainclothes (not uniforms)? Did their vests say "ICE" on them?
- Were the officers armed? Did they brandish their weapons?
- Did the officers use any kind of force to arrest you? For example, did they tackle you or shove you or hit you? Were they rough with you when they put on handcuffs or zip ties?
- Did the officers use any derogatory language (e.g., calling you an "illegal" or a racial slur)?
- If they arrested you in your home, did you open the door? Did they break down the door or otherwise force their way inside? Did a child or someone else in the home open the door?
- Did they ask for your consent to enter? What did you say? What did you say once the agents were in your home?
- Did the agents use violence against you or anyone else in the house?
- Did they search your home? Did they ask for your consent before searching and did you say yes? Did they break any of your belongings or damage any part of your home?

5. Add your Request for Relief on your last page of your packet and sign and date the final page of the form.

On the last page of your packet, after you have finished your legal grounds and the facts that go with them, write in:

"AO 242, Section, Request for Relief:

- Assume jurisdiction over this matter.
- Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- Issue an Order prohibiting the Respondents from transferring me from the district without the court's approval.
- Order my immediate release from detention.
- In the alternative, require Respondents to provide me with an individualized bond hearing before a neutral arbiter at which the government bears the burden of proof by clear and convincing evidence that my continued detention is necessary, and order that respondents consider alternatives to detention and my ability to pay when setting a monetary bond.
- Order that Respondents cannot re-detain me without notice and a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence.
- Order that Respondents return my property, including any identity documents, such as a passport, driver's license, or work permit.
- Grant any further relief as the Court deems just and proper."

Make sure you sign the declaration on the final page and also provide the date that you put the habeas petition in the detention center's mail system.

6. Fill out the Civil Cover Sheet.

Question I.(a) "Plaintiff": This is you. Put your name here as you wrote it in the case caption on the habeas form.
Question I.(b) "County of residence of first listed plaintiff": This is the county where you are currently detained.
Question I.(c) "Attorneys": N/A
Defendants: This is where you list the people you are suing (the warden of the facility, the ICE Field Office Director, the ICE Director, and the Attorney General)
County of residence of first listed defendant: You can put the same county you did for yourself if you list the warden first; if you list one of the federal defendants first, put Washington, D.C.
Attorneys (if known): You can leave this blank.

Question II. "Basis of Jurisdiction": Check box 2 "U.S. Government Defendant"
Question III. "Citizenship of Principal Parties": Leave this blank.

Question IV. "Nature of Suit": Check box 463, "Alien detainee" under Habeas Corpus, which is under Prisoner Petitions
Question V. Origin: Check box 1, "Original proceeding"
Question VI. Cause of Action: Write 28 U.S.C. § 2241 on the top line and "Ongoing detention violates the Constitution, the Immigration and Nationality Act, and implementing regulations" on the second line.
Question VII. Requested in Complaint: Check the box for "No" by Jury Demand and otherwise leave blank
Question VIII. Related Cases: Leave this blank.

Signature: Put in the date under "DATE" and write "Pro Se" under "Signature of Attorney of Record".

7. Complete the In Forma Pauperis form if you are filing one.

Caption: This should be the same as on your habeas form.
Question 1: You are incarcerated. Fill in the name of the detention center where you are held. **You also need to get the detention center to provide you with a copy of your commissary or other account with the detention center and get an officer to sign it, or to sign a statement saying that you do not have an account.**
Question 2: You do not need to answer this question. Skip to 3.
Question 3: This is asking whether you have **received money** from any of the below sources within the past year. So for example, only check "Rent payments, interest, or dividends" if you are a landlord and have received income from a tenant paying you rent or if you have enough savings that they earn you interest or if you have stocks that have paid dividends. If you have received money from any of them in the past year, you have to say how much from each source and how much you expect each source to pay you in the future.
Question 4: Put down how much you have in cash or in the bank; if you don't have any cash or don't have a bank account, write "not applicable."
Question 5: This question is asking about any other thing of value that you may own; normal possessions like your furniture, kitchen equipment, and clothing do not need to be listed. If you do not own your car or your house outright, do not include them. If you have a mortgage, that goes under Question 8.
Question 6: List here all of your monthly expenses, including rent, car payment, phone payment, child care, utilities, etc.
Question 7: Name everyone who is dependent on you for financial support, your relationship to them, and how much you contribute, but **if they are under 18, just use their initials**. For most people, this will likely be members of your immediate family, like your spouse and children. If you also contribute to your parents, a sibling, or other relative, you can list them as well and how much money you send them.
Question 8: If you have a mortgage, you can list it here; if you have a car payment that you already noted in Question 6, say "see car payment Question 6." If you have student loans, credit card debt, medical debt, or any other debt, list it here as well, and the bank or other institution you owe the money to.

Make sure to sign and date the form.

8. Complete the Request for Appointment of Counsel.

Caption: Fill in the correct court name, and put your information in the top left corner, as well as the same petitioner and respondent information as in the habeas form and IFP.
Page 1: Fill in your name. If you are also submitting an IFP form, check the first box. If you are not, check the second box.
Page 2: If you have reached out to pro bono attorneys or nonprofits seeking their help filing a habeas petition, list them here, and explain why they could not take your case. If there are no available attorneys in your area, say "There are no attorneys that I can find who assist with immigration detention habeas petitions in the area where I am detained"; if there are no pro bono attorneys, or if you have no way of contacting an attorney for the purpose of a habeas, you should write that.
Page 3: You can write that you are raising serious constitutional claims; that immigration law is complex; and list any additional difficulties you face in bringing your claim. If you have been detained for longer than 6 months, note that, as well as how detention is negatively impacting you.

Make sure you sign and date the motion

Affidavit: You do not have to fill this out if you filed the IFP form. If you do fill it out, the instructions are similar to the IFP form – see above.

9. Assemble your packet and make copies of the petition and motions.

Your packet should go in the following order:

- Civil cover sheet
- Habeas form (except the last page, for your signature)
- Your Addendum sheets (make sure you include a "Request for Relief" on the last sheet after your claim)
- The last page of the habeas form, **signed and dated**
- Your In Forma Pauperis form
- Your Motion for Appointment of Counsel
- (Optional) Your certificate of service

You will need to send **at least two copies** to the Clerk's Office of the appropriate district court. If your request to proceed In Forma Pauperis is granted, the court will handle service for you. If it is not granted, you may be required to handle service on your own. If you handle service yourself, you will also need copies to send to the Assistant U.S. Attorney's Office, the warden, and possibly the Attorney General, and the ICE Area Field Office. You can send these at the same time that you file and also attach a signed and dated Certificate of Service, saying that you swear under penalty of perjury that you mailed copies to those offices (include their addresses) and the date you sent them. Even if your court does not grant your In Forma Pauperis request, it might issue a summons that you then have to

mail, or just handle service for pro se petitioners, so you may not need to send these copies or to send them immediately. **You can call the court clerk to ask for service instructions, or someone might be able to help you call the court clerk to ask.** It is nevertheless a good idea to have multiple copies; **you will want to be sure to keep at least one copy for yourself.**

10. Call the clerk for the appropriate district court if possible.

Confirm the rules around filing and serving pro se habeas petitions. Confirm the correct addresses. Confirm that you are filing with the correct court. The clerk's phone number can be found on the district court's website in the contact information.

11. Follow local court instructions and mail your habeas perition, IFP, and motion to appoint counsel!

Congrats! You have now filed your habeas petition. You should get a response from the court with further instructions soon. If for some reason you have filed your habeas petition incorrectly, the court will return it with instructions for how to fix the issues that caused the court to reject it. Read those carefully and fix the problems before refiling.

Addendum Sheet 1: FOR EVERYONE:

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO 242, Section: Your Earlier Challenges of the Decision or Action

There is no statutory exhaustion requirement for habeas petitions challenging the lawfulness or constitutionality of immigration detention. Montano v. Texas, 867 F.3d 540, 542 (5th Cir. 2017). Also, requiring exhaustion is not appropriate when the petitioner could suffer irreparable harm, or when it would be futile. McCarthy v. Madigan, 503 U.S. 140, 144-49 (1992). Continued unlawful detention is an irreparable harm. It would also be futile to raise appeals about the constitutionality of detention before the Department of Homeland Security (DHS) or the Executive Office for Immigration Review (EOIR), including the immigration courts and the Board of Immigration Appeals.

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ONE

My detention violates both the substantive and procedural due process requirements of the Fifth Amendment of the U.S. Constitution.

Supporting Facts
The information below is included to the best of my knowledge.

[In this first section, write background information about yourself. Please write a paragraph or more explaining who you are, who depends on you, and how you contribute to your local community. Write in your own voice ("I was…", "I tried…", etc.). Please do not include private information (for example, the names of children) that you do not want other people to know.

Consider including the following information if it applies in your case:

- Your age, the city and state where you live, and if you have lived in the U.S. for a long time
- Children or family members who are U.S. citizens and U.S. permanent residents
- People in the U.S. who depend on you, and how you help them
- If you have a work permit, describe your work.
- Your participation in local organizations, like church, schools, and volunteering
- If you have NEVER been arrested or convicted of a crime, it is helpful to include that fact.
- If you currently have lawful immigration status (including DACA or other deferred action or TPS) or a pending immigration application (like SIJS), it is helpful to include that information.

- **If you were previously released on your own recognizance** after any time in ICE or CBP custody (if you were given the form I-220A), you should say that.
- **If you were previously released from a shelter (ORR custody) as an unaccompanied child**, you should say that.
- If you have complied with your immigration requirements, such as immigration court hearings, ICE check-ins, or other processes, it is helpful to include that information.
- Other facts that show you have positive community ties to the United States and that you are not a flight risk

Next, please write a paragraph or more explaining any **difficulties you have had in detention or mistreatment by immigration officials**. Write in your own voice ("I was...", "I tried...", etc.). **Please do not include private information (for example, the names of children) that you do not want other people to know.**

Consider including the following information if it applies in your case:

- Any mistreatment by immigration officials at the time of your arrest
- Any mistreatment by immigration officials during your detention
- Any difficult conditions you have experienced in the detention center
- Any health issues you have experienced while detained
- Any problems receiving medication and adequate medical treatment
- Any problems with basic necessities such as food, hygiene, or sleep
- Any difficulties communicating with or supporting loved ones while detained
- Any emotional distress you have experienced due to your detention
- Any attempts to get ICE to release you and why they were not successful
- Other facts that show the hardships you have experienced as a result of your detention and arrest]

Presentation of Ground in Appeals

Legal Memorandum

Not applicable. See exhaustion paragraph on page 1.

The Fifth Amendment of the U.S. Constitution guarantees the right to due process to people in the United States, regardless of their immigration status. Under procedural due process, the government cannot deprive a person of their liberty without a fair process. *Mathews v. Eldridge*, 424 U.S. 319 (1976). Under substantive due process, the government must have a legitimate purpose for immigration detention – specifically, preventing flight risk or preventing danger to the community. Immigration detention is not supposed to be a form of punishment. *Zadvydas v. Davis*, 533 U.S. 678 (2001).

[PUT THIS ON YOUR LAST ADDENDUM SHEET, AFTER YOUR LAST CLAIM]

REQUEST FOR RELIEF

- Assume jurisdiction over this matter.
- Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
- Issue an Order prohibiting the Respondents from transferring me from the district without the court's approval.
- Order my immediate release from detention.
- In the alternative, require Respondents to provide me with an individualized bond hearing before a neutral arbiter at which the government bears the burden of proof by clear and convincing evidence that my continued detention is necessary, and order that respondents consider alternatives to detention and my ability to pay when setting a monetary bond.
- Order that Respondents cannot re-detain me without notice and a pre-deprivation hearing before this Court where the government bears the burden of justifying re-detention by clear and convincing evidence.
- Order that Respondents return my property, including any identity documents, such as a passport, driver's license, or work permit.
- Grant any further relief as the Court deems just and proper.

Addendum Sheet for Medical Emergency

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ____

My detention is an unreasonable risk to my health and safety, in violation of the Fifth Amendment of the U.S. Constitution.

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- The medical problems you are having
- Any problems you have had receiving adequate treatment or medications
- Any attempts you have made to get better medical care in detention
- Why the medical problems you are having are an emergency
- Why remaining in detention would be a threat to your health or safety]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Addendum Sheet for *Yajure Hurtado*

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ____

I am detained under 1226(a), not 1225(b), because I was not "arriving" or "seeking admission" when I was arrested by ICE, since I am not a recent entrant. My continued detention without a bond hearing violates the Immigration and Nationality Act and the Fifth Amendment of the Constitution.

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- The circumstances of your arrest by ICE, including the geographical location and how long it had been since you entered the United States.
- How long you have lived in the U.S.]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Addendum Sheet for Prolonged Detention

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ____

My detention has become unconstitutionally prolonged and violates the 5th Amendment of the Constitution.

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- The length of your detention (for example, "I have been detained in ICE custody for 7 months.")
- Any delays caused by the government (for example, how long did it take to get an initial hearing and subsequent hearings? Did ICE ever ask for more time between your immigration court hearings?)
- The reason for any delays that you caused (for example, "I requested a brief continuance to seek counsel, but I have not unreasonably delayed the immigration court process.")]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Addendum Sheet for Post-Final Order

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ____

Because my deportation to any country is not significantly likely in the reasonably foreseeable future, my detention no longer serves a legitimate purpose and violates the Immigration and Nationality Act (8 U.S.C. § 1231) and the Fifth Amendment of the Constitution.

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- How long you have been detained **since receiving your final order of removal**
- How you have complied with ICE's attempts to deport you (did you sign what they asked you to; did you communicate with your consulate etc.)
- Why you think that it is not likely that ICE will deport you in the near future (for example, you have not heard any updates in X amount of time, you know that your country of origin will not take you back, you have claimed that you fear deportation to a third country, etc.)]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Addendum Sheet for OSUP Revocation (Multiple Grounds)

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ____

Immigration and Customs Enforcement violated the Administrative Procedure Act, the Accardi doctrine, and the Fifth Amendment when it failed to follow its own regulations governing the revocation of an order of supervision, 8 C.F.R. §§ 241.4, 241.13: they did not provide me with any notice or an interview that would allow me to contest the reasons for revocation. ICE also did not revoke it for a permissible reason under the agency's own regulations, because I have not violated the terms of my release and no change in circumstances has made my removal significantly likely in the reasonably foreseeable future.

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was…", "I tried…", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- For supporting facts, you want to show that ICE gave you no notice and/or did not interview you before or after re-detaining you, by describing what happened when ICE detained you. You also want to show that no circumstances have changed since you received your OSUP that would justify your re-detention. Some things that might count as changed circumstances are if ICE has arranged for your deportation, something in your country of deportation has changed and so **you** can now be deported there (not just that some people can be), ICE has gotten travel documents or made travel arrangements for your deportation, or a third country that you may have no ties to has agreed to accept you. Failing to comply with the terms of your release, like missing a check-in, would also be a changed circumstance.
- Were you given any written paperwork explaining the reasons for re-detaining you?
- Did the officers ask you any questions or offer you any explanation?
- Describe how nothing has changed in your case that means that your removal is likely in the near future:
  - Has ICE gotten travel documents for you or made travel arrangements?
  - Has a third country agreed to accept you?

- Describe how you complied with the terms of your release before your re-detention:
  - How frequent were your check-ins, how long have you had check-ins, and did you attend all of them? If you missed one, when did that happen and what were the circumstances?
- If you have not had any new convictions or contacts with law enforcement, you should write that. If you have had any new convictions or contacts with law enforcement, you can consider explaining why they should not have led to re-detention (based on the severity of the offense, rehab, etc.) and that you were still entitled to notice and an interview before re-detention regardless.
- Provide any information about why you can't be deported to your country. If you have had check-ins for a long time, explain that ICE has had a number of years to try to deport you but they haven't been able to.]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

GROUND ____

My re-detention violates both the substantive and procedural due process requirements of the Fifth Amendment of the Constitution.

Supporting Facts
See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was…", "I tried…", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- For supporting facts you want to show that your interest in being free is more important than the government's interest in detaining you, and that you received no notice or opportunity to respond to ICE's reasons for revoking your OSUP before you were re-detained.
  - How much time were you free before your re-detention?
  - How much time did you initially spend in immigration detention before you were released?
  - Describe how your life has developed since you left detention the first time: write about your family (and if you are the primary caregiver to someone, say that), your work, your ties to the community, any volunteer work you have done, etc.
  - You can briefly re-state should also include any health issues you suffer from, your age, and how detention has been affecting you]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

GROUND ____

Because my deportation to any country is not significantly likely in the reasonably foreseeable future, my detention no longer serves a legitimate purpose and violates the Immigration and Nationality Act (8 U.S.C. § 1231) and the Fifth Amendment of the Constitution.

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- How long you have been detained since receiving your final order of removal
- How you have complied with ICE's attempts to deport you (did you sign what they asked you to; did you communicate with your consulate; etc.)
- Why you think that it is not likely that ICE will deport you in the near future (for example, you have not heard any updates in X amount of time, you know that your country of origin will not take you back, you have claimed that you fear deportation to a third country, etc.)]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Addendum Sheet for Parole Revocation (Multiple Grounds)

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ____

My re-detention violates both the substantive and procedural due process requirements of the Fifth Amendment of the Constitution.

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- For supporting facts, you want to show that your interest in being free is more important than the government's interest in detaining you, and that you did not get any notice or opportunity to challenge your re-detention.
- How much time were you free before your re-detention?
- How much time did you spend in ICE or CBP custody before you were released the first time, if any?
- Describe how your life has developed since you left detention or were granted parole the first time: write about your family (and if you are the primary caregiver to someone, say that), your work, your ties to the community, any volunteer work you have done, etc.
- You can also briefly restate should also include any health issues you suffer from, your age, and how detention has been affecting you.]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

GROUND ____

ICE had no valid reason to revoke my parole and re-detain [or detain, if you were never in ICE or CBP custody, even briefly] me; it is not in the public interest and ICE acted arbitrarily and capriciously when it re-detained me, in violation of the Administrative Procedure Act.

Supporting Facts
See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- For supporting facts, you want to show how you have complied with the terms of your release prior to your re-detention:
  - Do you have any new convictions or contacts with law enforcement (if so, explain)?
  - Were you required to check in, and if so, did you comply?
  - How long have you been living freely in the U.S. since you were granted parole?
  - Have you applied for asylum and appeared at all of the appointments you were required to? Where are you in the process?
  - You can also briefly re-iterate why you are not a danger to society (e.g., no criminal history) or a flight risk (your community ties).]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

GROUND ___ **[if you did not receive any written notice of the reasons that ICE revoked your parole]**

Immigration and Customs Enforcement violated the Administrative Procedure Act, the *Accardi* doctrine, and the Fifth Amendment when it failed to provide me written notice of individualized reasons before revoking my parole, as required by 8 CFR § 212.5(e)(2)(i).

Supporting Facts
See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- For supporting facts, you want to show that ICE gave you no written notice of its reasons for revoking your parole before or after re-detaining you.
- Describe what happened when ICE detained you:
  - Were you given any written paperwork stating that your parole was revoked? If you were given written notice, did that notice explain the reasons for revoking your parole? If you were given written notice, did it include information that was specific to you, or did it just make general statements that could apply to anyone?
  - Did the officers ask you any questions or offer you any explanation?]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Addendum Sheet for DACA, SIJS Deferred Action, or U, T, VAWA Deferred Action (including post-final order)

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ____

My detention serves no lawful purpose because I have deferred action and I cannot be deported from the United States. Therefore, my detention violates the due process requirements of the Fifth Amendment of the Constitution.

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- Explain when you were granted deferred action and how long it is in place until.
- If you have DACA, explain when you were first granted DACA, how many times it's been renewed since then, when your current DACA expires, and whether you plan to renew it.
- If you have another form of deferred action, explain when it was granted and when it expires.]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Addendum Sheet for TPS

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ____

If you were granted TPS: My detention serves no lawful purpose because I have Temporary Protected Status and I cannot be detained or deported from the United States. Therefore, my detention violates the due process requirements of the Fifth Amendment of the Constitution. It also violates the Administrative Procedure Act and the Immigration and Nationality Act because ICE detained me in violation of statutory protection from detention due to my receipt of Temporary Protected Status, 8 U.S.C. §§ 1254a(a)(1)(A), (d)(4).

If you submitted your TPS application on time and it met all the requirements, but you are waiting on a decision: My detention serves no lawful purpose because I have prima facie eligibility for Temporary Protected Status and I cannot be detained or deported from the United States. 8 U.S.C. §§ 1254a(a)(1)(A), (d)(4). Therefore, my detention violates the due process requirements of the Fifth Amendment of the Constitution. It also violates the Administrative Procedure Act and the Immigration and Nationality Act because ICE detained me in violation of the temporary treatment benefits I receive under statute and regulations, 8 U.S.C. § 1254a(d)(4)(B); 8 C.F.R. §§ 244.5(b), 244.10(a).

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was...", "I tried...", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- Explain when you were granted Temporary Protected Status (TPS) and the country for which it was issued or when you applied for TPS.
- If you were granted Temporary Protected Status and you applied to renew it in time, you should say that.
- If you applied for Temporary Protected Status and completed an application that met all requirements, but it has never been decided (neither granted or denied), you should say that; you should also say if you attended your biometrics appointment.]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

Addendum Sheet for Fourth Amendment

Addendum to Petition for a Writ of Habeas Corpus Under 28 U.S.C. § 2241

AO242, Section: Grounds for Your Challenge in This Petition

GROUND ____

If you were arrested in public and without an administrative warrant: The ICE officers who arrested me did not have an administrative warrant or reason to believe that I was a noncitizen unlawfully in the U.S. or that I had committed a federal crime at the time of my arrest. The ICE officers also did not have reason to believe that I would flee before they could get a warrant for my arrest. 8 U.S.C. § 1357(a)(2). [if true] The officers also failed to identify themselves as ICE agents and explain why I was under arrest even though it was safe and practicable for them to do so. ICE made an unreasonable seizure when arresting me, violating the Fourth Amendment of the United States, the INA, and the agency's own regulations, 8 C.F.R. § 287.8(c)(i)-(iii). Because my current detention is the direct result of the agency's illegal and unconstitutional actions, my detention is also unlawful and a petition for habeas corpus is the appropriate vehicle and release the appropriate remedy.

If you were arrested in your home and ICE entered your home without a judicial warrant or your consent: The ICE officers who arrested me did so by entering my home without a judicial warrant or my consent to enter. It is per se unreasonable to enter a home without a warrant, with only a few, narrow exceptions not present here. An administrative warrant does not give ICE authority to enter a home because those warrants are issued by the same agency responsible for enforcement, without any neutral arbiter evaluating the evidence they are based on. ICE made an unreasonable seizure when arresting me, violating the Fourth Amendment of the United States. Because my current detention is the direct result of the agency's illegal and unconstitutional actions, my detention is also unlawful and a petition for habeas corpus is the appropriate vehicle and release the appropriate remedy.

Supporting Facts

See facts listed under Ground One. Additional facts are listed below to the best of my knowledge.

[When writing supporting facts, write in your own voice ("I was…", "I tried…", etc.). Please do not include private information that you do not want other people to know. In this section, please include:

- Describe the circumstances of your arrest by ICE, including where it happened, what you were doing, and the time of day.

- If you were arrested in public without an administrative warrant and the officers didn't ask you any questions, or you refused to answer their questions and they arrested you anyway, that could be evidence that they based their arrest of you solely on your race, ethnicity, or language, and did not have enough reason to arrest you. If the officers did not ask you any questions at the time of your arrest or arrested you without knowing your immigration status or citizenship, you should say that.
    - If you told immigration officers that you are not a citizen and are not in possession of valid status, this claim will likely not apply to you unless there are other circumstances like those identified below.
- If the ICE officers did not identify themselves as ICE at the time of your arrest, they may have violated the law. Were the officers wearing masks? Were they in plainclothes (not uniforms)? Did their vests say "ICE" on them?
- Were the officers armed? Did they brandish their weapons?
- Did the officers use any kind of force to arrest you? For example, did they tackle you or shove you or hit you? Were they rough with you when they put on handcuffs or zip ties?
- Did the officers use any derogatory language (e.g., calling you an "illegal" or a racial slur)?
- If they arrested you in your home, did you open the door? Did they break down the door or otherwise force their way inside? Did a child or someone else in the home open the door?
- Did they ask for your consent to enter? What did you say? What did you say once the agents were in your home?
- Did the agents use violence against you or anyone else in the house?
- Did they search your home? Did they ask for your consent before searching and did you say yes? Did they break any of your belongings or damage any part of your home?]

Presentation of Ground in Appeals

Not applicable. See exhaustion paragraph on page 1.

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Your name here

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS

The warden of the detention center, ICE Field Office Director, ICE Director, and the Attorney General

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☒ 2 U.S. Government Defendant
- ☐ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	☐ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☐ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ☐ 153 Recovery of Overpayment of Veteran's Benefits
- ☐ 160 Stockholders' Suits
- ☐ 190 Other Contract
- ☐ 195 Contract Product Liability
- ☐ 196 Franchise

REAL PROPERTY
- ☐ 210 Land Condemnation
- ☐ 220 Foreclosure
- ☐ 230 Rent Lease & Ejectment
- ☐ 240 Torts to Land
- ☐ 245 Tort Product Liability
- ☐ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ☐ 365 Personal Injury - Product Liability
- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ☐ 370 Other Fraud
- ☐ 371 Truth in Lending
- ☐ 380 Other Personal Property Damage
- ☐ 385 Property Damage Product Liability

CIVIL RIGHTS
- ☐ 440 Other Civil Rights
- ☐ 441 Voting
- ☐ 442 Employment
- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
- ☐ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ☒ 463 Alien Detainee
- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
- ☐ 751 Family and Medical Leave Act
- ☐ 790 Other Labor Litigation
- ☐ 791 Employee Retirement Income Security Act

IMMIGRATION
- ☐ 462 Naturalization Application
- ☐ 465 Other Immigration Actions

BANKRUPTCY
- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

INTELLECTUAL PROPERTY RIGHTS
- ☐ 820 Copyrights
- ☐ 830 Patent
- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark
- ☐ 880 Defend Trade Secrets Act of 2016

SOCIAL SECURITY
- ☐ 861 HIA (1395ff)
- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

FEDERAL TAX SUITS
- ☐ 870 Taxes (U.S. Plaintiff or Defendant)
- ☐ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ☐ 375 False Claims Act
- ☐ 376 Qui Tam (31 USC 3729(a))
- ☐ 400 State Reapportionment
- ☐ 410 Antitrust
- ☐ 430 Banks and Banking
- ☐ 450 Commerce
- ☐ 460 Deportation
- ☐ 470 Racketeer Influenced and Corrupt Organizations
- ☐ 480 Consumer Credit (15 USC 1681 or 1692)
- ☐ 485 Telephone Consumer Protection Act
- ☐ 490 Cable/Sat TV
- ☐ 850 Securities/Commodities/ Exchange
- ☐ 890 Other Statutory Actions
- ☐ 891 Agricultural Acts
- ☐ 893 Environmental Matters
- ☐ 895 Freedom of Information Act
- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District *(specify)* ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
28 USC 2241

Brief description of cause:
Ongoing detention violates the Constitution, the Immigration and Nationality Act, and implementing regulations

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE _____ DOCKET NUMBER _____

DATE

SIGNATURE OF ATTORNEY OF RECORD

Pro Se

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Instructions

1. **Who Should Use This Form**. You should use this form if
   - you are a federal prisoner and you wish to challenge the way your sentence is being carried out *(for example, you claim that the Bureau of Prisons miscalculated your sentence or failed to properly award good time credits)*;
   - you are in federal or state custody because of something other than a judgment of conviction *(for example, you are in pretrial detention or are awaiting extradition)*; or
   - you are alleging that you are illegally detained in immigration custody.

2. **Who Should Not Use This Form**. You should not use this form if
   - you are challenging the validity of a federal judgment of conviction and sentence *(these challenges are generally raised in a motion under 28 U.S.C. § 2255)*;
   - you are challenging the validity of a state judgment of conviction and sentence *(these challenges are generally raised in a petition under 28 U.S.C. § 2254)*; or
   - you are challenging a final order of removal in an immigration case *(these challenges are generally raised in a petition for review directly with a United States Court of Appeals)*.

3. **Preparing the Petition**. The petition must be typed or neatly written, and you must sign and date it under penalty of perjury. **A false statement may lead to prosecution.**

4. **Answer all the questions.** You do not need to cite law. You may submit additional pages if necessary. If you do not fill out the form properly, you will be asked to submit additional or correct information. If you want to submit any legal arguments, you must submit them in a separate memorandum. Be aware that any such memorandum may be subject to page limits set forth in the local rules of the court where you file this petition. If you attach additional pages, number the pages and identify which section of the petition is being continued. All filings must be submitted on paper sized 8½ by 11 inches. **Do not use the back of any page.**

5. **Supporting Documents**. In addition to your petition, you must send to the court a copy of the decisions you are challenging and a copy of any briefs or administrative remedy forms filed in your case.

6. **Required Filing Fee**. You must include the $5 filing fee required by 28 U.S.C. § 1914(a). If you are unable to pay the filing fee, you must ask the court for permission to proceed in forma pauperis – that is, as a person who cannot pay the filing fee – by submitting the documents that the court requires.

7. **Submitting Documents to the Court**. Mail your petition and ____ copies to the clerk of the United States District Court for the district and division in which you are confined. For a list of districts and divisions, see 28 U.S.C. §§ 81-131. All copies must be identical to the original. Copies may be legibly handwritten.

   If you want a file-stamped copy of the petition, you must enclose an additional copy of the petition and ask the court to file-stamp it and return it to you.

8. **Change of Address**. You must immediately notify the court in writing of any change of address. If you do not, the court may dismiss your case.

Annotated form (minus addendum pages)

DO NOT FILE THIS IN COURT - USE THIS TO FILL IN A CLEAN COPY!

UNITED STATES DISTRICT COURT

for the

Put the correct court for where you are detained here

Your name

Petitioner

v.

The warden, ICE AFOD, ICE Director, and Attorney General go here

(name of warden or authorized person having custody of petitioner)

Case No. _____

(Supplied by Clerk of Court)

PETITION FOR A WRIT OF HABEAS CORPUS UNDER 28 U.S.C. § 2241

Personal Information

1. (a) Your full name: _____
   (b) Other names you have used: _____
2. Place of confinement:
   (a) Name of institution: _____
   (b) Address: _____
   _____
   (c) Your identification number: **Your A number** _____
3. Are you currently being held on orders by:
   ☑ Federal authorities ☐ State authorities ☐ Other - explain:
   _____
4. Are you currently:
   ☐ A pretrial detainee (waiting for trial on criminal charges)
   ☐ Serving a sentence (incarceration, parole, probation, etc.) after having been convicted of a crime
   If you are currently serving a sentence, provide:
   (a) Name and location of court that sentenced you: _____
   _____
   (b) Docket number of criminal case: _____
   (c) Date of sentencing: _____
   ☑ Being held on an immigration charge
   ☐ Other *(explain)*: _____
   _____
   _____

Decision or Action You Are Challenging

5. What are you challenging in this petition:
   ☐ How your sentence is being carried out, calculated, or credited by prison or parole authorities (for example, revocation or calculation of good time credits)

❒ Pretrial detention
☑ Immigration detention
❒ Detainer
❒ The validity of your conviction or sentence as imposed (for example, sentence beyond the statutory maximum or improperly calculated under the sentencing guidelines)
❒ Disciplinary proceedings
❒ Other *(explain)*:

6. Provide more information about the decision or action you are challenging:

(a) Name and location of the agency or court:

Include the location!

Immigration and Customs Enforcement if you did not request a bond hearing; the immigration court that denied you a bond hearing if you did

(b) Docket number, case number, or opinion number: **Your A number**

(c) Decision or action you are challenging *(for disciplinary proceedings, specify the penalties imposed)*:

ICE's decision to detain you → could be their initial decision or custody review; OR immigration court's denial of a bond hearing

(d) Date of the decision or action: **Date you were detained; custody review denied; or bond hearing denied**

Your Earlier Challenges of the Decision or Action

7. **First appeal**

Did you appeal the decision, file a grievance, or seek an administrative remedy?

❒ Yes ❒ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

ONLY check yes if you appealed the immigration judge's denial to the BIA. Otherwise check "No."

(b) If you answered "No," explain why you did not appeal:

If ICE denied a custody review, say "Not applicable." If the immigration court denied a bond hearing, say "See Addendum."

8. **Second appeal**

After the first appeal, did you file a second appeal to a higher authority, agency, or court?

❒ Yes ☑ No

The answer here is almost certainly no!

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a second appeal:

Not applicable

9. **Third appeal**

After the second appeal, did you file a third appeal to a higher authority, agency, or court?

❒ Yes ☑ No

(a) If "Yes," provide:

(1) Name of the authority, agency, or court:

(2) Date of filing:

(3) Docket number, case number, or opinion number:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) If you answered "No," explain why you did not file a third appeal:

Not applicable

10. **Motion under 28 U.S.C. § 2255**

In this petition, are you challenging the validity of your conviction or sentence as imposed?

❒ Yes ☑ No

If "Yes," answer the following:

(a) Have you already filed a motion under 28 U.S.C. § 2255 that challenged this conviction or sentence?

❒ Yes ❒ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(b) Have you ever filed a motion in a United States Court of Appeals under 28 U.S.C. § 2244(b)(3)(A), seeking permission to file a second or successive Section 2255 motion to challenge this conviction or sentence?

❒ Yes ❒ No

If "Yes," provide:

(1) Name of court:

(2) Case number:

(3) Date of filing:

(4) Result:

(5) Date of result:

(6) Issues raised:

(c) Explain why the remedy under 28 U.S.C. § 2255 is inadequate or ineffective to challenge your conviction or sentence:

11. **Appeals of immigration proceedings**

Does this case concern immigration proceedings?

☑ Yes ❒ No

If "Yes," provide:

(a) Date you were taken into immigration custody: **Date that ICE arrested you**

(b) Date of the removal or reinstatement order: **If you do not have a removal order, N/A**

(c) Did you file an appeal with the Board of Immigration Appeals?

❒ Yes ❒ No

Select yes or no depending on if you appealed or not

If "Yes," provide:

(1) Date of filing:

(2) Case number: **Your A number**

(3) Result: **Did you win your appeal or was it denied? Is it pending?**

(4) Date of result: **Date of BIA decision. If it hasn't been decided say "pending"**

(5) Issues raised: **What did you say in your BIA appeal? What applications for relief had you filed with the immigration court?**

(d) Did you appeal the decision to the United States Court of Appeals?

❒ Yes ❒ No **Select yes or no depending on if you appealed or not**

If "Yes," provide:

(1) Name of court:

(2) Date of filing:

(3) Case number:

(4) Result:

(5) Date of result:

(6) Issues raised:

12. **Other appeals**

Other than the appeals you listed above, have you filed any other petition, application, or motion about the issues raised in this petition?

❒ Yes ☑ No

If "Yes," provide:

(a) Kind of petition, motion, or application:

(b) Name of the authority, agency, or court:

(c) Date of filing:

(d) Docket number, case number, or opinion number:

(e) Result:

(f) Date of result:

(g) Issues raised:

Grounds for Your Challenge in This Petition

13. State every ground (reason) that supports your claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground. Any legal arguments must be submitted in a separate memorandum.

GROUND ONE: See Addendum

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

See Addendum

(b) Did you present Ground One in all appeals that were available to you?

❒ Yes ❒ No

If you did appeal (for example, the IJ's no jurisdiction order to the BIA), it is possible that you presented this ground, but the most likely choice here is "No"

GROUND TWO:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Two in all appeals that were available to you?

❒ Yes ❒ No

GROUND THREE:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Three in all appeals that were available to you?

❒ Yes ❒ No

GROUND FOUR:

(a) Supporting facts *(Be brief. Do not cite cases or law.)*:

(b) Did you present Ground Four in all appeals that were available to you?

❒ Yes ❒ No

14. If there are any grounds that you did not present in all appeals that were available to you, explain why you did not: See Addendum

Request for Relief

15. State exactly what you want the court to do: See Addendum

Declaration Under Penalty Of Perjury

If you are incarcerated, on what date did you place this petition in the prison mail system:

_____

I declare under penalty of perjury that I am the petitioner, I have read this petition or had it read to me, and the information in this petition is true and correct. I understand that a false statement of a material fact may serve as the basis for prosecution for perjury.

Date: _____

_____
Signature of Petitioner

_____
Signature of Attorney or other authorized person, if any

Make sure you sign and date your petition!