

February 12, 2010

INSTRUCTION AND INFORMATION LETTER FOR HAITIAN IMMIGRATION DETAINEES ON HOW TO FILE YOUR OWN FEDERAL COURT CASE ASKING A COURT TO RELEASE YOU

Dear Detainee:

Are you Haitian? Are you being held in custody by immigration authorities? If so, this packet of information is for you. You have legal rights. This packet of information is to help people know their rights. Once you know your rights, this information will help you decide if you should file your own federal court case for release.

Because of the earthquake that hit Haiti on January 12, 2010, it is unlikely that U.S. immigration authorities will deport people to Haiti anytime soon. This information tells you how to file your own legal papers in federal court asking that you be released. These instructions will help you file papers that will allow you to ask a judge to release you.

These papers explain your legal right to file a petition for habeas corpus and how to file it. If you can get help from an attorney, go ahead and ask them to help you. If you cannot get an attorney, you have the right to file your own papers in court and be your own attorney. Then you can ask the court yourself to release you.

1. What is a "Petition for Habeas Corpus"?

In a habeas corpus petition, a person tells a court that they are wrongfully held by the government and asks a court for relief from unlawful detention.

Everyone held in U.S. jails has the right to petition for habeas due to unlawful detention no matter what your immigration status.



Sometimes a person in the custody of the Immigration Customs Enforcement (ICE) agency can file a habeas petition that, if granted, releases him from detention until U.S. immigration authorities are able to arrange for his deportation. In other cases, a habeas petition will instruct the government to provide some other form of custody review or bond hearing.

This *pro se* petition (a petition you file with a court by yourself) argues that the Department of Homeland Security (DHS) is not able to deport you to Haiti in the reasonably foreseeable future, and therefore you should be released.

2. Why Should You Seek a Custody Review?

BEFORE you file a petition for habeas corpus relief, you should file a request for a custody review.

What is that? ICE has an internal review procedure for detainees who have received a final order of removal, and have been detained for more than three (3) months. This procedure is called a “custody review,” and a detainee can request this review in writing.

We have included in this packet a letter called “REQUEST FOR RELEASE FROM DETENTION PURSUANT TO *ZADVYDAS V. DAVIS*” that you can fill out and submit to request a custody review from the ICE Field Office Director. (*Zadvydas* is an important decision that allows these hearings). If you submit it, you should receive a reply within ten (10) days starting the custody review process.

You may be released after ICE reviews your case, though ICE may place restrictions on your release or require you to report to their office periodically.

If you have not yet requested or received a custody review while in detention, you should request one before filing a petition for habeas corpus.

If you do not receive a response to your request for a custody review within ten (10) days, you can then file a petition for habeas corpus. [But if you *have* received a response about a custody review by ICE, you should firmly cross out paragraph #58 on page 21.]

3. Who Can File a Petition for Habeas Corpus?

Anyone who has been in detention for more than six (6) months AFTER a final order of removal can file a petition for habeas corpus. (A final order of removal is issued to you by either an immigration judge or by the Board of Immigration Appeals and means you are not appealing your case.) This 180-day period of detention was set by the Supreme Court case *Zadvydas v. Davis*, 533 U.S. 678 (2001). Sometimes, however, filing a habeas petition may speed up your deportation process. On the other hand, sometimes filing a habeas petition will motivate ICE to release you from detention, under terms of supervision, in order to avoid litigating your petition.

4. Where do I file this Habeas Petition?

A habeas corpus petition must be filed in the federal district court with jurisdiction over the jail or detention center in which you are detained. That means there is a specific court where you should file your habeas petition, and a list of some courts is attached.

5. How do I use the *pro se* Habeas Petition?

There are several blank lines that you should fill out before submitting this petition to a federal court. Here, we will explain how to complete certain areas of the form.

- **Cover Page (page 1):**

Identifying Your Federal District Court:

At the top of the page, you should put the name and location of the federal district court that has authority over your detention center. To locate your district court, look for the state where you are being detained in the attached list, “Addresses for Federal District Courts by Geographic Location,” find the district court located in the city closest to your detention center, and look at what part of the state it is located in, called the “District.” Fill in the name of the court and its geographic district name.

For example, if you are held near Baton Rouge, Louisiana, your district court is located within the “Middle District of Louisiana.”

Case Caption

The case caption, located on the top left of the page, identifies the parties: you, and the people who are responsible for detaining you (the officials holding you are called the “Respondents”). Identify yourself by writing your name at the top, and your alien or A# on the right. Then, write in the specific name of Respondents for your detention center: the Field Office Director for your detention center, and—if you are being held in a county jail—the County Sheriff’s name and the name of that County in which the jail is located.

While you have the names of both Respondents, fill in their names as well on page 5, paragraph #s 12 and 13. If you are not being held in a county jail, firmly cross out paragraph 13.

- **“Exhaustion of Administrative Remedies” (page 3)**

On page 3, paragraph # 4, you must indicate whether you were “ordered removed by an Immigration Judge or the Board of Immigration Appeals (Circle One).”

If you did not appeal your order of removal, circle “Immigration Judge” and then enter the date of the order. But, if you are unsure whether you appealed your removal order, or if the appeal is “final” (finished), you can contact the Executive Office of Immigration Review at (800) 898-7180 to find out what date your appeal was finalized. If you appealed the immigration judge’s decision, please circle “Board of Immigration Appeals” and enter the date the appeal became final.

Enter that same date describing when you were “ordered removed” on page 6, paragraph # 18.

- **Custody Determination (page 4)**

As explained above, you can request a “custody review” before filing a habeas petition to see if ICE will release you based on your file. If you have requested a review, on page 4, paragraph #7, circle “a custody review has been requested.” If you have already received a custody review, circle the other option.

- **Cooperation with ICE in the Deportation (page 7)**

You are asked to identify which of the following steps (a, b, c, or d) you have taken to cooperate with ICE in your deportation. Circle the steps that you have taken and provide the details if asked to do so.

6. How do I Attach Exhibits to my Habeas Petition?

Exhibits provide evidence to the court confirming that the events you describe in the habeas petition occurred. For each of the following documents—if you have gone through those steps and have gotten them—you should attach copies (**KEEP YOUR ORIGINALS AND ONLY ATTACH COPIES**) at the end of your habeas petition them in the following order, and clearly label mark them “Exhibit A,” “Exhibit B,” “Exhibit C,” etc. in the bottom corner of the first page of each exhibit:

- Copy of your final order of deportation → Exhibit A, mentioned on page 3.
- Copy of any custody determination decision OR a copy of the Custody Determination letter you sent to the ICE (which we discussed in question #2 above) → Exhibit B, mentioned on page 4, in paragraph 7.
- Copies of any letters to your consulate asking for them to issue travel documents, filled out an official form requesting your travel documents, or provided your deportation officer with any documents to assist with your deportation. If your family members have assisted you by giving this information to your deportation officer or the Haitian consulate, even if they were unable to contact anyone, include a written record on a separate

sheet of paper describing their efforts. → Exhibit C, Exhibit D, etc., mentioned on page 7, in paragraph 22.

If you do not have any of these documents because you did not go through these steps, then you must cross out the words, “attached as Exhibit[s] ___” on the page indicated for that document.

7. How Do I Notify Respondents’ Attorneys of My Habeas Petition and File the Petition?

On page 24, in the first space provided for an address, write the address of the U.S. Attorney’s office for the court where you are filing your habeas petition. In the second space provided for an address, write the federal district court with which you are filing.

Before mailing your petition. Make three copies of your habeas petition and exhibits. Mail your original petition to the “Clerk of Court” at the district court with which you are filing your petition (the second address on page 24 of your petition), and include a \$5.00 check or money order payable to “Clerk, U.S. District Court.”

If you cannot afford the \$5.00 fee, you can include an “In Forma Pauperis” form (included in this packet) instead.

If a family member or friend can pay your \$5.00 fee, you can send (file) the petition first with the district court. Then, about a week later, you will get a receipt from the court confirming that your petition has been filed and **your case number**. You can then mail the court clerk your friend’s check or money order with your case number written in the front of it.

Keep one copy of your petition for your records.

You may mail a copy of your habeas petition to: Sunita Patel, Center for Constitutional Rights, 666 Broadway, 7th Fl., New York, NY 10012. Although we are unable to represent you in your habeas petition, we hope to hear about whether your petition is successful or not.

8. What Will Happen After I File My Habeas Petition?

Within approximately one week, you should receive an “Order” from the court telling U.S. immigration officials (“DHS”) that they must respond to your petition by a certain deadline.

If you do not receive the Order, you should write a letter, including your case number, to the court asking them to: “Please issue an order to Respondents to show cause why Petitioner should not be immediately released from DHS’s custody.” (Note: YOU are the Petitioner.)

If U.S. immigration officials do not respond by the date required by the Order, you should write to the court, including your case number, telling them that: “DHS failed to comply with the court’s order, and I request that my habeas petition be granted.”

Remember to keep copies of everything you receive from the court or from Respondents.

9. I Received a Response from DHS/ICE. What Do I Do Next?

If DHS responds to your petition, you will be given time to reply. In your reply, you should tell the court that:

- 1) DHS has not been able to deport you to Haiti;
- 2) *(if this is true in your case)* you have been detained for more than six (6) months since DHS issued your final order of removal; and
- 3) there is “no substantial likelihood of your removal to Haiti in the reasonably foreseeable future.”

You should not discuss your plans regarding what you will do when you are released.

10. What Happens If ICE Moves Me to Another Facility Before I Receive a Decision About My Petition?

If DHS moves you to another facility, you must inform the court immediately so that you will continue to receive mail related to your case. If

you are moved, you should send a change of address form to the court and a copy of it to the U.S. Attorney's office (the first address you entered on page 24 of your petition).

**11. Many Weeks Have Passed and I Have Not Received Anything.
What Should I Do Next?**

The district court judge will usually issue a decision within a few weeks. However, if you do not receive a decision within a few weeks, you should write to the judge and requesting a decision.

If the judge orders you released, send a copy of the order to your deportation officer.

If the judge dismisses your case, write us a letter and tell us what happened and we will see if there is something you can do.

We hope that this information is useful to you and wish you the best with your petition. The Center for Constitutional Rights prepared this information packet so you could know your rights and do something about them. We cannot represent individual Haitian prisoners but hope this information will be helpful.

Sincerely,



Sunita Patel, Staff Attorney
Shirley Lin, Legal Intern
Center for Constitutional Rights
666 Broadway, 7th Floor
New York, NY 10012