
Petitions for Writ of Habeas Corpus for Immigrants Detained in the District of Colorado

*Supported by Rocky Mountain Immigrant
Advocacy Network*

COURSE BOOK VERSION 1.1

C B A · C L E

Petitions for Writ of Habeas Corpus for Immigrants Detained in the District of Colorado

April 28, 2026

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AGENDA

8:30 am: Registration and Coffee

9:00 am: Welcome Remarks

*Extended by **Monique Sherman, Esq.**, Detention Program Managing Attorney, RMIAN, and **Susie McNulty, Esq.**, Program Attorney, CBA-CLE*

9:05 am: Introduction to the Writ of Habeas Corpus

- Overview of panelists' expertise and why we are teaching the CLE
- Orienting to this moment – why habeas is a critical tool in defending against unlawful government action
- Overview of habeas authority
- Critical considerations when assessing eligibility
- Risk assessment prior to filing

*Presented by **Laura Lunn, Esq.**, Director of Advocacy & Litigation, RMIAN, and **Jenny Regier, Esq.**, Detention Program Pro Bono Coordinating Attorney, RMIAN*

9:55 am: Substance of the Claims and Practical Considerations (Part 1)

- Identifying who to sue
- Template pleadings and research for making the claim and anticipating counterarguments
- Working with opposing counsel
- Client strategy and planning
 - Restriction levels
 - Publicity and client privacy
- Appearing in court
- EAJA fees

*Presented by **Jess Dawgert, Esq.**, Ariela Lake Law & Consulting, PLLC, and **Laura Sturges, Esq.**, Of Counsel, Gibson, Dunn & Crutcher LLP*

10:45 am: Networking Break

**11:00 am: Substance of the Claims and Practical Considerations
(Part 2)**

- Identifying a claim or claims
- Common claims
- Motions and notice practice
- Remedies
- Outcomes and next steps

*Presented by **Elizabeth (Liz) Jordan, Esq.**, Immigration Law & Policy Clinic Director, University of Denver Sturm College of Law, and **Laura Lunn, Esq.**, Director of Advocacy & Litigation, RMIAN*

11:50 am: Getting Started! Moderated Panel Discussion

- Logistics of filing
- Retainer and client assignment of fees
- How to familiarize yourself with the issues and legal theories
- Understanding the rules and where to turn if you don't
- Serving and re-serving the petition
- How to use the CM/ECF portal
- Keeping time for possible EAJA fees

Panelists:

***Anji Hamilton, Esq.**, Pro Bono Counsel*

***Shira Hereld, Esq.**, RMIAN*

***Elizabeth (Liz) Jordan, Esq.**, Immigration Law & Policy*

Clinic Director, University of Denver Sturm College of Law

12:40 pm: Adjourn

BIOGRAPHICAL INFORMATION

PROGRAM CHAIRS

***Laura Lunn, Esq.,** (she/her) is the Director of Advocacy & Litigation at Rocky Mountain Immigrant Advocacy Network (RMIAN), a nonprofit organization that primarily works with children, families, and detained adults. She also teaches an Asylum Law & Advocacy Practicum in the spring semester at the University of Denver Sturm College of Law. Laura clerked for the El Paso Immigration Courts through the U.S. Attorney General's Honors Program, attended the University of Iowa College of Law, and earned her B.A. at Colgate University.

***Jenny Regier, Esq.,** (she/her) is the Pro Bono Coordinating Attorney for RMIAN's work with people in immigration detention in Aurora. She joined RMIAN in September 2020 as an Equal Justice Works Fellow sponsored by Pfizer, Inc. Through her fellowship, she coordinated a medical-legal partnership and worked to represent medically vulnerable women and gender minorities in detention. Jenny was a recipient of the Chancellor's Scholarship at the University of Denver (DU) Sturm College of Law. During law school, Jenny advocated for clients through the DU Immigration Law and Policy Clinic and with immigration legal services and civil rights organizations in the Denver area, including the Meyer Law Office, Rathod Mohamedbhai LLC, the Migrant Farm Worker Division of Colorado Legal Service, and RMIAN. Before law school, Jenny worked to provide immigration legal assistance to unaccompanied children on the Texas-Mexico border as an accredited representative with the South Texas Pro Bono Asylum Representation Project (ProBAR).

***Also a faculty member**

PROGRAM FACULTY

Jess Dawgert, Esq., is a founding partner of Ariela Lake Law & Consulting PLLC, where she focuses on federal litigation and helping clients, companies, and attorneys understand both immigration and federal court practice. She has more than two decades of experience in immigration law and policy, including seventeen years working for the U.S. Department of Justice as an Associate Deputy Attorney General and Senior Litigation Counsel. In these roles, she oversaw immigration policy, drafted new regulations, and litigated and supervised thousands of cases in twelve circuit courts of appeals and numerous district courts. Jess has also taught courses for attorneys and law students on many issues involving asylum, removability, detention, and criminal immigration issues. She is admitted to practice in the U.S. Supreme Court, eleven circuit courts of appeals, and numerous district courts. Jess earned a Bachelor of Science from the University of Miami and a Juris Doctor from Brooklyn Law School.

Anji Hamilton, Esq., is a public interest attorney with experience in federal litigation, employment law and family law. Her background includes work with plaintiff-side law firms, Texas RioGrande Legal Aid, and clerking for two years in the U.S. District Court for the Western District of Texas in El Paso. After a hiatus from practice, she returned to legal work as a volunteer pro bono attorney to represent RMIAN clients in federal habeas corpus proceedings.

Shira Hereld, Esq., (they/them) is a Staff Attorney at the Rocky Mountain Immigrant Advocacy Network, where they provide pro bono direct representation for individuals with disabilities in detention and work on the Advocacy and Litigation Team. Outside of work, they are an avid hiker, writer, and jigsaw-puzzler.

Elizabeth (Liz) Jordan, Esq., (she/her) is a professor in the University of Denver Sturm College of Law's Immigration Law & Policy Clinic. Her practice, teaching, and scholarship focus on advancing human rights in the United States legal system through trauma-informed, cross-cultural representation of her clients. Prof. Jordan has significant experience at the intersection of immigration law, disability law, and the criminal legal system, and has dedicated her career to working on the front lines of these issues including through zealous representation of death-sentenced prisoners, immigrant children, and immigrants with disabilities in U.S. Immigration and Customs Enforcement (ICE) custody. As the director of the ILPC, she supervises law students representing people in ICE custody and in removal proceedings in Aurora, Colorado. Her prior work, at the Civil Rights Education and Enforcement Center (CREEC) in Denver, included serving as co-lead counsel in *Frailhat v. ICE*, a systemwide class action lawsuit that led to the release of thousands of detained immigrants with elevated risk factors for COVID-19 during the pandemic. Before joining CREEC, Prof. Jordan was a staff attorney at The Door's Legal Services Center in New York City and a Fellow with the Capital Appeals Project in Louisiana. Prior to law school, she spent a year as a Fulbright Scholar in Spain studying human rights issues. Prof. Jordan received her Bachelor of Arts from Yale University and graduated *summa cum laude* from New York University's School of Law. The American Immigration Lawyers Association (AILA) recognized Prof. Jordan with the 2021 Arthur C. Helton Human Rights Award for outstanding service in advancing the cause of human rights. Her scholarship has been published in the Harvard Law and Policy Review and she regularly provides public comment on immigration issues and has been featured on National Public Radio, in the Los Angeles Times, and in numerous Colorado-based media outlets.

Laura Sturges, Esq., is Of Counsel in the Denver office of Gibson, Dunn & Crutcher. She practices in the firm's Litigation Department, and has substantial experience in a number of areas, including Foreign Corrupt Practices Act ("FCPA") investigations and compliance initiatives, antitrust litigation, commercial litigation, False Claims Act cases, appellate litigation, and SEC enforcement proceedings. Laura currently is leading a team conducting an FCPA investigation in Brazil, including interfacing with U.S. authorities. She previously served as a core member of an international team of Gibson Dunn lawyers assisting the compliance monitor in connection with the then-largest FCPA settlement ever. She has helped clients trouble-shoot FCPA compliance programs and identify potential violations in a variety of contexts, and regularly conducts M&A and third-party due diligence. Her FCPA compliance monitoring work includes activities in Europe, Latin America, the Middle East, and Africa. In addition to her FCPA experience, Laura has significant and wide-ranging experience in other areas of litigation. She recently represented clients facing antitrust claims in the healthcare industry, and resolved complex trade secret and employment litigation on behalf of a financial services client. She has extensive experience representing clients in complex contract dispute litigation in both state and federal court in a variety of industries, including real estate, construction, and hedge fund investing. Laura also assisted in the successful representation of clients accused of violating the False Claims Act in the Medicare context at both the federal district and appellate levels. Laura also maintains an active pro bono practice, including representing asylum candidates, assisting refugees, and successfully representing a local

charitable organization from trial court through the Colorado Supreme Court. Her commitment to pro bono has led to her twice receiving the firm's Frank Wheat award, given annually to lawyers in the firm who obtain significant results for their pro bono clients and demonstrate leadership and initiative that serve as inspiration to others. She is admitted to practice law in the State of Colorado. Laura is a member of the Colorado, Denver, and Colorado Women's Bar Associations, recently chaired the Law Alumni Board of Directors of the University of Colorado School of Law, and is a member of the Georgetown University Alumni Admissions Committee in Colorado. She is also a member of the Board of Directors for Work Options for Women. Laura was named a "Colorado Rising Star" by Colorado Super Lawyers magazine in both 2010 and 2012. Laura has been recognized in *The Best Lawyers in America*® for Corporate Law since 2022. Before joining the firm, she served as a law clerk to The Honorable Phillip S. Figa in the United States District Court for the District of Colorado. Laura earned her law degree magna cum laude in 2005 from the University of Colorado School of Law, where she graduated first in her class. She graduated cum laude from Georgetown University with a Bachelor of Arts degree in History and a Master of Arts in Liberal Studies, where she was a two-time NCAA All-American in Cross Country and Track. Before attending law school, Laura taught high school social studies.

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SECTION 2: Substance of the Claims and Practical Considerations (Part 1)
*Presented by **Jess Dawgert, Esq.**, Ariela Lake Law & Consulting, PLLC, and **Laura Sturges, Esq.**, Of Counsel, Gibson, Dunn & Crutcher LLP*

SECTION 3: Substance of the Claims and Practical Considerations (Part 2)
*Presented by **Elizabeth (Liz) Jordan, Esq.**, Immigration Law & Policy Clinic Director, University of Denver Sturm College of Law, and **Laura Lunn, Esq.**, Director of Advocacy & Litigation, RMIAN*

SECTION 4: Getting Started! Moderated Panel Discussion
Panelists:
***Anji Hamilton, Esq.**, Pro Bono Counsel*
***Shira Hereld, Esq.**, RMIAN*
***Elizabeth (Liz) Jordan, Esq.**, Immigration Law & Policy Clinic Director, University of Denver Sturm College of Law*

SECTION 1

Introduction to the Writ of Habeas Corpus



Presented by

Laura Lunn, Esq.
RMIAN
Westminster, CO

Jenny Regier, Esq.
RMIAN
Westminster, CO

Filing Petitions for Writ of Habeas Corpus for Immigrants Detained in the District of Colorado

April 28, 2026
RMIAN & CBA-CLE

RMIAN

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Welcome

Agenda:

- Introduction to the Writ of Habeas Corpus
- Substance of the Claims & Practical Considerations (Part 1)
- Break
- Substance of the Claims & Practical Considerations (Part 2)
- Getting Started! Panel Discussion

- Monique Sherman, Esq., Detention Program Managing Attorney, RMIAN
- Susie McNulty, Esq., Program Attorney, CBA-CLE

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Introduction to the Writ of Habeas Corpus

Laura Lunn, RMIAN Director of Advocacy &
Litigation

Jenny Regier, RMIAN Detention Program Pro
Bono Coordinating Attorney

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Introductions

- Rocky Mountain Immigrant Advocacy Network (RMIAN)
- Panels & panelists
 - Substance of the claims
 - Practical considerations
 - Logistical information
 - Q&A

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Resources

- This CLE PowerPoint
- Materials
 - RMIAN Immigration Habeas Screening Cheat Sheet
 - RMIAN Immigration Habeas Filing Checklist
 - RMIAN Immigration Habeas Guide for Legal Advocates in the District of Colorado
 - This guide includes a section on practice advisories and other resources that may be helpful to legal advocates working on immigration habeas petitions

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Increase in Petitions

- Nationwide
 - Over 18,000 filed in Trump's second term
 - More than 3 times the amount filed in the past three administrations combined
 - Approximately 200 petitions being filed daily
 - <https://www.propublica.org/article/habeas-petitions-immigrant-detentions-trump>
- District of Colorado
 - 2025: Between 100-120 petitions filed
 - 2026: As of March 20, 2026, between 282-288 petitions filed

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Overview of Habeas Authority

- 28 U.S.C. §§ [2241](#) (power to grant writ), [2242](#) (verification), [2243](#) (issuance; return; hearing; decision)
- **Applicable Rules**
 - [Federal Rules of Civil Procedure](#) (FRCP)
 - District of Colorado [Local Rules of Practice](#)
 - Judicial [Practice Standards](#)

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Jurisdiction

- “Challenges to immigration detention are properly brought directly through habeas.” *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001)).
- Habeas petitions are *not* a mechanism to challenge the underlying immigration proceedings, the validity of a removal order, or an appeal of an agency decision.
 - Review jurisdictional bars found at 8 U.S.C. § 1252(b)(9), (e), and (g).

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Immigration Habeas Petitions

- Immigration detention scheme
 - Mandatory v. discretionary detention
- Policies/statutory interpretation increasing detention numbers
 - IJ jurisdiction
 - Expansive enforcement and detention
 - Third country removal

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Eligibility Screening

- Detained?
- Statute of detention?
 - Final order of removal?
 - 8 U.S.C. § 1231
 - Pending withholding only proceedings
 - No pending proceedings
 - Pre-order?
 - 8 U.S.C. § 1225(b)
 - 8 U.S.C. § 1226(a)
 - 8 U.S.C. § 1226(c)

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Risk assessment

- Filing
- Client preparation (transfers/removal)
 - Privacy considerations

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Q & A

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SECTION 2

Substance of the Claims and Practical Considerations (Part 1)



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Substance of the Claims and Practical Considerations

Part 1

Jess Dawgert, Ariela Lake Law & Consulting
PLLC
Laura Sturges, Gibson, Dunn, & Crutcher

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Identifying Who to Sue

- Proper Respondent:
 - 28 U.S.C. 2242: “the person who has custody over” the petitioner
 - 28 U.S.C. 2243: “The writ, or order to show cause shall be directed to the person having custody of the person detained.”
 - *Rumsfeld v. Padilla*, 542 U.S. 426 (2004) – the custodian is “the person’ with the ability to produce the prisoner’s body before the habeas court.”
- Policy Challenges – reason to include a Cabinet Level?
- ICE vs. Warden

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Making the Claim and Anticipating Counterarguments

- **Statutory Basis of Detention**
 - Legal/statutory analysis?
 - Prolonged detention (requiring ICE declaration)?

- **Criminal History and Flight Risk – what to present and when**

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Statutes of Detention

INA § 235(b)(1)(B)(ii) / 8 U.S.C. § 1225(b)(1)(B)(ii) – Detention Mandatory	Pre-order: Noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and to certain other noncitizens designated by the Attorney General; includes people placed in credible fear proceedings
INA § 235(b)(2)(A) / 8 U.S.C. § 1225(b)(2)(A) – Detention Mandatory	Pre-order: Individuals apprehended near the border who were not inspected and admitted—this is a catchall provision that applies to most other applicants for admission not covered by § 1225(b)
INA § 236(a) / 8 U.S.C. § 1226(a) – Detention Discretionary	Pre-order: Discretionary detention statute “pending a decision on whether the [noncitizen] is to be removed” where no disqualifying criminal activity - the only statute of detention where a person is eligible for discretionary release on bond from an immigration judge
INA § 236(c) / 8 U.S.C. § 1226(c) – Detention Mandatory	Pre-order: “Mandatory” detention for convictions (and admissions of committing) certain criminal offenses
INA § 241(a) / 8 U.S.C. § 1231(a) – Detention Mandatory	Post-order: Individuals with a final order to their country of origin; people with a final order of removal that is withheld or deferred (i.e., withholding or CAT grant); and people whose prior order of removal was reinstated (i.e., withholding only proceedings)

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Working with Opposing Counsel

- Negotiating briefing schedules
- Motions to Enforce
- Service
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Client Strategy and Planning

- Restriction Levels
 - Case Code 463: Level 1 (limited access to parties and court)
 - Level 2: limited access to filing party and court
 - Level 3: just the court
 - Motion for “leave to restrict”
 - When used?
- Publicity and Client Privacy
 - Pseudonym
 - When/whether to involve press
- Motions: Temporary Restraining Orders and Orders to Show Cause

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Appearing in Court

- Status conference
 - Short, can be telephonic
- Oral argument
 - To discuss legal issues, generally in person
- Evidentiary hearings
 - For unresolved facts, to obtain more information from government declarants
 - In person
- Formalities
 - “May it Please the Court”
 - Federal Rules of Evidence

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Equal Access to Justice (EAJA) Fees

- *Daley v. Ceja*, 158 F.4th 1152 (10th Cir. 2025): habeas is a “civil action” allowing for the recovery of attorney fees in EAJA
- Requirements:
 - Prevailing party
 - Government was not substantially justified in pre-litigation and/or litigation position
 - Net worth less than \$2 million
 - Record of hours spent on case (no block billing)
- Can include paraprofessional hours (at the appropriate rate)
- Statutory rate vs. enhanced fees (special factors)

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Q & A

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Take a Break!

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SECTION 3

Substance of the Claims and Practical Considerations (Part 2)



Presented by

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Substance of the Claims and Practical Considerations

Part 2

Liz Jordan, Director, Immigration Law & Policy Clinic at the University of Denver Sturm College of Law

Laura Lunn, RMIAN Director of Advocacy & Litigation

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Identifying Claim(s)

- Authorized?
- Proper?
 - Statute of detention
 - Violates law or the constitution
- Prolonged?
 - Detention during pending immigration proceedings that has lasted six or more months – no individualized custody determination by a neutral arbiter
- Indefinite?
 - Post-order, no pending proceedings

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Screening

- Detained?
- Statute of detention?
 - Final order of removal?
 - 8 U.S.C. § 1231
 - Pending withholding-only proceedings
 - No pending proceedings
 - Pre-order?
 - 8 U.S.C. § 1225(b)
 - 8 U.S.C. § 1226(a)
 - 8 U.S.C. § 1226(c)

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Hypo 1:

ICE detained Maxie in December 2025 after living in the United States for 6 years. They entered the country as an unaccompanied kid and lived in ORR custody before being released. They were granted SIJS and deferred action and have a pending affirmative asylum application.

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Hypo 2:

Daria came to the United States at age 12. She was convicted of a controlled substance offense that constitutes an aggravated felony. You've been working with her for over a year and although she won her case before the immigration court, ICE has appealed to the Board of Immigration Appeals and she remains detained.

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Hypo 3:

Simon was granted withholding of removal in 2019 and remained detained for 90 days before being released. ICE picked him up from his home in February 2026 and detained him in Aurora. They indicated an intention to remove him to a third country but have not provided him with any additional information.

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Motions, Notices, & Status Reports

- Motions
 - Temporary restraining order and/or preliminary injunction
 - Order to show cause
 - Restrict public access
 - Proceed under pseudonym
 - Enforce
- Notices
 - Supplemental authority
 - Factual updates
- Status reports

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Remedies

- Immediate release
 - Bond
 - Adjudicator
 - Burden of proof
 - Standard of proof
 - Procedural protections
 - Restrictions on re-detention
 - Conditions of release
 - Third country removal
- *Relationship between claims and remedies

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Outcomes

- Petition granted
 - Immediate release
 - Bond hearing
 - Granted → released
 - Granted → not released b/c DHS subjects to automatic stay
 - Denied → possibility of motion to enforce
 - Denied → no viable motion to enforce / motion to enforce denied
 - Possibility of future habeas petition?
- Petition denied
 - Possibility of future habeas?
- Appeal

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Next steps

- Preparing client for possible outcomes
 - Bond hearing (if applicable)
 - Coordinating release
 - Seeking fees
- Review rights and responsibilities – ICE & EOIR (if applicable)
 - Closing case

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Q & A

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SECTION 4

Getting Started! Moderated Panel Discussion



Panelists

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Getting Started!

Anji Hamilton, RMIAN volunteer attorney

Shira Hereld, RMIAN Staff Attorney

Liz Jordan, Director, Immigration Law & Policy
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of Law

Logistics of Filing

- Admission to the District of Colorado
- Getting started with the CM/ECF Portal
- Before filing review **RMIAN Immigration Habeas Filing Checklist**

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Retainer and client assignment of fees

- Representation agreement
- Explaining fee assignment for Equal Access to Justice Act (EAJA) fees
- Explaining the process to clients
 - Risks
 - Importance of communication and planning for potential transfer/removal

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Issues & Legal Theories

- Practice advisories
 - Research tools
 - Other resources

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Knowing the Rules!

- 28 U.S.C. §§ [2241](#) (power to grant writ), [2242](#) (verification), [2243](#) (issuance; return; hearing; decision)
- **Applicable Rules**
 - [Federal Rules of Civil Procedure](#) (FRCP)
 - District of Colorado [Local Rules of Practice](#)
 - Judicial [Practice Standards](#)
- What to do when in doubt

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Serving the Petition

- Service requirements
 - Judge's orders
- Practical considerations

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Using the CF/ECF Portal

- Case opening
 - Entry of appearance
- Filing documents on the docket

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Attorneys' Fees

- Contemporaneous time entries
 - Possible tools – toggl.com
- Timing of EAJA motion
- Negotiating with opposing counsel

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Q & A

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Thank You!

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Immigration Habeas Screening Cheat Sheet | Aurora, Colorado

This document was prepared for Rocky Mountain Immigrant Advocacy Network (RMIAN) staff members to assist them with screening for potential habeas eligibility. It is meant to assist with preliminary issue spotting only.

Detained?

- Is the individual currently being detained by Immigration and Customs Enforcement (ICE)?
 - ➔ **If yes**, identify the statute of detention
 - ➔ **If no**, RMIAN is not currently prioritizing representing people who are not currently detained, even if there is the possibility of a pre-deprivation habeas petition.

Final order of removal?

- ➔ **If yes**, screen for post-order detention habeas (INA § 241 / 8 U.S.C. § 1231)
- ➔ **If no**, screen for pre-order detention habeas (INA §§ 235, 236 / 8 U.S.C. §§ 1225, 1226)

Detention pursuant to INA § 241 / 8 U.S.C. § 1231

- Individual has an administratively final order of removal based on a denied credible fear interview
- Individual has an administratively final order based on a prior removal and it currently in reinstatement of removal proceedings
- At least 30 days have passed since an immigration judge (IJ) entered an order of removal and neither party appealed, meaning the order is now administratively final
- There was an appeal to the Board of Immigration Appeals (BIA) that was dismissed (if filed by the individual) or ICE prevailed on an appeal and the BIA entered a final order of removal without remanding the case back to the immigration court
 - *Note: If someone then files an appeal to the circuit court and is awarded a stay of removal, they would likely *not* have a final order of removal unless and until the circuit court denies the petition for review

Post-final order claims - INA § 241 / 8 U.S.C. § 1231

ICE has detained the individual for approximately 6 months or more since the issuance of a final order of removal and removal is not significantly likely in the reasonably foreseeable future

- Group 1: People with a final order of removal that has been withheld under INA § 241(b)(3) or withheld/deferred pursuant to the Convention Against Torture (CAT), 8 C.F.R. §§ 1208.16-18
- Group 2: People who have a reinstated order of removal and are in withholding only proceedings
- Group 3: People with a final order of removal that is not withhold or deferred but the country of origin is not cooperating with removal
 - **Note*: This could include people with an old final order of removal that was not effectuated (likely due to lack of cooperation from the country of origin) and DHS is now seeking to remove them

Screening where detention is pursuant to INA § 241 / 8 U.S.C. § 1231

→ When did your order of removal become final?

- If approximately six months or more, make referral

→ Do you have a reinstated order of removal?

- If yes, has the person been detained approximately 6 months or longer?
 - If yes, make referral

→ Were you previously released from ICE detention?

- If yes, have approximately six months or more have passed since your order of removal became final?
 - If yes to both, make referral

**Note*: Under current policy, cases in either posture likely involve a claim against removal to a third country.

Risk: The filing of a habeas petition in this posture could be the catalyzing factor that motivates ICE to work swiftly toward removal

→ This will likely result in release from detention, but that means it could be:

- Release into the United States
- Removal to the person's country of origin
- In some circumstances, removal to a third country

No final order of removal?

Possible statutes of detention

INA § 235(b) / 8 U.S.C. § 1225(b) (mandatory detention)

INA § 236(a) / 8 U.S.C. § 1226(a) (discretionary detention)

INA § 236(c) / 8 U.S.C. § 1226(c) (mandatory detention)

INA § 235(b) / 8 U.S.C. § 1225(b) (mandatory detention)

People who are arriving and have not been admitted or paroled, people subject to expedited removal, or people deemed an applicant for admission

Screening where detention is pursuant to INA § 235 / 8 U.S.C. § 1225

→ What is the date of detention?

- If approximately 6 months or more, make referral

Note: In some circumstances, the government takes the position that people who are factually and legally detained under INA § 236(a) / 8 U.S.C. § 1226(a) are detained pursuant to INA § 235 / 8 U.S.C. § 1225. Please see the section below for claims on behalf of people in that posture.

INA § 236(a) / 8 U.S.C. § 1226(a) (discretionary detention)

Permissible detention when a person is in removal proceedings pursuant to INA § 240 / 8 U.S.C. § 1229a and has not admitted to or been convicted of a disqualifying crime

Screening where detention is pursuant to INA § 236(a) / 8 U.S.C. § 1226(a)

→ Was the arrest lawfully executed?

- Judicial arrest warrant?
- Consent if on private property?
- Administrative warrant or probable cause not on private property?

- If no, make referral

→ Was the person previously released from the custody of the Department of Homeland Security (DHS) – including Customs and Border Protection (CBP) & ICE custody?

- Bond granted?
- Paroled?
- Released on own recognizance?

- If yes, make referral
- ➔ **Was the person granted an immigration benefit that makes detention unlawful?**
 - Lawful Permanent Resident (LPR)?
 - Refugee?
 - Temporary Protected Status (TPS)?
 - Special Immigrant Juvenile Status (SIJS)?
 - Deferred action?
 - Violence Against Women Act (VAWA)?
 - Other benefit staying removal?
- If yes, make referral
- ➔ **Once detained, was a bond hearing held?**
 - If no, make referral
 - If yes, what was the basis for denial?
 - Lack of jurisdiction (including where alternative finding of flight risk/dangerousness) – make referral
 - Danger and flight risk
 - Burden on individual? – make referral
 - If detained 6 months or more (i.e., prolonged detention) – make referral
- ➔ **Did an IJ grant bond but ICE appealed the order and invoked the autostay provision?**
 - If yes, make referral

INA § 236(c) / 8 U.S.C. § 1226(c) (mandatory detention)

Detention where the person has admitted to or been convicted of certain crimes enumerated in the statute

Screening where detention is pursuant to INA § 236(c) / 8 U.S.C. § 1226(c)

- ➔ **What is the date of detention?**
 - If approximately 6 months or more, make referral

Claims that could apply regardless of the statute of detention

- ➔ **Was the person targeted for arrest due to their protected First Amendment speech?**
 - If yes, make referral
- ➔ **Does the person have a qualifying disability under Section 504 of the Rehabilitation Act that is preventing them from**



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meaningfully participating in their immigration proceedings?

*This type of claim is particularly relevant if a person is experiencing suicidality and/or is decompensating such that their life is at risk.

- If yes, make referral

District of Colorado Habeas Filing Checklist

Filing a Habeas Petition

Review

- 28 U.S.C. §§ [2241](#) (power to grant writ), [2242](#) (verification), [2243](#) (issuance; return; hearing; decision)
- [Federal Rules of Civil Procedure](#) (FRCP), particularly [Rule 4\(i\)](#)
- District of Colorado [Local Rules of Practice](#)
- District of Colorado [FAQs](#)

Communication of Intent to File

First, evaluate whether it makes sense to alert the government of your intent to file a habeas petition. If you are concerned about your client being transferred or deported imminently, you may not want to alert the government of your intent to file. Rather, you might notify the Assistant U.S. Attorney's Office (and Immigration and Customs Enforcement) *after* the petition is on file and you've locked in jurisdiction in the District of Colorado.

Contact Kevin Traskos (kevin.traskos@usdoj.gov); Chief, Civil Division at USAO in D. of Colorado

- Subject line should have case name and number (e.g., 26-cv-000XX)
- Provide PDF copy of petition, indicate intent to file and timeline (i.e., we intend to file in 2 hours, 48 hours, etc.) or inform him that you just filed and provide the D.Colo. case number
- Include client's name and immigration case number
- Ask what attorney will be assigned to the case for further communication
- Ask for position on any motions you intend to file

Are you filing a Motion for Order to Show Cause or a Motion for Temporary Restraining Order and/or Preliminary Injunction? If yes, assess whether you should file an ex parte motion, in which case, you must comply with Fed. R. Civ. P. 65(b)(1).

Before you File

- Consider whether you want to complete the D. of Colorado [habeas form](#) (requires client signature) *Not required
- Prep [Civil Cover Sheet](#) to make sure the information corresponds with the information provided in the petition – review all responses for accuracy
- Double check names and addresses of Respondents on (1) cover page; (2) parties section of petition; and (3) certificate of service
- Assess what motions you intend to file along with your petition and obtain the government's position, if/when necessary

Filing on CM/ECF

□ Filing Case

- Open the case: “Civil” □ “Open a Case” □ “Attorney Case Opening”
 - Jurisdiction: 2 (U.S. Gvt Defendant)
 - Cause of Action: Choose “Habeas Corpus: INS” close to the bottom of the list of options (numbered as **28:2241in**)
 - Nature of Suit: Immigration: Habeas Corpus - [Noncitizen] [Detained person] (**463**)
 - Origin: Original Proceeding
 - Citizenship plaintiff: Skip
 - Citizenship defendant: Skip
 - ****Skip a bunch of boxes****
 - Fee status: Filing fee paid with this filing □ and pay fee as soon as the case number is provided
 - After creating the case, the CM/ECF system will take you to a page where you pay electronically. Cost is \$5.00.
 - Add Parties
 - Add Petitioner (default is defendant, so be sure to change)
 - Add Respondents (default is defendant, so be sure to change)
- Petition & exhibits (as attachment)
 - Attorney will receive email that case is opened once you submit the petition
 - For exhibits, create PDF with bates numbering; add as an attachment to the petition (e.g., ECF No. 1-1)
 - RMIAN typically files the exhibits as an attachment to the underlying petition, though we have also filed them independently if needed (i.e., the petition is filed in an emergency and exhibits are filed as soon as possible thereafter)
- Civil Cover Sheet: “Notices” → “Notice (other)”; file this as the second document filed after the petition & exhibits

□ Filing fee

- Pay the filing fee as soon as a case number is assigned
 - You will be directed automatically to an electronic way of paying on CM/ECF immediately.
 - If not automatically directed, you can complete the [Single Transaction Credit Card Authorization Form](#) (saved on the server or download from CM/ECF)
 - If necessary, email completed form to newcases@cod.uscourts.gov



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- You will receive notification that payment was processed
- Receipt will be received through CM/ECF portal

Service pursuant to FRCP 4(i)

- **Serve All Parties & US Attorney Office (5 copies total)**
 - Each party named as a Respondent/Defendant must be served by **certified** or **registered** mail sent via USPS at work; AUSA; and U.S. AG's office addresses

DOUBLE CHECK ALL RESPONDENTS AND ADDRESSES

- Send to DOJ
 - AUSA
 - **Kevin Traskos**
Chief, Civil Division
U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600
Denver, CO 80202
 - AG
 - **Todd Blanche**
Acting Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
- Send to DHS HQ
 - Secretary for DHS & Director for ICE
Markwayne Mullin & Todd Lyons, DHS/ICE, c/o
Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485
- Send to ICE FOD
 - **George Valdez**
Denver ICE Field Office
12445 E. Caley Avenue

Centennial, CO 80111

- Send to GEO Group, Inc.
 - Warden
 - **Juan Baltazar**
GEO Group, Inc.
3130 N. Oakland Street
Aurora, CO 80010
- Each party receives a copy of the petition, exhibits, and civil cover sheet
- Track the filing and provide proof of service
- Note: If the court issues a separate order delineating the service requirements, it overrides the FRCP. If the court indicates that the petitioner must “serve” respondents and does not specify otherwise (i.e., it does not mention FRCP 4(i)), according to the AUSA’s office, it is sufficient to serve the AUSA in all the ways the court has directed (email, overnight and/or certified mail, whatever, etc.) and you do not need to serve all the other respondents.

After Filing

- Submit courtesy copy with assigned case number to Kevin Traskos (kevin.traskos@usdoj.gob); Chief, Civil Division at USAO in D. of Colorado
 - After filing, the case should be assigned to an AUSA. If an AUSA is not immediately assigned, be persistent and continue to follow-up with Kevin.
- The case will typically be assigned to an Article III judge and a magistrate. If you filed a motion for injunctive relief, the Article III judge must preside over the matter. If you do not have both an Article III judge and a magistrate immediately assigned, you may want to call the court to make sure there weren’t any mistakes made with the case assignment.
 - Once you have a judge assigned to the case, review their applicable [practice standards](#).
- File [Entry of Appearance](#) for any attorneys who did not file the petition on CM/ECF → “Notices” → “Notice of Entry of Appearance”
 - Check to see if AUSA has entered appearance, if they have, add their information to the certificate of service; if no one has, include Kevin’s contact information in the certificate of service.
 - If the AUSA has not yet entered onto the case, send courtesy copies of all filings to Kevin.

- [Consent/Non-Consent to United States Magistrate Judge Jurisdiction form](#) -- must be filed no later than (a) seven days before the scheduling conference, if any; or (b) 45 days after the filing of the first response, other than an answer, to the operative complaint, whichever is earlier.
 - File the consent/non-consent form through “other documents” on CM/ECF.

Motions Practice

- **Filing a Motion to Restrict Public Access**
 - [463 Habeas Corpus](#) - “[Noncitizen] [Detained person]” suit is automatically subject to a Level 1 Restriction pursuant to [Fed. R. Civ. Pro. 5.2](#).
 - If you need to file to restrict any of the filings, review [D.C.COLO.LCivR7.2](#).
 - The Court cannot restrict specific pages of a document filed on CM/ECF but can only restrict the document in its entirety
 - Motion must indicate that Petitioner wishes to restrict an entire document entry (e.g., ECF No. 1-1), which should include necessary redactions
 - Include a statement indicating the level of restriction sought
 - Level 1 limits access to the parties and the court
 - Level 2 limits access to the filing party and the court
 - Level 3 limits access to the court
 - Approach AUSA seeking Respondents’ position on the motion
 - Prepare a proposed order
 - Filing the restricted document:
 - Create a placeholder cover page for the exhibit where it should appear
 - → For example, if you are filing the exhibit attached to ECF No. 5 as a restricted document, ECF No. 5-1 should have a cover page as a placeholder that says something like, “ECF No. 5-1, RESTRICTED: LEVEL ONE”
 - File the restricted document as the next ECF No. – in the above example, it would be ECF No. 6, with a cover page, e.g., “RESTRICTED: LEVEL ONE Supplemental Exhibits Tabs A-C”
 - → File under “Civil” □ “Other Filings” □ “Other Documents” □ “Restricted Doc. – Level 1 – Viewable by Case Participants & Court”
 - File the motion to restrict as the next document, i.e., ECF No. 7
 - *If you have questions, call the judge’s clerk and they can help walk you through the process
 - Filing the Motion:
 - “Civil” → “Motions” → “Leave to Restrict”

- **Filing a Motion to Seek Leave to Proceed Under Pseudonym**
 - In some circumstances, the client and/or their family members may be placed at risk if their habeas case is publicly accessible, in which case, RMIAN typically seeks leave to proceed under pseudonym where the client's initials are used instead of their full name.
 - If pursuing this type of motion, seek the government's position and provide an explanation of why the client's identity should remain confidential and clarify the requested alternative to providing the client's full name (e.g., proceeding under initials only)
 - Prepare a proposed order
 - Filing: "Civil" □ "Motions" □ "Leave"

- **Filing a Motion for Temporary Restraining Order and/or Preliminary Injunction**
 - Ex parte?
 - If yes, comply with [Fed. R. Civ. P. 65\(b\)\(1\)](#)
 - If no, seek the government's position and provide a statement describing the efforts made to provide required notice and documents.
[D.C.COLO.LCivR 65.1](#)
 - Filing: "Civil" □ "Motions" □ "Temporary Restraining Order"

- **Filing an Emergency TRO**
 - Choose "Emergency" in dropdown options when filing
 - "Civil" □ "Motions" □ "Temporary Restraining Order"
 - Check whether the judge has a standing order for emergency motions
 - If a judge has not yet been assigned, email the Clerk of Court, jeffrey_p_colwell@cod.uscourts.gov

Timing After Filing

28 U.S.C. § 2243

- Order to Show Cause → government has 3-20 days to respond once ordered to show cause
- Petitioner has 5 days to submit the return/reply brief

D.C.COLO.LCivR 7.1(d)

The responding party shall have 21 days after the date of service of a motion, or such lesser or greater time as the court may allow, in which to file a response. The moving party may file a reply no later than 14 days after the date of service of the response, or such lesser or greater time as the court may allow. The date of service of a motion electronically filed shall be determined under D.C.COLO.LCivR 5.1(d).

- Judge practice standards may include guidance on timing for response and reply briefs. Particularly where a Motion for Temporary Restraining Order or Motion for Order to Show Cause is filed, the court may enter a minute order with briefing deadlines.
- The parties may wish to negotiate a briefing schedule at the outset of litigation to have more control over potential deadlines, in which case, you might submit a joint motion for entry of briefing schedule.

Filing Reply Brief on CM/ECF

- Reply to Order to Show Cause:
 - “Civil” → “Other Filings” → “Other Documents” → “Reply”
 - When you have the option to write in additional notes, add “to Motion to Order to Show Cause [ECF No. X]” manually
- Reply to a TRO:
 - “Civil” → “Motions and Related Pleadings” → “Supporting Documents, Responses and Replies” → “Reply to Response to Motion”



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Habeas Guide for Legal Advocates in the District of Colorado

Purpose

This guide is a tool for legal advocates to assist in filing habeas petitions before the District Court for the District of Colorado. It is meant to provide basic information and explanations of habeas practice before the District of Colorado.

This guide is not meant to provide legal advice about how to pursue litigation in any individual case. The cases listed throughout this resource are not exhaustive but rather provide a starting point for additional legal research.

This guide addresses the following topics:

I. Background

- What is a habeas petition?
- Who are the parties in a habeas case?
- What are the risks and benefits of filing a habeas petition?
- What is the remedy being sought?

II. Screening for Eligibility

- What is the statute of detention?
- Other considerations when issue spotting
 - Jurisdiction & Venue
 - Exhaustion of remedies

III. Common Habeas Claims

- Who qualifies for habeas relief?
- Who does not typically qualify for habeas relief?

IV. Logistics of Filing

- Familiarizing yourself with the rules
- Where do you file?
- Service requirements
- Motions practice

V. *Attorneys' fees under the Equal Access to Justice Act (EAJA)*

- What are attorneys' fees?
- Do EAJA fees apply to immigration habeas petitions?
- When can you qualify for EAJA fees?

VI. *Further Reading and Additional Resources*

I. *Background*

What is a habeas petition?

A petition for writ of habeas corpus challenges the legality of someone's detention. Placement in unlawful government custody could mean that the person is held in jail, prison, or immigration detention. This guide discusses habeas petitions filed in federal district court, focusing on the District of Colorado, seeking release from immigration detention.

Habeas petitions may challenge whether detention was authorized from the outset, the government's interpretation of the statutory basis for detention, and/or the legality of continued detention. The applicable habeas statute authorizes federal district courts to grant writs of habeas corpus when a person is "in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C. § 2241(a), (c)(3). "[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and that the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973). "Challenges to immigration detention are properly brought directly through habeas." *Soberanes v. Comfort*, 388 F.3d 1305, 1310 (10th Cir. 2004) (citing *Zadvydas v. Davis*, 533 U.S. 678, 687–88 (2001)).

Habeas petitions are *not* a mechanism to challenge the underlying immigration proceedings, the validity of a removal order, or an appeal of an agency decision. The government often cites to jurisdictional bars found at 8 U.S.C. § 1252(b)(9), (e), and (g) and it may be useful to review that statute to better understand its interplay with what claims can be appropriately channeled via a habeas petition.

Who are the parties in a habeas case?

As a general rule, "[w]henever a § 2241 habeas petitioner seeks to challenge [their] present physical custody within the United States, [they] should name [their] warden as respondent and file the petition in the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 447 (2004). For more information on this point, refer to this [practice advisory](#).

In a habeas case, the person filing the petition for writ of habeas corpus is the “petitioner” and the parties responding to the petition are the “respondents.”

The Aurora Contract Detention Facility (“Aurora facility”) is owned and operated by Geo Group, Inc., and, based on the holding in *Padilla*, it is recommended to list the Geo warden as a named respondent. In addition, it is common to include Denver Field Office Director for Immigration and Customs Enforcement (“ICE”), and cabinet level government officials, including the Director for ICE, the Secretary for the Department of Homeland Security (“DHS”), and the Attorney General of the United States. In some cases where the petitioner is challenging policies carried out by U.S. Citizenship and Immigration Services (“USCIS”) it may make sense to also include the Director of USCIS.

What are the risks and benefits of filing a habeas petition?

Petitions in habeas cases can be complicated and carry certain risks. For example, if someone already has a final order of removal or if they receive one while the habeas petition is pending, ICE may speed up its deportation efforts, either to the person’s country of origin or to a “third country,” which refers to a country that is not the person's country of citizenship or nationality.

Third country removal is also a risk for people who win withholding of removal under Immigration and Nationality Act (“INA”) § 241 (8 U.S.C. § 1231) as well as people who win withholding or deferral of removal pursuant to the implementing regulations of the Convention Against Torture (“CAT”) (8 C.F.R. § 1208.16-18) because in those types of cases, an immigration judge has entered an order of removal that has been withheld or deferred to a particular country or countries. It does not necessarily prevent removal to other countries.

If someone is lawfully deported, it may moot out their habeas petition, meaning it is no longer a viable form of relief because the person is no longer in the custody of U.S. government officials.

Additionally, some petitioners may fear retaliation for filing a habeas petition. Cases pending before the district court are publicly accessible (though there are certain levels of restriction applicable in immigration habeas cases), the case name and all court orders are available online and all filings are available at the district court. As a result, clients who have fear-based claims or who are survivors of significant crimes or human trafficking may wish to restrict or pseudonymize their cases to mitigate any personal risk or risk of harm to their loved ones.

What is the remedy being sought?

Typically, if the petitioner prevails in a habeas case, they qualify for one of two remedies: (1) Release; or (2) Bond hearing. The type of remedy afforded depends on the grounds for the legal challenge to the person's detention.

For example, when a petitioner brings a claim challenging their indefinite detention under *Zadvydas v. Davis*, 533 U.S. 678 (2001) (final order of removal and no pending proceedings), release is the most common remedy.

Similarly, when a petitioner challenges the legality of their re-detention after prior release (on bond or Order of Supervision), the most frequent remedy ordered by the courts is immediate release. However, it may be contingent upon the outcome of a future bond hearing held in a non-detained setting.

In contrast, when someone is challenging their prolonged detention and they have pending immigration proceedings, the most common remedy is a bond hearing before the immigration court. That said, this is an evolving area of practice because there are many examples of immigration judges failing to provide a constitutionally adequate bond hearing. As a result, litigants may seek immediate release, or in the alternative, a bond hearing before the district court (rather than immigration court).

In cases where the remedy is likely a bond hearing, part of what is litigated in the habeas case is whether the burden of proof on the bond determination should be shifted to the government with a "clear and convincing evidence" standard of proof. The reason for this is that the underlying challenge relates to whether it is constitutional to hold someone for a prolonged period without ever affording them a custody review conducted by a neutral arbiter. If the court finds that detention has become unconstitutionally prolonged, most of the time the court will order a bond hearing.

II. Screening for Eligibility

In addition to the following explanation, RMIAN created an **Immigration Habeas Screening Cheat Sheet** for people detained in Aurora, Colorado. It is geared toward RMIAN staff but may be a helpful tool in issue spotting. It is contained in your CLE materials.

What is the statute of detention?

The most critical question to ask when screening a person’s case for habeas eligibility is, “What is the statute of detention?” It is the foundational question for determining any possible claims for relief.

<p>INA § 235(b)(1)(B)(ii) / 8 U.S.C. § 1225(b)(1)(B)(ii) – Detention Mandatory</p>	<p>Pre-order: Noncitizens initially determined to be inadmissible due to fraud, misrepresentation, or lack of valid documentation, and to certain other noncitizens designated by the Attorney General; includes people placed in credible fear proceedings</p>
<p>INA § 235(b)(2)(A) / 8 U.S.C. § 1225(b)(2)(A) – Detention Mandatory</p>	<p>Pre-order: Individuals apprehended near the border who were not inspected and admitted—this is a catchall provision that applies to most other applicants for admission not covered by § 1225(b)(1)</p>
<p>INA § 236(a) / 8 U.S.C. § 1226(a) – Detention Discretionary</p>	<p>Pre-order: Discretionary detention statute “pending a decision on whether the [noncitizen] is to be removed” where no disqualifying criminal activity - the only statute of detention where a person is eligible for discretionary release on bond from an immigration judge</p>
<p>INA § 236(c) / 8 U.S.C. § 1226(c) – Detention Mandatory</p>	<p>Pre-order: “Mandatory” detention for convictions (and admissions of committing) certain criminal offenses</p>
<p>INA § 241(a) / 8 U.S.C. § 1231(a) – Detention Mandatory</p>	<p>Post-order: Individuals with a final order to their country of origin; people with a final order of removal that is withheld or deferred (i.e., withholding or CAT grant); and people whose prior order of removal was reinstated (i.e., withholding only proceedings)</p>

Other considerations when issue spotting

Jurisdiction & Venue

- District courts have jurisdiction under 28 U.S.C. § 2241 to hear habeas claims by noncitizens challenging the lawfulness or constitutionality of their civil immigration detention. *See Jennings v. Rodriguez*, 138 S. Ct. 830, 839–

42 (2018); *Demore v. Kim*, 538 U.S. 510, 516–17 (2003); *Zadvydas*, 533 U.S. at 687.

- These “district of confinement” and “immediate custodian” rules for filing “do not implicate the Court’s subject-matter jurisdiction and are treated functionally as matters of personal jurisdiction or venue.” *Ozturk v. Trump*, 779 F. Supp. 3d 462, 475 (D. Vt.), *amended sub nom. Ozturk v. Hyde*, 136 F.4th 382 (2d Cir. 2025) (citing *Padilla*, 542 U.S. at 434 n. 7, 451; 28 U.S.C. § 2241(a)).
 - *District of confinement rule*
 - Habeas petitions should be filed in the district of confinement, and jurisdiction remains in that district even if a person is later transferred to a location outside of the initial place of filing. *Padilla*, 542 U.S. at 441; *Ex parte Endo*, 323 U.S. 283 (1944).
 - *Immediate custodian rule*
 - A petitioner should name the immediate custodian as the respondent to the petition. This has been interpreted to mean the warden of the detention facility. It is also common to name DHS officials who oversee the petitioner’s detention as well as the U.S. Attorney General.
 - This issue is discussed at length in *Fuentes v. Choate*, No. 24-CV-01377-NYW, 2024 WL 2978285, at *5 (D. Colo. June 13, 2024).
 - The federal habeas statute provides that the proper respondent to a habeas petition is “the person who has custody over [the petitioner].” 28 U.S.C. § 2242; *see also id.* § 2243 (“The writ, or order to show cause shall be directed to the person having custody of the person detained”). These provisions have long been interpreted to refer to the “person who has the *immediate custody* of the party detained, with the power to produce the body of such party before the court or judge.” *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Therefore, “for core habeas petitions challenging present physical confinement, jurisdiction lies only in one district: the district of confinement.” *Id.* at 443; *see also United States v. Scott*, 803 F.2d 1095, 1096 (10th Cir. 1986) (“A § 2241 petition for a writ of habeas corpus must be addressed to the federal district court where the [petitioner] is confined.”)

“[T]he default rule is that the proper respondent is the warden of the facility where the prisoner is being held, not the Attorney General or some other remote supervisory official.” *Padilla*, 542 U.S. at 435. Jurisdiction is determined at the time the habeas petition is filed. *Serna v. Commandant, USDB-Leavenworth*, 608 F. App'x 713, 714 (10th Cir. 2015); *Golding v. Sessions*, No. 1:18-cv-03036-RJS, 2018 WL 6444400, at *2 (S.D.N.Y. Dec. 6, 2018).

- “*Extraordinary circumstances*” exception to the immediate custodian rule
 - Exceptions to the immediate-custodian rule exist when there is no immediate physical custodian with respect to the “custody” challenged—i.e., when a person is held in an undisclosed location by an unknown custodian.
 - This question is explored in *Ozturk v. Trump*, 777 F. Supp. 3d 26, 35 (D. Mass. 2025).

Exhaustion of remedies

- Petitions under 28 U.S.C. § 2241 are not subject to statutory exhaustion requirements.
- In the Tenth Circuit, exhaustion *may* be required.
 - The Tenth Circuit previously held that “[a]dministrative exhaustion is jurisdictional only when the federal statute in question makes this clear.” *See, e.g., McQueen ex rel. McQueen v. Colo. Springs Sch. Dist. No. 11*, 488 F.3d 868, 873 (10th Cir. 2007).
 - However, the Court has stated: “The exhaustion of available administrative remedies is a prerequisite for § 2241 habeas relief, although we recognize that the statute itself does not expressly contain such a requirement.” *Garza v. Davis*, 596 F.3d 1198, 1203 (10th Cir. 2010) (analyzing § 2241 in the context of a habeas petition challenging criminal custody). There, the Court recognized that “[a] narrow exception to the exhaustion requirement applies if a petitioner can demonstrate that exhaustion is futile.” *Id.*
- The District of Colorado has provided more framing around the question of futility when a § 2241 habeas challenges immigration detention.
 - The district court has ruled that “exhaustion is not required in the immigration context when it would be futile . . . or when ‘the interests

of the individual in retaining prompt access to a federal judicial forum outweigh the interest of the agency in protecting its own authority.” *Quintana Casillas v. Sessions*, No. CV 17-01039-DME-CBS, 2017 WL 3088346, at *9 (D. Colo. July 20, 2017) (citing *Son Vo v. Greene*, 109 F. Supp. 2d 1281, 1282 (D. Colo. 2000)).

Common habeas claims

There are a few common scenarios that exist for challenging the legality of someone’s detention. The most frequently litigated claims are listed below.

Detention is not authorized

Detention is unlawful because there is no statutory basis for the government to hold the person in custody. This arises when ICE has no authority to detain a person in the first instance because they are not removable.

- When might this apply?
 - U.S. citizen/lawful permanent resident (i.e., green card holder)/refugee/other lawful status
 - *See U.H.A. v. Bondi*, No. 26-417 (JRT/DLM), 2026 WL 558824 (D. Minn. Feb. 27, 2026) (granting injunctive relief to class challenging detention of refugees)

There are also circumstances where the government has conferred a benefit that may prevent removal.

- For instance, people with valid Deferred Action for Childhood Arrivals (DACA) or other types of deferred action—including related to a Bona Fide Determination (BFD), grant of Special Immigrant Juvenile Status (SIJS), approved Violence Against Women Act (VAWA) application, etc.; valid Temporary Protected Status (TPS); or other status that has not been lawfully terminated or revoked. This could also include the argument that detention attendant to removal proceedings amounts to a de facto revocation of the underlying status.
 - *Alfaro Herrera v. Baltazar*, No. 25-CV-04014-CNS, 2026 WL 91470 (D. Colo. Jan. 13, 2026) (SIJS grantee)
 - More information on claims specific to unaccompanied minors:

- Under age 18:
<https://www.americanbar.org/groups/litigation/resources/childrens-rights/habeas-practice-advisory-for-immigrant-children-in-detention/>
- Over age 18:
<https://docs.google.com/document/d/1fn1UBoJTrx8oc3V-m2ahrK7wPaGRwenzykhJEl2shl0/edit?tab=t.0>
- https://nipnlg.org/sites/default/files/2026-01/2026_Quick-Guide-to-SIJS-Release.pdf

Detention violates law or the constitution

Myriad examples exist where the U.S. government is subjecting people to detention in violation of due process and/or statutory rights. Below are some examples of habeas claims that occur under these circumstances.

Unlawful revocation of release and redetention. This claim arises from situations where the person was previously detained and released on parole, bond, an order of supervision, etc. Redetention can be challenged because there should be a custody review conducted *prior to* the revocation of someone’s liberty interest.

- *Valera v. Baltazar*, No. 1:25-CV-03744-CNS, 2025 WL 3496174, at *4 (D. Colo. Dec. 5, 2025) (prior grant of bond from an immigration judge)
- *Alfaro Herrera v. Baltazar*, No. 1:25-CV-04014-CNS, 2026 WL 91470, at *4 (D. Colo. Jan. 13, 2026) (previously released from the custody of the Office of Refugee Resettlement)
- *Toro Rodriguez v. Baltazar*, No. 1:26-CV-01068-CNS, 2026 WL 820488, at *2 (D. Colo. Mar. 25, 2026) (DHS officials previously authorized release on own recognizance)

Challenge to the statute of detention being applied. If a person is detained and the government is subjecting the person to detention based on an incorrect interpretation of what statute of detention applies, that can provide a basis for a habeas challenge.

- For example, in 2025, the Board of Immigration Appeals (BIA) issued a published decision, *Matter of Yajure Hurtado*, 29 I&N Dec. 216 (BIA 2025), which sought to recategorize people who have always been construed to be detained pursuant to INA § 236(a) as being detained under INA § 235(b). This decision recategorized people who are subject to *discretionary* immigration detention and instead sought to make them subject to *mandatory* detention. Specifically, the decision applies to people arrested

within the United States and not right at the border immediately upon arrival. However, the immigration agencies' change in policy has been challenged in federal district courts across the country and is now being decided by the circuits. *See Avila v. Bondi*, No. 25-3248, 2026 WL 819258, at *1 (8th Cir. Mar. 25, 2026); *Buenrostro Mendez v. Bondi*, No. 25-20496, 2026 WL 323330, at *5 (5th Cir. Feb. 6, 2026). It is very likely that the supreme court will take it up soon.

- This [tracker](#) maintained by Politico is a helpful resource to see how different district court judges from across the United States have ruled on this issue.
- Here is a non-exhaustive list of cases on this issue from the D. Colo.:
 - *Singh v. Valdez*, No. 26-CV-1109-WJM, 2026 WL 890240, at *3 (D. Colo. Apr. 1, 2026)
 - *Mendoza Gutierrez v. Baltasar, et al.*, No. 25-cv-2720-RMR, 2025 WL 2962908 (D. Colo. Oct. 17, 2025)
- The American Immigration Council is monitoring this issue as well and has resources available [here](#), including a [tracker](#) of pending circuit court appeals.

Automatic stay provision. This claim is available to people who are detained pursuant to INA § 236(a) / 8 U.S.C. § 1226(a) and are bond eligible, were granted bond by an immigration judge, and DHS invoked the automatic stay provision found at 8 C.F.R. § 1003.19(i)(2).

- *Merchan-Pacheo v. Noem*, No. 1:25-CV-03860-SBP, 2026 WL 88526, at *3 (D. Colo. Jan. 12, 2026).

Conditions of release. It is possible to challenge ICE's unilateral imposition of conditions of release as unlawful based on an argument that it constitutes constructive custody.

- *Alfaro Herrera v. Baltazar*, No. 25-CV-04014-CNS, 2026 WL 91470 (D. Colo. Jan. 13, 2026) (ordering release with no ankle monitor)
- *Batz Barreno v. Baltasar*, No. 25-CV-03017-GPG-TPO, 2026 WL 120253, at *3 (D. Colo. Jan. 15, 2026) (granting motion to enforce based on ICE's unlawful imposition of an ankle monitor)
- *Cortes v. Guadian*, No. 1:26-CV-00294-CNS, 2026 WL 265688, at *2 (D. Colo. Feb. 2, 2026)
- *Singh v. Baltasar*, No. 1:26-CV-00336-CNS, 2026 WL 352870, at *6 (D. Colo. Feb. 9, 2026)

First Amendment. These claims arise when detention is initiated in retaliation for protected First Amendment speech. This inquiry typically involves three steps: (1) Was the person engaged in constitutionally protected activity?; (2) Has their arrest and detention caused an injury that would chill a person of ordinary firmness from continuing to engage in that activity?; and (3) Was the government's adverse action substantially motivated as a response to the petitioner's exercise of constitutionally protected conduct? These claims are not common but have increased exponentially in prevalence in 2025.

- *Vizguerra-Ramirez v. Baltazar*, No. 25-CV-00881-NYW, 2025 WL 3653158, at *10 (D. Colo. Dec. 17, 2025)

Section 504 of the Rehabilitation Act. Section 504 prohibits disability discrimination. In the context of a habeas claim for someone in immigration detention, the challenge is very fact-intensive and hinges on a showing that confinement is preventing the person with a qualifying disability from meaningfully accessing a government program or benefit (i.e., immigration proceedings). The government is on notice of the person's disability and has an affirmative duty to ensure reasonable accommodations are provided. Release is the reasonable accommodation being requested because no other accommodation would be able to place the person in a position akin to someone accessing the same program or benefit who does not have a disability. This is not a common habeas claim, and RMIAN has unique expertise in this area of litigation.

- *Ali v. Baltazar*, No. 25-CV-03317-RBJ, 2026 WL 322565, at *1 (D. Colo. Jan. 27, 2026)
- *Fuentes v. Choate*, No. 24-CV-01377-NYW, 2024 WL 2978285, at *11 (D. Colo. June 13, 2024)
- *Viruel Arias v. Choate*, No. 22-cv-02238-CNS, 2022 WL 4467245, at *2 (D. Colo. Sept. 26, 2022)

Prolonged detention

Someone who has pending immigration proceedings (including removal and withholding-only) and has been detained for a prolonged period of time without a constitutionally adequate custody review may qualify for a habeas. Although the analysis of when detention has become unconstitutionally prolonged does not have a bright line rule, what has been deemed to be the minimum duration of time is typically six months. The longer that someone is detained after that six-month

mark, the more likely it is that a judge might find the length of detention unconstitutional.

- INA § 235(b) / 8 U.S.C. § 1225(b)
 - Due process claims under this statute of detention are challenging and there is not a good case out of the D.Colo. granting habeas relief.
 - *Doe v. Bondi*, No. 1:25-CV-02712-DDD-SBP, 2025 WL 3516292, at *4-5 (D. Colo. Nov. 4, 2025)
 - *Bonilla Espinoza v. Ceja*, No. 1:25-cv-01120-GPG, slip op. at 12-19 (D. Colo. May 21, 2025)
- INA § 236(a) / 8 U.S.C. § 1226(a)
 - *L.G. v. Choate*, 744 F. Supp. 3d 1172, 1180 (D. Colo. 2024) (Rodriguez, J.) (applying *Mathews v. Eldridge* factors)
 - (1) the importance of the petitioner’s interest at stake; (2) the risk of erroneous deprivation of the interest due to the procedures used and probable value of additional procedural safeguards; and (3) the government’s interest.
 - *Alfaro Herrera v. Baltazar*, No. 1:25-CV-04014-CNS, 2026 WL 91470, at *7 (D. Colo. Jan. 13, 2026) (finding that petitioner’s prolonged detention violated both substantive and procedural due process)
 - *Barreno v. Baltazar*, No. 025-CV-03017-GPG-TPO, 2025 WL 3190936, at *3 (D. Colo. Nov. 14, 2025)
- INA § 236(c) / 8 U.S.C. § 1226(c)
 - *Singh v. Choate*, 2019 WL 3943960 (D. Colo. Aug. 21, 2019) (Mix, M.J.)
 - (1) the total length of detention to date;
 - (2) the likely duration of future detention;
 - (3) the conditions of detention;
 - (4) delays in the removal proceedings caused by the noncitizen;
 - (5) delays in the removal proceedings caused by the government; and
 - (6) the likelihood that the removal proceedings will result in a final order of removal.
 - *See also*
 - *Martinez v. Ceja*, 760 F. Supp. 3d 1188, 1193 (D. Colo. 2024)
 - *de Zarate v. Choate*, No. 23-cv-00571-PAB, 2023 WL 2574370, at *3 (D. Colo. Mar. 20, 2023)

- *Daley v. Choate*, No. 22-cv-03043-RM, 2023 WL 2336052, at *3 (D. Colo. Jan. 6, 2023)
 - *Viruel Arias v. Choate*, No. 22-cv-02238-CNS, 2022 WL 4467245, at *2 (D. Colo. Sept. 26, 2022)
 - *Sheikh v. Choate*, No. 22-cv-1627-RMR, 2022 WL 17075894 at *2, (D. Colo. July 27, 2022)
- INA § 241 / 8 U.S.C. § 1231
 - *Juarez v. Choate*, No. 24-cv-00419-CNS, 2024 WL 1012912, at *4 (D. Colo. Mar. 8, 2024) (Sweeney, J.) (applying the six-factor test articulated in *Singh* – see above)
 - *Ramirez v. Bondi*, No. 25-cv-01002-RMR, 2025 WL 1294919, at *6 (D. Colo. May 5, 2025) (Rodriguez, J.), *appeal docketed*, No. 25-1263 (10th Cir. July 8, 2025)
 - *Arostegui-Maldonado v. Baltazar*, 794 F. Supp. 3d 926, 938 (D. Colo. 2025) (Martinez, J.), *appeal dismissed per stipulation*, No. 25-1377 (10th Cir. Oct. 10, 2025)
 - *Vizguerra-Ramirez v. Baltazar*, No. 25-CV-00881-NYW, 2025 WL 3653158, at *8 (D. Colo. Dec. 17, 2025)

Indefinite detention

Someone who has a final order of removal and no pending proceedings may qualify for habeas relief under well-established Supreme Court precedent set forth in *Zadvydas*, 533 U.S. at 678. In *Zadvydas*, SCOTUS created a presumption that post-order detention was constitutional for six months. The burden of proof is initially on the petitioner to show “good reason to believe” that there is no significant likelihood of removal in the reasonably foreseeable future (SLRRFF). Once that is established, the burden shifts to the government to demonstrate that removal *is likely* in the reasonably foreseeable future.

- *Third country removal*. DHS is using the current third country removal policy as a pretext for detaining people with final orders of removal (including people who prevailed on a withholding or deferral claim). As a result, there has been a recent uptick in *Zadvydas* claims that also challenge the application of the third country removal policy to individual litigants.
 - *M.A. v. Baltazar*, No. 26-CV-00755-NYW, 2026 WL 809842, at *4 (D. Colo. Mar. 24, 2026)
 - *Rodriguez Hernandez v. Noem*, No. 25-cv-04164-RMR (D. Colo. Mar. 10, 2026)

- *Koca v. Noem*, No. 26-cv-00443-NYW, 2026 WL 57661 (D.Colo. Mar. 2, 2026)
- *Castellano v. U.S. Dep't of Homeland Sec.*, No. 26-cv-00080-PAB, 2026 WL 472732, at *3 (D. Colo. Feb. 19, 2026)
- *Ali v. Baltazar*, No. 25-CV-03317-RBJ, 2026 WL 322565, at *1 (D. Colo. Jan. 27, 2026)
- *Aguilar v. Noem*, No. 25-CV-03463-NYW, 2025 WL 3514282, at *6 (D. Colo. Dec. 8, 2025)
- *Pena-Gil v. Lyons*, No. 25-CV-03268-PAB-NRN, 2025 WL 3268333, at *4 (D. Colo. Nov. 24, 2025)
- *I.F.M. v. Baltazar*, No. 25-CV-03475-RMR, ECF No. 23 (D. Colo. Nov. 24, 2025)
- *Ahrach v. Baltazar*, No. 25-CV-03195-PAB, 2025 WL 3227529, at *3 (D. Colo. Nov. 19, 2025)

Who does not typically qualify for a habeas petition?

Discretionary denial under INA § 236(a) / 8 U.S.C. § 1226(a). If someone had a bond hearing before the immigration court and the judge denied their request for bond because the court found the person to be a flight risk or a danger to the community, that type of discretionary determination cannot be challenged via a habeas case.

- However, if detention subsequently becomes prolonged, there may be a possibility of challenging detention based on a prolonged detention legal theory.
- It is possible to contest the process applied in discretionary bond hearings as being constitutionally insufficient (i.e., the burden of proof should rest on the government rather than the person seeking bond).
- If a petitioner prevails on a habeas claim and the district court orders a bond hearing and the immigration court fails to adhere to what is required to conduct a constitutionally adequate bond hearing, it may be possible to challenge such a finding via a motion to enforce.
 - *Batz Barreno v. Baltasar*, No. 25-CV-03017-GPG-TPO, 2026 WL 120253, at *1 (D. Colo. Jan. 15, 2026)
 - *Cervantes Arredondo v. Baltazar*, No. 1:25-cv-03040-RBJ, ECF No. 26 (D. Colo. Dec. 18, 2025)

People who do not fall under the categories delineated above. For example, people who are subject to mandatory detention (i.e., detention under INA § 235, 236(c), or

241) and whose detention has not become prolonged and there is not another mechanism to challenge the legality of detention.

Challenges that do not involve detention. Finally, as mentioned above, a habeas petition is *not* a mechanism to challenge the person's underlying immigration proceedings, validity of an order of removal, or appeal an agency decision.

III. Logistics of Filing

RMIAN has compiled a **District of Colorado Habeas Filing Checklist** that is a companion document to this guide. It is included in your CLE materials.

Familiarizing yourself with the rules

- District of Colorado [Local Rules of Practice](#)
- 28 U.S.C. §§ [2241](#) (power to grant writ), [2242](#) (verification), [2243](#) (issuance; return; hearing; decision)
- [FRCP 4\(i\)](#)
- District of Colorado [FAQs](#)

Where do you file?

Attorneys should file via the electronic portal, CM/ECF. More information is available on the District of Colorado website:

<http://www.cod.uscourts.gov/CourtOperations/CMECF.aspx>

Pro se litigants filing via mail should use the following address:

U.S. District Court for the District of Colorado
Alfred A. Arraj Courthouse
901 19th Street
Denver, Colorado 80294

Service requirements

- Pursuant to FRCP 4(i), serve all respondents & U.S. Attorney's Office by certified or registered mail sent via U.S. Postal Service.
- Verify all addresses before filing
 - AUSA

U.S. Attorney's Office
District of Colorado
1801 California Street, Ste. 1600

Denver, CO 80202

- Attorney General
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, D.C. 20530
- Secretary for DHS & Director for ICE
Office of the General Counsel
U.S. Department of Homeland Security
245 Murray Lane, SW
Mail Stop 0485
Washington, DC 20528-0485
- Denver Field Office Director
Denver ICE Field Office
12445 E. Caley Avenue
Centennial, CO 80111
- Warden
GEO Group, Inc.
3130 N. Oakland Street
Aurora, CO 80010

Judge Practice Standards & Standing Orders

Once your case is assigned to a judge, be sure to review the [Court's practice standards](#) and any standing orders that may apply.

Motions practice

Getting your case moving. This area of practice is very specific to the jurisdiction where you are appearing. In the District of Colorado, the court will not immediately issue an order to show cause upon the filing of a habeas petition. As a result, the petitioner should consider filing a motion to accompany the habeas petition in order to spur the issuance of a briefing schedule. Most importantly, unless a motion is filed, the habeas petition will not be adjudicated quickly.

Typically, the AUSAs will not immediately enter an appearance and have 60 days to do so for represented parties. Under such circumstances, the court may not order a briefing schedule because such an order would be ex parte. Here are some options for motions you could file to generate momentum:

- Motion for temporary restraining order and/or preliminary injunction
- Motion for order to show cause
- Motion for entry of briefing schedule (this could be filed as a joint motion if counsel for the parties come to an agreement on briefing deadlines)

Client privacy considerations. Immigration habeas petitions have certain restrictions on public access that are enumerated in [Fed. R. Civ. Pro. 5.2](#). A recent uptick in interest in these types of cases means that more filings are becoming public because people are accessing the filings in-person at the district court portal and sharing them publicly. As a result, attorneys need to be mindful of privacy considerations when entering documents into the court record. Additionally the increased scrutiny of immigration habeas cases may mean that certain petitioners may not wish to include their full names in the filing for fear of retribution and retaliation.

- Motion to restrict public access
 - This type of motion is helpful when you wish to submit evidence into the record that should not be public. RMIAN typically files a motion to restrict public access when we are filing medical records or expert evaluations into the record. RMIAN generally seeks restriction of documents that provide the factual and legal basis for fear-based immigration claims because those court records are not already publicly accessible and can pose an additional risk to the petitioner.
- Motion to seek leave to proceed under pseudonym
 - Under certain circumstances, RMIAN will seek leave to proceed under pseudonym when there are particularly sensitive facts present in the petitioner's case.

Emergencies. Some client situations present an emergency situation, warranting the need for an emergency motion for temporary restraining order. This could be true if a client is in the process of being transferred and/or removed from the United States. It could also occur if the client is facing a medical emergency.

- Emergency motion for temporary restraining order
 - Typically, this motion will be ex parte, meaning that you are asking the court to rule before opposing counsel has the opportunity to provide a response. Be sure to comply with [Fed. R. Civ. P. 65\(b\)\(1\)](#).

- Review your judge's standing orders to see whether there is guidance regarding how to handle emergency motions.
- If a judge has not yet been assigned to your case, you might try reaching out to the Clerk of Court, jeffrey_p_colwell@cod.uscourts.gov.

IV. Attorneys' fees under the Equal Access to Justice Act (EAJA)

What are attorneys' fees?

Attorney fees are payments for a lawyer's time, expertise, and services. They are separate from case costs (filing fees, expert witnesses). They cover the lawyer's labor, not the out-of-pocket expenses for the case.

RMIAN offers pro bono representation to our clients. However, when we sign representation agreements, we ensure that there is an agreement in writing that if we qualify to seek attorney's fees, the client recognizes that we are seeking money from the government to compensate us for the time spent preparing and litigating their case. The agreement explicitly states that the client agrees that the fees will be distributed to pro bono counsel of record.

Does the EAJA apply to immigration habeas petitions?

RMIAN recently prevailed in *Daley v. Ceja*, 158 F.4th 1152, 1166 (10th Cir. 2025), which clarified that attorneys' fees under the Equal Access to Justice Act (EAJA) are available in immigration habeas petitions within the Tenth Circuit. The government sought rehearing en banc, which the panel denied on April 3, 2026. There is a circuit split related to this issue. Fees are available in the Second, Third, Ninth, and Tenth Circuits. *Michelin v. Warden Moshannon Valley Corr. Ctr.*, No. 24-2990, 2026 WL 263483 (3d Cir. Feb. 2, 2026); *Daley*, 158 F.4th at 1152; *Vacchio v. Ashcroft*, 404 F.3d 663, 668-72 (2d Cir. 2005); *In re Petition of Hill*, 775 F.2d 1037, 1040-41 (9th Cir. 1985). Fees are not available in the Fourth and Fifth Circuits. *Barco v. Witte*, 65 F.4th 782 (5th Cir. 2023); *Obando-Segura v. Garland*, 999 F.3d 190, 194 (4th Cir. 2021).

When can you qualify for EAJA fees?

EAJA provides for an award of attorney's fees and costs to a financially eligible prevailing party in a civil action brought against the United States, unless the court finds that the position of the United States was substantially justified or special circumstances make an award unjust. *Arostegui-Maldonado v. Garland*, No. 22-

9554, 2024 WL 5114134, at *1 (10th Cir. Feb. 15, 2024) (citing 28 U.S.C. § 2412(d)(1)(A); *see also* 28 U.S.C. § 2412(a)(1) (a judgment for costs may be awarded to the prevailing party limited to costs incurred in the litigation)).

- Prevailing party status
 - A prevailing party is one who demonstrates that she achieved a “material alteration of the legal relationship of the parties” and a “judicial imprimatur on the change.” *Buckhannon Bd. Care & Home Inc. v. W. Va. Dep’t of Health & Human Res.*, 532 U.S. 598, 604-605 (2001).
- Government’s pre-litigation and litigation position was not substantially justified
- No special circumstances that would make a fee award unjust
- Fee amount
 - The moving party should include a statement of the total amount of fees and costs requested along with an itemized account of time expended and rates charged.
- Timing
 - Any EAJA motion must be filed within 30 days of entry of final judgment in the action, i.e., within 30 days after the expiration of time for filing an appeal, or, if an appeal is filed, within 30 days of entry of final judgment by the court of appeals or Supreme Court. A “final judgment” means “a judgment that is final and not appealable, and includes an order of settlement. . . .” 28 U.S.C. § 2412(d)(2)(G).
 - In federal district court, the government has a sixty-day period for filing an appeal, *see* Fed. R. App. P. 4(a)(1)(B), and the EAJA motion must be filed within 30-days of that date. *Arias v. Choate*, No. 1:22-CV-02238-CNS, 2023 WL 4488890, at *6 (D. Colo. July 12, 2023).

For more information about filing for EAJA fees, refer to the practice advisory, [Requesting Attorneys’ Fees Under the Equal Access to Justice Act](#).

VI. Further Reading and Additional Resources

Practice advisories

- **Habeas corpus petitions – National Immigration Litigation Alliance**
 - <https://immigrationlitigation.org/wp-content/uploads/2025/11/25.01.15-Habeasx.pdf>
- **Habeas practice advisory for Immigrant Children in Detention – American Bar Association**

- <https://www.americanbar.org/groups/litigation/resources/childrens-rights/habeas-practice-advisory-for-immigrant-children-in-detention/>
- **Maldonado Bautista Practice Advisory – Northwest Immigrant Rights Project**
 - https://www.nwirp.org/uploads/2025/Maldonado%20Bautista%20Practice%20Advisory_12%203%202025.pdf
- **Quick Guide to Release from Immigration Detention for SIJS Youth – National Immigration Project**
 - https://nipnlg.org/sites/default/files/2026-01/2026_Quick-Guide-to-SIJS-Release.pdf

Resources

- **8 U.S.C. 1225(b) / 1226(a); INA 235(b)/236(a) habeas petition tracker – American Immigration Council**
 - https://ailassoc.sharepoint.com/:x/s/legalteam/IQA2yXjRe8IRSo3nZWY_uH_i9AS6gbz4QwH-RWp-sYd6vSLQ?rttime=90huMwBv3kg
- **Electronic Filing and Access to Electronic Federal Court Documents – American Immigration Council**
 - https://www.americanimmigrationcouncil.org/wp-content/uploads/2016/07/Electronic-Filing-PA_Final.3.11.26.pdf
- **Habeas Dockets**
 - <https://habeasdockets.org/>
 - Provides case documents that are often unavailable on Pacer for habeas cases filed in various jurisdictions across the United States
- **Habeas Filing Contacts – Acacia**
 - <https://docs.google.com/spreadsheets/d/1J5wDCXEbCObL8n56aC0C4LULu6JMKI-OdohjJlN975U/edit?resourcekey=&gid=1300817352#gid=1300817352>
- **Habeas Petitions/Decisions for Us/Ts/VAWA - ASISTA**
 - https://docs.google.com/spreadsheets/d/1RVvu4ZPLUumA9QSy_2b7Gozy3G0bupDBh1anVVPRsoE/edit?gid=0#gid=0
- **Immigration Habeas Starter Kit - Acacia**
 - https://acaciadj.service-now.com/practitioner_hub/en/immigration-habeas-resource-starter-kit?id=kb_article&sysparm_article=KB0010190
- **Pro Se Habeas Explainer Packet – National Immigration Project**
 - https://nipnlg.org/sites/default/files/2025-12/2025_Habeas-packet.pdf
- **Vecina Practical Guide to Filing Habeas Petitions**

- <https://vecina.teachable.com/l/pdp/habeas-corpus-for-immigrant-detainees-a-practical-guide-to-filing-petitions1>