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A LEGAL GUIDE FOR INS DETAINEES:

PETITIONING FOR RELEASE FROM INDEFINITE DETENTION

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Commission on Immigration Policy, Practice and Pro Bono
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STEP TWO:
PETITIONING FOR ADMINISTRATIVE REVIEW
FROM INS HEADQUARTERS SIX MONTHS AFTER
THE FINAL ORDER OF REMOVAL

Once six months have elapsed since your removal order became final,¹⁶ you **must** follow the steps listed below in order to initiate INS Headquarters (HQPDU) custody review under the *Zadvydas* standard.¹⁷ Under the *Zadvydas* standard, HQPDU will make its decision to detain or release you based on whether there is a **significant likelihood that you can be deported in the reasonably foreseeable future.**

Steps for you to follow:

1. **Send a letter to HQPDU** (Headquarters Post-Order Detention Unit) requesting your release from detention.¹⁸
 - The letter must be typed or handwritten neatly.
 - The letter must be in English.
 - Be sure to include your full name and Alien Number (“A – Number”) on all letters sent.
 - You must explain, in as much detail as possible:
 - a. Why you think there is no significant likelihood that you will be deported in the reasonably foreseeable future¹⁹ (*i.e.*, you have received a letter from your consulate stating that they will not accept you; there is no repatriation agreement between your home country and the United States; many months have passed and your consulate has not issued travel documents for you); and
 - b. What you have done to help the INS deport you²⁰ (*i.e.*, signing your travel document application; telling your Deportation Officer when and where you were born). **You must make reasonable efforts to assist the INS in securing travel documents for your**

¹⁶ See *id.* § 241.13(b)(2)(ii).

¹⁷ *Id.* §§ 241.13(c), (d)(1).

¹⁸ *Id.* § 241.13(d)(1).

¹⁹ *Id.*

²⁰ *Id.* § 241.13(d)(2).

removal. The INS will not release you if you are not cooperating with their efforts to deport you.²¹

- ❖ See **Form 2** for a sample letter you can fill out to send to the HQPDU.

2. **Send copies of any documents** that you have with the above letter to HQPDU that will show the INS you have cooperated with their removal efforts, that your removal is not reasonably foreseeable, that you are not a danger to the public nor a flight risk,²² and that you deserve to be released.²³ For example, copies of the following documents will be helpful to send:²⁴

- Identification documents such as a birth certificate or passport.
- Any correspondence you have had with your consulate or embassy including passport applications, letters, or signed travel documents that you have sent or received.
- A letter from your consulate stating that your home country will not accept you for deportation, or they do not recognize you as citizen.
- A letter from the person you will be living with if you are released (*i.e.*, a relative/sponsor).
- A letter from your employer, written on business letterhead, stating that you will have a job or interview if you are released.
- Certificates from education or job training classes you have completed while in detention.
- Certificates/letters stating that you have completed a behavior management program while in detention (*i.e.*, drug treatment, anger management).
- Reference letters from former employers, responsible family members, church leaders, prison chaplains, or detention officers who know you.

- Note that much of this information is the same as the information you sent to the INS for your first custody review. If you saved this information, much of it can be re-used and updated for your subsequent custody review with HQPDU.

²¹ *Id.* § 241.13(e)(2).

²² *Id.* § 241.4(d)(1).

²³ *Id.* § 241.13(d)(1).

²⁴ Allison Wannamaker, Esq., *Release from INS Custody After a Removal Order: Post-order Custody Reviews and Habeas Corpus*, (Catholic Legal Immigration Network, Inc. 2002).

3. Make a second copy of all the above information that you are sending to HQPDU, and send it to your Deportation Officer for your local INS file.

You will receive a letter from HQPDU acknowledging receipt of your information and explaining the procedures they will use to evaluate your request within ten business days after they have received your information.²⁵ The INS may gather more information about your case from the U.S. Department of State,²⁶ and they may want to interview you in person or on the telephone.²⁷ You have a right to have access to all information the INS intends to rely on in making its decision, and you have a right to respond or contradict this information with your own information or evidence.²⁸

Once the INS has considered all information relevant to your case, HQPDU will mail you a copy of its written decision.²⁹ If the INS determines that there is no significant likelihood of your removal in the reasonably foreseeable future, you will be released under supervised conditions.³⁰ If your request for release is denied, you may submit another request after six months,³¹ or you may file a petition for writ of habeas corpus to the appropriate federal district court. You may also file a habeas corpus petition if HQPDU does not issue a written decision promptly and you have good reason to believe you cannot be removed in the reasonably foreseeable future.³²

²⁵ 8 C.F.R. § 241.13(e)(1).

²⁶ Id. § 241.13(e)(3).

²⁷ Id. § 241.13(e)(5).

²⁸ Id. § 241.13(e)(4).

²⁹ Id. § 241.13(g).

³⁰ Id. § 241.13(h).

³¹ Id. § 241.13(j).

³² There is no administrative appeal from a HQPDU decision under this section. Id. § 241.13(g)(2).

Form 2: Six-Month Letter Requesting Release From Detention

[Print your full name]

[Alien number]

[Mailing address at your detention center]

[Today's date]

Headquarters Post-Order Detention Unit
U.S. Immigration and Naturalization Service
801 I Street, N.W., Suite 800
Washington, DC 20536

I request that the INS take the following information into consideration in reviewing my custody status because I believe that I qualify for an order of supervision. I am under a final order of removal and have been in detention for more than 6 months since my order of removal became final. It is unlikely that I will be deported to [your home country] in the reasonably foreseeable future. I am not a danger to public safety, and I am not a flight risk.

I entered the United States on [date of your entry]. I have the following family members in the United States:

[Enter the names and addresses of all family members living in the United States, and state whether they are lawful permanent residents or U.S. citizens].

My home country will not accept my deportation because [In this section, provide the reason(s) why the INS has been unable to deport you. For example, you could explain that your home country does not have a repatriation agreement with the United States, that you know other detainees from your home country are not

deported; that your home country has specifically told you it will not take you back; or that your home country does not consider you to be a citizen].

I have cooperated with INS efforts to remove me from the United States. I have [In this section, explain what you and your Deportation Officer have done to get your home country's permission for your return. For example, explain which papers you have signed, whether you have talked to your home country's embassy or consulate, and whether you have provided the INS with any photographs, fingerprints, or identity papers. **Attach photocopies of any letters or documents you have supporting these claims:**

In addition, I am not a danger to public safety because [In this section, you should provide information to the INS to demonstrate that you will not commit further crimes or otherwise pose a danger to the public. Include reasons such as those suggested below. **Attach photocopies of any letters or documents that support these claims].**

- 1) My past criminal conduct occurred while I was associated with certain people who had a negative influence on me. If released, I will be living far away from these people.
- 2) I will live with my parent(s)/other relative/friend where I will have a stable home.
- 3) I will have a job if released (explain where you will work, and, if possible, have your employer write a letter, which you can submit, explaining that you will have a job there).
- 4) I want to continue my education and will enroll in job training/college/educational programs if released.
- 5) I have been rehabilitated while in detention (list the programs that you have completed, such as Alcoholics Anonymous, Bible study, drug treatment, or vocational training, and **attach certificates/letters of completion**).
- 6) I did not have any disciplinary problems while in detention (if you have a good disciplinary record, have someone from your detention center write a letter supporting this claim for you to submit with this letter).

- 7) I have a healthy support network available that will help me succeed outside of detention (describe your family or other ties to the community, church or other religious membership, or any community programs that will support you after you are released).
- 8) Unusual circumstances warrant my release (explain any unusual circumstances, such as a sick family member who needs your help, any extensive medical treatment that you require, or your family's need for your financial support).
- 9) I realize that I have made mistakes in the past, but I have learned from them and can now be a productive member of society.]

I am not a flight risk because I will live at [write the address and phone number where you will live if released] with my [write who you will live with, if applicable]. When I am released, I will concentrate on working and supporting my family. I am prepared to comply with all restrictions imposed on me as part of my release. [If you have ever violated your probation, or missed a court hearing or INS appointment, you should explain why and tell the INS why your failure to comply will not recur].

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

Respectfully Submitted,

[Print your full name and Alien number]

[Sign your full name]

Headquarters Post-Order Detention Unit
U.S. Immigration and Naturalization Service
801 I Street, N.W., Suite 800
Washington, DC 20536

I request that the INS take the following information into consideration in reviewing my custody status because I believe that I qualify for an order of supervision. I am under a final order of removal and have been in detention for more than 6 months since my order of removal became final. It is unlikely that I will be deported to _____ in the reasonably foreseeable future. I am not a danger to public safety, and I am not a flight risk.

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

My home country will not accept my deportation because _____

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

In addition, I am not a danger to public safety because _____

I am not a flight risk because I will live at _____
_____ with my _____

When I am released, I will concentrate on working and supporting my family. I am prepared to comply with all restrictions imposed on me as part of my release. _____

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

Respectfully Submitted,

