**TEMPLATE HABEAS PETITION**

**For more detailed information, see the practice advisory**

**Habeas Corpus Petitions**

**available at:** **www.immigrationlitigation.org**

[Attorney Information and Bar No.,

if Required by Local Rule]

Attorney/s for Petitioner

**UNITED STATES DISTRICT COURT**

**\_\_\_\_\_\_ DISTRICT OF [STATE]**

**\_\_\_\_ DIVISION**

**[NAME],** )

 ) Case No. \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Petitioner, )

 ) **PETITION FOR WRIT OF**

v. ) **HABEAS CORPUS**

 )

**[NAME]**, Warden, [Name of Facility]; )

**[NAME],** Acting/Director of [City] Field Office, ) **ORAL ARGUMENT**

U.S. Immigration and Customs Enforcement;) **REQUESTED**

**[NAME],** Secretary of the U.S. Department of )

Homeland Security; and **[NAME], )**

Attorney General of the United States, )

in their official capacities, )

 )

Respondents. )

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_)

**INTRODUCTION**

#. Short introduction providing Petitioner’s full name and status. For detention challenges, include dates and length of detention and an assertion as to why detention is unconstitutional/unlawful/ and/or why release is not reasonably foreseeable. For non-detention challenges, include brief description of challenge and why habeas review is necessary. Accordingly, to vindicate Petitioner’s [select] statutory / constitutional / regulatory rights, this Court should grant the instant petition for a writ of habeas corpus.

#. [If helpful, add paragraph summarizing claims presented]. Absent an order from this Court, Petitioner will \_\_\_\_\_\_\_\_\_.

#. Petitioner asks this Court to find that \_\_\_\_\_\_\_\_\_ and order \_\_\_\_\_\_\_\_\_\_\_.

**JURISDICTION**

#. This action arises under the Constitution of the United States and the Immigration and Nationality Act (INA), 8 U.S.C. § 1101 *et seq*.

#. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 (habeas corpus), 28 U.S.C. § 1331 (federal question), and Article I, § 9, cl. 2 of the United States Constitution (Suspension Clause). [If applicable: Under 8 U.S.C. § 1252(e)(2), this Court has habeas authority to determine [select] whether Petitioner is a noncitizen / whether Petitioner was ordered removed under 8 U.S.C. § 1225(b)(1) / whether Petitioner can prove by a preponderance of the evidence that he/she/they is [select] a lawful permanent resident / refugee under 8 U.S.C. § 1157 / asylee under 8 U.S.C. § 1158.]

#. This Court may grant relief under the habeas corpus statutes, 28 U.S.C. § 2241 *et. seq*., the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq*., and the All Writs Act, 28 U.S.C. § 1651.

**VENUE**

*#.* [If applicable: Venue is proper because Petitioner is detained at [Name of Facility] in City, State, which is within the jurisdiction of this District.]

#. [If applicable or in addition: Venue is proper in this District because Respondents are officers, employees, or agencies of the United States and [select] Respondent [Name] reside in this District / a substantial part of the events or omissions giving rise to her claims occurred in this District / and/or Petitioner resides in this District and no real property is involved in this action.] 28 U.S.C. § 1391(e).

**REQUIREMENTS OF 28 U.S.C. § 2243**

#. The Court must grant the petition for writ of habeas corpus or issue an order to show cause (OSC) to the respondents “forthwith,” unless the petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Court must require respondents to file a return “within *three days* unless for good cause additional time, not exceeding twenty days, is allowed.” *Id.* (emphasis added).

#. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as “perhaps the most important writ known to the constitutional law of England, affording as it does a *swift* and imperative remedy in all cases of illegal restraint or confinement.” *Fay v. Noia*, 372 U.S. 391, 400 (1963) (emphasis added).

**PARTIES**

#. Petitioner is a [immigration status]. [Either Petitioner is currently detained at [Name of Facility] OR Petitioner is a resident of [City, State]. She/He/They is in the custody, and under the direct control, of Respondents and their agents.

#. Respondent [Name] is the Warden of [Name of Facility], and she/he has immediate physical custody of Petitioner pursuant to the facility’s contract with U.S. Immigration and Customs Enforcement to detain noncitizens and is a legal custodian of Petitioner. Respondent [Last Name] is a legal custodian of Petitioner.

#. Respondent [Name] is sued in her/his/their official capacity as the Acting Director of the [City] Field Office of U.S. Immigration and Customs Enforcement. Respondent [Last Name] is a legal custodian of Petitioner and has authority to release her/him/them.

#. Respondent [Full Name] is sued in his/her/their official capacity as the Secretary of the U.S. Department of Homeland Security (DHS). In this capacity, Respondent [Last Name] is responsible for the implementation and enforcement of the Immigration and Nationality Act, and oversees [select] U.S. Immigration and Customs Enforcement / U.S. Customs and Border Protection, the component agency responsible for Petitioner’s detention / custody. Respondent [Last Name] is a legal custodian of Petitioner.

#. Respondent [Full Name] is sued in his/her/their official capacity as the Attorney General of the United States and the senior official of the U.S. Department of Justice (DOJ). In that capacity, he/she/they has the authority to adjudicate removal cases and to oversee the Executive Office for Immigration Review (EOIR), which administers the immigration courts and the BIA. Respondent [Last Name] is a legal custodian of Petitioner.

**STATEMENT OF FACTS**

#. Petitioner is a [age]-year-old citizen of [Country]. [Consider adding a sentence here that sums up Petitioner’s equities, i.e., family members, employment, community ties, past persecution/torture].

#. In individually numbered paragraphs, briefly summarize the facts regarding the proceedings that led to the need to file the habeas petition and are necessary to adjudication. Factual allegations might address how and when Petitioner arrived in the United States, how and when DHS placed Petitioner in removal proceedings/detention, experiences in detention, what happened in removal proceedings and the outcome, and whether Petitioner appeared pro se or with counsel. Use additional headings as applicable.

#. Add numbered paragraphs for each factual allegation.

**LEGAL FRAMEWORK**

#. Add the legal background relevant to the claims for relief.

**CLAIMS FOR RELIEF**

**COUNT ONE**

**Violation of Fifth Amendment Right to Due Process**

#. The allegations in the above paragraphs are realleged and incorporated herein.

#. Allege constitutional violation.

1. For these reasons, [select] Petitioner’s detention / challenged action violates the Due Process Clause of the Fifth Amendment.

**COUNT TWO**

**Violation of 8 U.S.C. § \_\_\_ and Implementing Regulations**

#. The allegations in the above paragraphs are realleged and incorporated herein.

#. Allege statutory and/or regulatory violation.

#. For these reasons, [select] Petitioner’s detention / challenged action violates 8 U.S.C. § **\_\_\_** and8 C.F.R. § \_\_\_.

**PRAYER FOR RELIEF**

Wherefore, Petitioner respectfully requests this Court to grant the following:

1. Assume jurisdiction over this matter;
2. Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days.
3. Declare that [select] Petitioner’s detention / challenged action violates the Due Process Clause of the Fifth Amendment, 8 U.S.C. § \_\_\_, and/or 8 C.F.R. § \_\_\_;
4. Issue a Writ of Habeas Corpus ordering Respondents to \_\_\_\_ [for example, release Petitioner immediately / schedule a bond hearing before an immigration judge and, at such hearing, \_\_\_\_ / afford Petitioner \_\_\_\_];
5. Award Petitioner attorney’s fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
6. Grant any further relief this Court deems just and proper.

Respectfully submitted,

/s/ *Attorney Name*

Attorney Name

Signature block

*Counsel for Petitioner*

Dated: [Month Day, Year]

**VERIFICATION PURSUANT TO 28 U.S.C. § 2242**

I represent Petitioner, Name, and submit this verification on his/her/their behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this \_\_\_ day of \_\_\_\_, 2025.

s/*Attorney Name*

Attorney Name