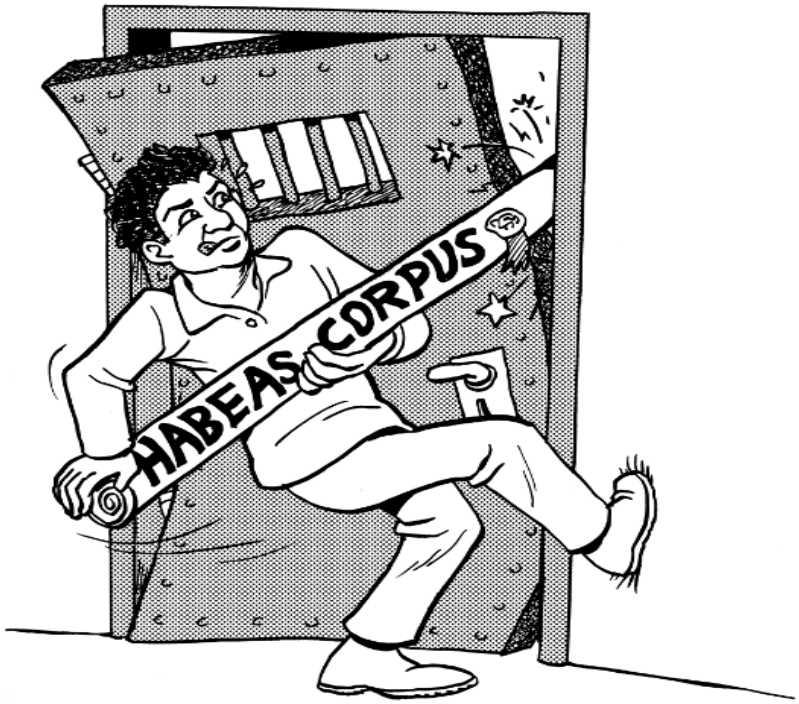
How to Get Out of Detention with a Petition for *Habeas Corpus*



The Florence Immigrant & Refugee Rights Project is a nonprofit legal services organization that works with adults and children in immigration custody in Arizona. The staff of the Florence Project prepared and updated this guide for immigrant detainees who represent themselves in their removal proceedings. To see our guides, go to: www.firrp.org.

This guide is not intended to provide legal advice. It is not a substitute for legal counsel.

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Important Words to Know

Immigration law has many technical words. Here is a list of some words you will see in this guide and a short explanation of what they mean.

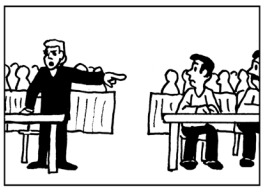
Deportation: ICE has put you in *deportation proceedings*, which are also called *removal proceedings*. If the judge orders you deported or "removed" from the United States, officials will send you back to the country where you are a citizen. You will not be able to legally return to the U.S. for at least 10 years.



Florence Project: A group of lawyers and legal assistants who provide free legal help to people who do not have lawyers. The Florence Project wrote this guide to help you understand your case.



ICE Attorney: The lawyer who represents ICE when you go to your court hearings. This lawyer sits at the table next to you and also talks to the judge. Government attorneys should see that justice is done. Usually they ask the judge to order to deport you.



Immigration and Customs Enforcement (ICE): The agency that has put you in deportation proceedings and detained you. ICE is part of the Department of Homeland Security, or *DHS*.



Immigration Judge: The person who will decide your removal or bond case. Judges hold hearings in the courtroom and wear black robes. They should look at the facts of your case and apply the law fairly. Judges do not work for ICE.



Federal District Court Judge: The person who will decide your habeas petition. This is a separate person from an immigration judge. The federal court judge has the power to decide whether ICE has the legal power to detain you.



U.S. Attorney: The attorney who represents ICE and the warden of your detention center in your habeas petition. This attorney is different from the ICE attorney you met in immigration court. This attorney will appear before the federal court.



Who Should Read this Guide?

If you are held in ICE custody and believe that your detention is illegal, you can file a petition for habeas corpus to challenge whether the government has the legal power to keep you detained. This process is separate from your deportation or bond hearings. If you win a habeas petition, the federal court could either order your release or a special bond hearing before the immigration judge.

What is "habeas corpus"?

"Habeas corpus" is a Latin term meaning "bring us the body." It is a legal petition filed to challenge Immigration and Customs Enforcement's (ICE) ability to detain a person.

There are many different types of habeas corpus petitions. In this guide we will only be discussing habeas corpus petitions that are filed in federal district court to challenge ICE's ability to detain you. We will be simply calling these "habeas petitions" in this guide.

The federal district court is different and, sometimes, more powerful than the immigration court. The immigration judge ("Immigration Judge") has the ability to make decisions about your removal or bond case. But, the district court judge can decide if the government has the legal power to detain you at all. But remember, a

habeas petition only challenges ICE's power to ***detain*** you. It does ***not*** challenge whether the Immigration Judge can order you removed.

How can a habeas petition help me?

A habeas petition asks the district court to make a decision about whether ICE can detain you. In most cases, the court is deciding whether ICE has the legal right to detain you, or whether you have been held for such a long time—six months at the very least--that the Immigration Judge must provide you with a bond hearing.

Can I file a habeas petition to challenge my criminal conviction?

Yes, there are certain types of habeas corpus petitions that you can use to try to overturn a conviction in either state or federal criminal court. However, these are not discussed in this guide. You should try to consult with a criminal defense attorney to learn more about this.

Can I file a habeas petition to challenge my order of deportation?

No, a habeas petition can *only* challenge your detention by ICE. In order to challenge an order of deportation from the Board of Immigration Appeals, you must file a petition for review with the Ninth Circuit Court of Appeals.

How long does a habeas petition take?

Because the courts have many cases, a petition for habeas corpus can take a long time. In general, habeas petitions take at least 6 months, and in most cases you will not receive a final decision for at least 10 months.

Do not expect that just filing a petition will result in your quick release. The judge will first review your claim, order the government to respond, and give you a chance to reply to the government's arguments. Then, the judge will consider what decision to make in your case.

If you are suffering truly serious harm from your detention, like not getting the medical care you need, or if you have a strong argument that your detention is illegal, you may be able to speed up the case and get a decision in a few weeks. You can ask the district court to make a decision as quickly as possible by filing a Motion for a Temporary Restraining Order. This allows your case to jump to the front the line because the harm that you are experiencing because of detention is so serious.

For example, a 17-year-old was sent to detention even though ICE can only hold adults over 18. Because his detention was against the law and he was losing his ability to ask for visas only available to minors, he was able to win a Temporary Restraining Order filed along with his habeas petition and leave detention quickly.

If you feel that the harm that you are suffering because of your detention is truly exceptional, please speak with the Florence Project as soon as possible about whether a Motion for Temporary Restraining Order might help your case.



In what situations could I file a habeas petition?

Here are the most common situations where you might file a habeas petition:

Unlawful detention

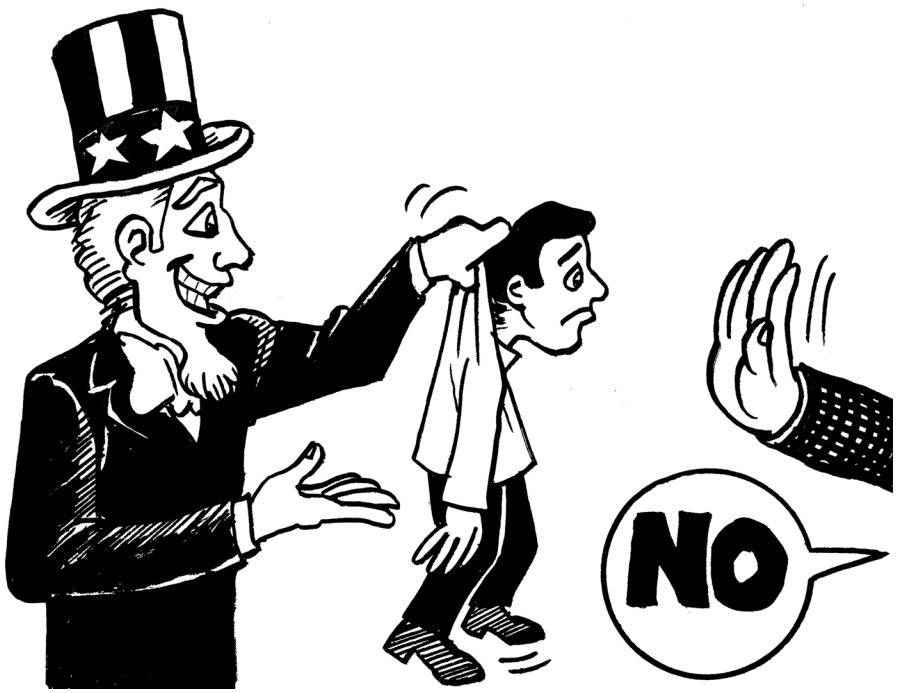
You can file a habeas petition if you believe that your detention violates the law. Most cases like these are where people have a claim of U.S. citizenship, where a person under 18 years old is in adult detention, or where ICE mistakenly says that a person with permanent residency is undocumented. Unlawful detention habeas petitions like these are not common. If you are being held unlawfully, that may be enough to win a Temporary Restraining Order. Courts take claims of unlawful detention very seriously.



Continued Detention After Your Removal Order ("*Zadvydas* habeas")

If you are from a country that does not accept people or is very slow to accept people who are deported from the United States, you may continue to be held in ICE custody even after the Immigration Judge orders you removed. This can happen if your country is very slow to issue a travel document for you or the U.S. does not have an agreement with your country to receive people who have been deported.

If you have been held for more than six months after your removal order is *final,* you may be held against the law. In an important case called *Zadvydas v. Davis*, the Supreme Court held that you should be released after being held for six months after the removal order. Additionally, there should be a low chance that you could be removed in the future.



To file a *Zadvydas* habeas petition, you must wait ***six months*** from the date of your final order of removal. A final order of removal is when the Immigration Judge ordered you deported and you did not reserve the right to appeal. It could also be when the Board of Immigration Appeals dismissed your appeal and you did not file a petition for review to the Ninth Circuit and request a stay of removal. Or, if you appealed to the Ninth Circuit, if the Ninth Circuit denied your appeal. You *cannot*

file a *Zadvydas* habeas before 6 months have passed from the date of your ***final*** order of removal.

A *Zadvydas* petition asks the court to order that ICE either deport you or release you to in the United States. That means that filing a Zadvydas petition could speed your removal if ICE is able to organize your travel or find a country to receive you.

To win your case, you ***must*** work with the ICE to try to get a travel document from your country. This may mean writing a letter to your embassy or the embassies of other countries or applying for a passport. You should also include as much information as possible with your petition showing that your country will not accept you back. This could include:

- Proof that you or your family has been in contact with your embassy without response,
- Letters from your embassy denying you a travel document, or
- proof that your country does not generally accept people who are removed from the U.S.

If you do not have any proof, ICE may try to say that there is still a chance that they could remove you to your country and continue to detain you while they try to do that.

Prolonged Detention Habeas

You may file a prolonged detention habeas petition if you have been detained for more than six months without a bond hearing. The longer that you have been detained without a bond hearing, the stronger your case for a prolonged detention habeas petition becomes.

To file a prolonged detention habeas petition, you must argue that the U.S. Constitution itself requires that you be give a bond hearing before an Immigration Judge. In this hearing, the government must show that you are a danger or flight risk in order to keep you detained.

The federal court will look at five factors to determine whether to order a bond hearing in your case:

1. First, and most importantly, **the length of your detention**. You can file a prolonged detention petition after you have been held for six months, but the court is more likely to grant your case if you have been held for at least a year without a bond hearing.



2. **Delays in your case**. The court will look at who is responsible for delays in your case. It's fine if you had to ask the Immigration Judge to give you more time for a few hearings because you needed that time to look for counsel or prepare your case, but make sure that you haven't been trying to delay your hearings without a good reason related to your case. The strongest cases will show that ICE or the immigration court has caused many of the delays in your case. For example, did the court cancel your hearing or hearings because the court was closed? Or did ICE have to ask for more time because they didn't complete their filings? The strongest cases will show that ICE, the Immigration Judge, or the Board of Immigration Appeals caused long delays in the case.

3. **The strength of your case in immigration court**. How strong is your case in immigration court? Are you likely to win asylum or another type of case, even if you have to appeal? The strongest cases will show that they have a strong legal basis to win protection from removal, even if you have to appeal to the Board of Immigration Appeals or the Ninth Circuit.

4. **The conditions of your detention.** The court will look at the detention center where you're held and what life is like there. If the conditions are not good, it's very important to show proof. Helpful evidence includes:

- **Bad medical care.** Submit your medical records if you can show that you are not receiving the care you need. Your habeas petition may be accessed by the public, so make sure not to include anything you want to keep private.

- **Poor food or nutrition.** Submit examples about the type of food you receive and why that food is not good for you. For example, do you have diabetes or are you overweight and is the food making your condition worse?

- **Are you held in jail?** The strongest cases will show that the conditions inside the detention center are poor and very similar to jails or prisons. Any evidence that you can gather to show that detainees are treated poorly is helpful. Newspaper articles, letters from other detainees, and reports from human rights groups can help you show these conditions.



Before you file a prolonged detention habeas petition, you should first request a hearing from the Immigration Judge. This is an important way to show the federal court that you have tried every single way to get out of detention before asking the federal judge to get involved.



Once the Immigration Judge issues an order denying you a bond hearing, or saying they have "no jurisdiction," meaning no legal power to make the order, you should then appeal that decision to the Board of Immigration Appeals. If the Board of Immigration Appeals agrees with the Immigration Judge, they will dismiss your appeal, which means that there is no legal power for them to give you a bond. It is a good idea to have at least the Immigration Judge's order denying bond before you file your habeas petition. You do not have to wait for a decision from the Board of Immigration Appeals, but it is a good idea to submit proof that you appealed the Immigration Judge's denial to the Board of Immigration Appeals.

If you win a prolonged detention habeas petition you will not be released. You will be given a hearing to ask an immigration Judge for a bond. The judge can still deny you a bond if ICE proves that you are dangerous or that you might not show up for your next immigration appointment.

Where do I file my habeas petition?

If you are detained in Eloy, Arizona or Florence, Arizona, you should file your habeas petition by mail at the U.S. District Court of Arizona in Phoenix.

U.S. District Court – District of Arizona
Sandra Day O'Connor U.S. Courthouse
Attn: Pro Se Habeas Department
401 W. Washington Street
Phoenix, AZ 85003-2119 Telephone: 602-322-7200

How much does it cost to file a habeas petition?



The filing fee for a habeas petition is $5. If you do not have $5, you can file your petition with an Application to Proceed In Forma Pauperis, which is like a fee waiver. A sample is attached at the end of this guide.

What form do I use to file a habeas petition?

To file a habeas petition, you should use the form provided by your local district court, if one is available. The U.S. District Court in Phoenix has a habeas petition form on their website at:
http://www.azd.uscourts.gov/sites/default/files/forms/2241-instructions-form.pdf

A copy of the Arizona District Court's sample petition is included at the end of this guide.

When filling out your petition, you should explain what type of habeas petition you are filing.

For example, if you have been held for more than six months after your final removal order and want *Zadvydas* habeas petition, you could write,

"I am filing a habeas petition under *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001) because I received a final order of removal over 6 months ago and am still detained."

If you are filing a petition to challenge your prolonged detention, you could write, "I am filing habeas under the Due Process Clause of the U.S. Constitution because I have been subjected to prolonged detention and have not been given a bond hearing."

Answer all the questions in the form as best you can. Make sure to give the court the date that you were detained and the most important dates in your case. Depending on the type of case you have, these could be:

- The date that you were first detained by ICE;
- the dates that the Immigration Judge and the Board of Immigration Appeals denied your request for a bond,
- the dates that the Immigration Judge and the Board of Immigration Appeals ordered you removed (if any)
- the date you became subject to prolonged detention (this would be six months from the date of your first detention)

What evidence should I send along with my habeas petition?

You must file all evidence that you want the federal district court judge to consider with your petition when you file it. This is very important, so make sure to spend time gathering all the evidence that you need. This could include:

For *Zadvydas* petitions:

- The Immigration Judge or BIA order denying you a bond hearing
- Proof of your attempts to contact your consulate or embassy
- Immigration Judge or BIA decisions ordering you removed
- Reports showing that your country is not accepting deportees
- Any other proof of your attempts to cooperate with ICE in your removal

For prolonged detention petitions:

- The Immigration Judge or BIA order denying you a bond hearing

- Immigration Judge or BIA decisions to show the strength of your case in immigration court
- Documents, decisions, or transcripts from your hearings that show the reasons for delays in your case
- Information about the conditions of your detention, like medical records, reports, and newspaper articles

For unlawful detention petitions:

- The Immigration Judge or BIA order denying you a bond hearing
- Any proof that you can gather to show that ICE is illegally holding you, like birth certificates, proof of U.S. citizen or lawful permanent resident status, etc.

This is not a complete list and each case is different. Talk to the Florence Project about what kind of proof is the best to submit with your petition.

Send **the original plus one copy** of this form and all attachments to the Arizona district court in Phoenix (address above), along with your $5 or request for a fee waiver.

You must also include a Certificate of Service showing that you have sent copies of the petition and all attachments to the Warden at the facility where you are detained as well as to ICE and the U.S. Attorney's office. A sample is on the next page.

Certificate of Service: Delivered by Mail

I, _____

(Write your name)

certify that on the date below I placed a copy in of this document and all attachments in first-class mail to the recipients below:

ICE Field Office
2035 N. Central Avenue
Phoenix, AZ, 85004

U.S. Attorney for the District of AZ
Two Renaissance Square,
40 N. Central Ave., Suite 1800
Phoenix, AZ 85004-4449

Warden, Detention Center
_____
_____
(insert the address of the detention center where you are being held above)

Signed:	→

Date:	/ /

Day / Month / Year

What happens after I file my habeas petition?

Once you send your habeas petition to the district court, the judge will consider whether you have shown enough proof that you may be held in violation of the law. If the judge believes there is enough proof, the government will have to file a response to your petition. In that response, they will have to show why ICE has the legal power to detain you. It will often take between 30 to 120 days after you file the petition for the judge to order the government to respond.

If the court orders the government to respond, the government will have about a month to file their documents, or **Response**.

Once the government (ICE) submits its Response, you will usually have about 14 days from the date of the Response to submit a **Reply** arguing why ICE's reasons for detaining you, or detaining you without a bond, are not valid. The exact amount of time will be on the judge's order, so review it carefully. Ask the Florence Project for help if you need it.

After the government's Response and your Reply are submitted, the District Court judge will make a decision in writing. This is the final decision on your habeas petition. If the District Court denies your habeas petition, you have the right to appeal this decision to the Ninth Circuit.

What do I get if I win my habeas petition?

If you have filed an unlawful detention habeas or a *Zadvydas* habeas, the court may order ICE to release you. If you have filed a prolonged detention habeas, the court may order ICE to provide you a bond hearing in front of the Immigration Judge. You could be given a bond hearing quite quickly after the federal district court judge orders it, so be sure to have all your bond evidence ready to submit. As soon as you file your petition, read and review closely the Florence Project's guide on how to get a bond so you know what evidence to gather. If you have a bond hearing, ICE has to prove that you are a danger or a flight risk. The Immigration Judge must make an audio recording of the hearing and the decision. If you do not agree with the judge's

decision on your bond, you can appeal this decision to the Board of Immigration Appeals.

Be sure to stay in touch with the Florence Project if you have questions. We wish you the best of luck with your case!

Attachments: Sample Habeas Petition and Sample Motion for Fee Waiver