

1 Petitioner's unlawful detention. In support of this petition, Petitioner alleges as follows:

2 1. This is a petition for habeas corpus challenging the unlawful indefinite detention of an alien who
3 has been ordered deported/excluded/removed from the United States but has not been physically
4 deported from the United States. This action arises under the United States Constitution and the
5 Immigration & Nationality Act of 1952, as amended (the "Act"), 8 U.S.C. § 1101, et seq. Subject
6 matter jurisdiction is based upon 28 U.S.C. § 2241. This Court may grant relief pursuant to 28 U.S.C.
7 § 2241, et seq. See, e.g., Zadvydas v. Davis, 533 U.S. 678, 150 L. Ed. 2d 653, 121 S.Ct. 2491
8 (2001); Ma v. Ashcroft, 257 F.3d 1095 (9th Cir. 2001).

9 2. Petitioner is being detained by the Immigration and Naturalization Service ("INS"), under the
10 direction of the U.S. Attorney General, _____, and the INS District Director for the San
11 Francisco District, _____, at the KERN COUNTY JAIL _____ [name of jail or
12 other detention facility] in Bakersfield, ca. _____ [city], California.

13 Respondents _____ and the INS exercise power and authority over aliens on a nationwide basis
14 and are the custodians of Petitioner. Respondent _____ is the local INS District Director, who
15 exercises power and authority over aliens on a regional basis, including the control of aliens detained in
16 the Fresnos CA, Fresno County jail _____ [name of jail or other detention facility].

17 3. On 06/04/09 _____ [date], Petitioner was ordered deported/excluded/removed
18 from the United States by an Immigration Judge. The petitioner [did / did not] appeal this order to the
19 Board of Immigration Appeals. The Board of Immigration Appeals denied this appeal on
20 06/04/09 _____ [date if known]. Petitioner is now subject to a final order of deportation,
21 exclusion, or removal.

22 4. According to 8 U.S.C. § 1231(a)(1)(A) the "removal period" runs for ninety days after an
23 order of removal becomes final. During this ninety-day "removal period," the petitioner is mandatorily
24 detained. See 8 U.S.C. § 1231(a)(2). After the completion of the "removal period," the petitioner's
25 detention is governed by 8 U.S.C. § 1231(a)(6), which provides for the possibility of release under
26 supervision.

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1 5. In Zadvydas v. Davis, 533 U.S. 678, 150 L. Ed. 2d 653, 121 S.Ct. 2491 (2001), the United
2 States Supreme Court examined 8 U.S.C. §1231(a)(6), in light of the due process protections of the
3 United States Constitution and held:

4 ...we read an implicit limitation into the statute [8 U.S.C. § 1231(a)(6)] before us. In our
5 view, the statute, read in light of the constitution's demands, limits an alien's post-removal
6 period detention to a period reasonably necessary to bring about that alien's removal from
7 the United States. It does not permit indefinite detention.

8 Zadvydas, 121 S.Ct. at 2498. The Court stated that once the statutory removal period of 90 days [8
9 U.S.C. § 1231(a)(2)] has passed, further detention is only authorized if it is "reasonable." Id., at 2503.
10 The Court clarified that detention is unreasonable if the alien shows there is no reason to believe
11 removal is likely in the reasonably foreseeable future and the government does not rebut that showing.
12 Id. In order to grant relief to a petitioner, it is not necessary for the court to find that removal is
13 impossible or unlikely; rather, the court need only conclude that there is no "significant likelihood" that
14 removal will occur in the "reasonably foreseeable future". Id., at 2505.

15 6. Petitioner last entered the United States in 5/16/1995 [year or specific date if known].

16 7. Petitioner was born in CHINANDEGA, NICARAGUA [country].

17 Petitioner was ordered deported to NICARAGUA CENTRO AMERICA [country].

18 8. Petitioner has been held in continuous post-removal order INS custody since ~~06/04/09~~

19 06/04/09 That is a total of 85 Days months of post-removal order detention. In all
20 of that time, Petitioner has received no indication that the Petitioner's country will acquiesce to
21 repatriation in the reasonably foreseeable future. As a result of that country's recalcitrance,
22 Respondent INS has been unable to obtain travel documents for Petitioner and is unable to effectuate
23 Petitioner's removal from the United States in the reasonably foreseeable future. See Ma v. Ashcroft,
24 257 F.3d 1095 (9th Cir. 2001).

25 9. Petitioner is not awaiting trial nor serving a sentence on any state or federal criminal case.

26 10. It is incumbent upon the court to proceed expeditiously in light of the liberty interest at
27 stake. Yong v. INS, 208 F.3d 1116, 1119 (9th Cir. 2000) ("special solicitude is required because the
28

1 2000 U.S. Dist. Lexis 18429 (S.D.N.Y. December 21, 2000). In determining whether or not the
2 appointment of counsel is necessary in the interest of justice, courts have generally considered the
3 following factors: the merits of the underlying petition, the complexity and novelty of the legal issues,
4 and the ability of the petitioner to investigate and present the factual and legal issues. See Saldina v.
5 Thornburgh, 775 F.Supp 507 (D.Conn. 1991). An examination of those factors and others in the
6 instant case indicate that justice demands that legal counsel be appointed.

7 **1. Petitioner Cannot Adequately Present the Factual Issues**

8 Petitioner is incarcerated under extremely restrictive conditions. When Petitioner was taken into
9 custody by the INS nearly all of the Petitioner's legal papers were taken from the Petitioner and placed
10 into "property for safekeeping." Petitioner does not currently have access to this material. Petitioner's
11 access to the telephones is also severely restricted and Petitioner is limited to collect calls. Due to
12 Petitioner's incarceration, Petitioner is unable to adequately investigate and present the factual issues
13 relevant to this petition.

14 Most of the relevant facts concerning Petitioner's detention are contained in the INS's
15 administrative alien file, or "A-file." This file also contains documentation that will assist the court in
16 determining Petitioner's correct constitutional and statutory status. Petitioner does not have access to
17 the A-file and, therefore, will be unable to adequately respond to any factual assertions made by
18 Respondent INS concerning the Petitioner's immigration status or concerning the timing of relevant
19 events. Unless Respondent INS agrees to provide Petitioner with a complete copy of the Petitioner's
20 INS A-file, Petitioner will have to avail himself to the discovery process set forth in Rule 6 of the Rules
21 Governing § 2254 Cases. (The discovery process is, at the court's discretion, available to Petitioner
22 pursuant to Rule 1 of the Rules Governing § 2254 Cases.) Should the court allow for discovery in this
23 case, Rule 6 states that counsel may be appointed under 18 U.S.C. § 3006.

24 **2. The Legal Issues are Complex**

25 This petition involves complex legal issues for this court to resolve. There are weighty
26 constitutional principles at stake such as the extent to which an alien, present in the United States, is
27 entitled to Substantive and/or Procedural Due Process. Further, these petitions often involve complex
28 jurisdiction issues. This petition also involves interpreting the difficult and often convoluted provisions

1 of the Immigration and Nationality Act ("INA"). This especially likely if the Respondent disputes
2 Petitioner's immigration status. Finally, any dispute regarding Petitioner's immigration status or the
3 likelihood of deportation may result in an evidentiary hearing. If an evidentiary hearing becomes
4 necessary, appointment of counsel is mandatory under Rule 8(c) of the Rules Governing Section 2254
5 Cases.

6 **3. The Legal Issues are Novel**

7 This petition involves the question of whether or not the Respondents can continue to detain
8 Petitioner pursuant to 8 U.S.C. § 1231(a)(6). This statute was construed by the U.S. Supreme Court in
9 Zadvydas v. Davis, 533 U.S. 678, 121 S. Ct. 2491 (2001). However, the application of the Zadvydas
10 decision continues to evolve. Finally, if the issue of the possibility of removal in the foreseeable future
11 is contested by Respondent INS, an evidentiary hearing will likely be necessary. Again, in this
12 situation, the assistance of counsel is required under Rule 8(c) of the Rules Governing Section 2254
13 Cases.

14 **4. Considerations of Judicial Economy and the Swift Adjudication
15 of 28 U.S.C. § 2241 Claims Warrant Appointment in this Case**

16 This Court will benefit from the contributions of experienced federal counsel in examining the
17 claims of this Petition. The Federal Defender's Office has become familiar with the relevant legal and
18 factual issues presented by this type of petition and can quickly assess and present such information for
19 the court to adjudicate this matter in a timely fashion as required by Yong v. INS, 208 F.3d 1116, 1119
20 (9th Cir. 2000).

21 **5. Petitioner is Not Able to Adequately Present his Case**

22 Petitioner is a native of NICARAGUA, C.A. [country]. English [is / is not] [circle one]
23 Petitioner's native language. Petitioner has no background in the law and has no knowledge regarding
24 the civil procedures of federal district court.

25 Further, Petitioner suffers from the following handicap which interferes with the ability to
26 present the factual and legal issues of this case: Regarlyly to my two Son's in the U.S.A
27 in the custodie of her Mon in Fresno C.A.

28 Anthony arevalo Vargas 3year old [explain, if applicable]
Meyling Arevalo Vargas 12 Moths

1 Many of the recent cases interpreting the Zadvydas decision are in recent Federal Supplement
2 cases or in unpublished cases, which are accessible only through a computerized database. INS
3 detainees, incarcerated in local county jails, do not have access to such cases and are consequently
4 unable to adequately present the relevant legal arguments.

5 INS detainees such as Petitioner are not allowed to work at the jail. Even if the court allows
6 this petition to be filed *in forma pauperis*, Petitioner may not have the funds to pay for postage with
7 respect to other pleadings.

8 INS detainees are frequently transferred to various jails contracting with the INS. The court is
9 usually not notified by the INS of such transfers. If the court sends letters and/or orders to INS
10 detainees who have been transferred, those items are generally returned to sender rather than forwarded
11 to the detainee's new location.


12 The fact that Petitioner has managed to file the instant request and petition should not be viewed
13 by the court as evidence that the Petitioner is able to adequate prosecute this litigation. This request
14 and the petition it is attached to are essentially "fill-in-the-blank" forms, which have been developed by
15 the Office of the Federal Defender.

16 **CONCLUSION**

17 This Court has the authority and should appoint counsel for Petitioner pursuant to 18 U.S.C.
18 §3006A (a)(2)(B). Appointment of counsel will serve the interests of justice and judicial expedience
19 and economy.

20 Respectfully submitted,

21
22 Dated: 06/29/09

23 
24 _____
[signature]

25 Eliseo A, Arevalo, Delgado
26 _____
[type or print name]

1 writ is intended to be a 'swift and imperative remedy in all cases of illegal restraint or confinement.'"
2 citing Fay v. Noia, 372 U.S. 491, 500 (1963)). Because the Petitioner has alleged facts indicating that
3 he/she is entitled to relief, the court should order a return to this application for a writ within three days
4 unless, for good cause, an additional twenty days is allowed. 28 U.S.C. § 2243. The court is directed
5 by statute to "summarily hear and determine the facts, and dispose of [a habeas petition] as law and
6 justice require. 28 U.S.C. § 2243.

7
8 **GROUND FOR RELIEF**

9
10 **COUNT ONE**

11 11. Petitioner's indefinite detention under 8 U.S.C. § 1231(a)(6) exceeds Respondent's statutory
12 authority to detain the Petitioner. Zadvydas v. Davis, 533 U.S. 678, 150 L. Ed. 2d 653, 121 S.Ct.
13 2491 (2001).

14 **COUNT TWO**

15 12. Petitioner's indefinite detention violates the Petitioner's substantive and procedural due
16 process rights under the Due Process Clause of the Fifth Amendment to the Constitution. See, e.g.,
17 Tam v. INS, 14 F. Supp. 2d 1184 (E.D. Cal. 1998); Kay v. Reno, 94 F. Supp. 2d 546 (M.D. Pa.
18 2000); In Re: Indefinite Detention Cases, 82 F. Supp. 2d 1098 (C.D. Cal. 2000); Nguyen et.al. v.
19 Fasano, 84 F. Supp. 2d 1099 (S.D. Cal. 2000); Phan v. Reno, 56 F. Supp. 2d 1149 (W.D. Wash.
20 1999); Le v. Greene, 84 F. Supp. 2d 1168 (D. Col. 2000).

21 **COUNT THREE**

22 13. Respondent INS's current detention of Petitioner is punitive in nature and, thus, constitutes
23 punishment without due process of law. Such punishment is constitutionally impermissible. See
24 Wong Wing v. United States, 163 U.S. 228 (1896). (Punishment cannot be imposed on a post removal
25 order alien, unless the alien is given full due process protections afforded criminal defendants).

26 ///

INS HABEAS UNIT

Date:

DETENTION QUESTIONNAIRE

06/29/09

First Name: ELISEO	Middle: Antonio	Last (Family): Arevalo
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INS Alien Number (A Number): A75469077	Date of Birth: 05/22/73	Place of Birth: Chinandega NIC.
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Nationality: Nicaraguan	Have you or your family retained an immigration attorney or other private counsel? None
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When did you come to the United States? 05/16/95	Did you have a VISA or PASSPORT? None
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How did you come to the United States? (Describe in detail, please use the back of this page if necessary)

Cross the Border by Nogales Arizona.

Were/Are your: parents Two Son's grandparents United States Citizens?

How and when did they become citizens: They are being birth on U.S.A
They are in her mother custody in Fresno CA.

Have you ever applied for citizenship: NO YES, when & where:

Have you ever applied for an immigration benefit? Permanent Residency "Green Card" Asylum Amnesty TPS
 Cancellation of Removal Other:

Date (if remembered) or age? May 2001 28 Years Old

Have you ever gone before an Immigration Judge? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	If yes, when and where: Florence, Arizona xxxxx 1998.
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Do you have an upcoming immigration court date? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	If yes, when and where: Deportation Issue
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If you have already been through immigration proceedings, are you currently under an order of:

Deportation Removal Exclusion No order (explain):
 Don't know

Do you know why you were ordered deported, removed, or excluded? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	If yes, explain: (Criminal conviction(s), visa overstay, undocumented, other) I don't know
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Did you appeal the order to the Board of Immigration Appeals (BIA)? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	If yes, what was the date it was filed? If anyone helped you, what is their name, address and telephone number? no
Did you receive a decision from the BIA? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	If yes, what was the decision and the date it was filed: none
Were you granted any form of relief from removal? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	If yes, explain: (Asylum, Withholding of removal, Convention Against Torture, other) none
Do you have any reason to fear going back to your country of origin? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If yes, who do you fear and why: BECAUSE I'M HERE ABOUT OF MY INTIRE LIFE SINCES I' JUSTY A LITLLE KID AND ALL MY FAMILY IS THEU.S.A. THANK YOUR HONOR FOR TAKE CARE OF THIS MATTER.	
To the best of your knowledge, has the INS tried to obtain travel documents from your country? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	If yes, what steps have been taken that you know about: NONE
Have you ever filed a petition for writ of habeas corpus before? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	If yes, when and where: NONE
When did you enter INS custody (your present INS confinement)? Date 06/04/09	Where were you when the INS picked you up? Fresno.Ca countyjail
Have you been in INS custody before? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO If yes, for each time in custody, answer the following questions:	
When & where? 1998 Florence, Arizona.U.S.A. How long were you in custody? 1 Monht Were you released on an Order of Supervision? none If yes, when and where? none	When & where? 1998 Florence Arizona How long were you in custody? 1 Moth Were you released on an Order of Supervision? none If yes, when and where? none
Do you have a sponsor? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	Contact information: none
Do you have a job waiting for you? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO	Contact information: Ralhp, Triangel, Services, Inc Huron, CA,

If detainee is a Mariel Cuban, go to next page and complete.

DECLARATION OF

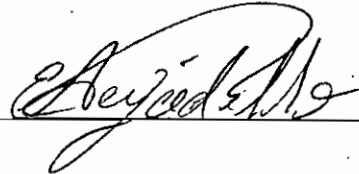
HABEAS CORPUS PETITION

1. My name is ELISEO ANTONIO AREVALO DELGADILLO.
2. My A-number is A75469077.
3. I am a native citizen of CHINANDEGA NICARAGUA C.A.
4. I entered the United States of America on 05/16/95.
5. I became a legal resident of the United States.
6. I was ordered deported to none in none.
7. I DID / DID NOT appeal my deportation.
If applicable:
A) My appeal was denied on None.
8. I have been in custody for more than 90 days since my deportation order became final.
9. I am not presently serving any criminal sentence, nor am I awaiting trial on any criminal case in the United States.

I affirm that the foregoing statements are true and correct, to the best of my knowledge, under penalty of perjury.

DATE 09/29/09

SIGNED




PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the petition for a writ of habeas corpus and order the INS to release Petitioner from its custody immediately (under reasonable conditions of supervision).

I verify under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Respectfully submitted,

Dated: 09/29/09


[signature]

ELISEO A. AREVALO D.
[type or print name]