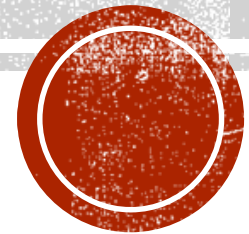


HABEAS PETITIONS

Attorney John Bruning, Kim Hunter Law, PLLC



Oh...Crap

THIS CARD MAY OR MAY
NOT HELP WHEN NEEDED,
BUT IT'S WORTH A SHOT

GET OUT OF ICE JAIL
FREE



**HABEAS
CORPUS**



HABEAS SOLVES ALL OUR PROBLEMS...

- Why file habeas?
 - A writ of habeas corpus orders ICE to release your client from ICE custody or do what you want ICE to do
 - U.S. District Court judges aren't bound by BIA precedent (and they're real judges!)
 - It's the only way out of mandatory detention
 - It forces IJs to follow the Constitution when they can't (or won't) otherwise
 - It's only \$5!
 - And... you can make the government pay you for your time



...WELL, MOSTLY.

- Habeas doesn't always mean your client will get out of detention
- But, it may at least change how or why your client is detained
- It also is taking a long time for the District Court to issue an order
- EOIR isn't too happy about habeas petitions



WHAT CAN WE CHALLENGE WITH HABEAS?

- Prolonged mandatory detention under 235(b) and 236(c) (*Jamal A, Liban M.J., Muse*)
- Prolonged post-order detention under 241 (*Zadvydas, Ibrahim, Tindi*)
- Prolonged 236(a) detention after bond is denied (*sometimes*) (*Ali*)
- Improper bond standards
 - Burden of proof (*Sajous*)
 - Ability to pay (*Hernandez*)
- ICE's refusal to honor state court writs (*Pensamiento, Turcios Lanza*)
- Delayed mandatory detention (*maybe*) (*Preap*)
- Mandatory detention for asylum seekers (???) (*Padilla, M-S-*)



HOW DO WE MAKE A HABEAS?

- First, you must be admitted to the U.S. District Court for the District of Minnesota.
 1. Go to www.mnd.uscourts.gov and review the Court's attorney admissions and filing materials.
 2. Register for a PACER account.
 3. File Petition for Admission to Practice and "certificates" from two admitted attorneys on PACER.
 4. Request an admission ceremony date at least 7 days after you file.
 5. Attend the admission ceremony with an admitted attorney who will move for your admission.
 6. Make sure you have CM/ECF filing privileges within a day.



- Now it's time to do the petition.
- Review the Court's website for FRCP, Local Rules, and ECF instructions (again).
- You can use the Court's default habeas petition form, or you can draft pleadings.
- What you'll file first:
 - Petition
 - Exhibits
 - Civil Cover Sheet
- Hint #1: Keep everything in Word format until after you docket the case on ECF. Then add the case number to the Petition and other filings.
- Hint #2: If you mess up, the court clerks will make sure it's corrected.
- Hint #3: If you get lost/confused about filing, call the Court's ECF Help Desk. Seriously. Call them. Even if you don't think you're confused. They're funded by filing fees.
- Hint #4: Track your work diligently. Date, start time, stop time, what you did. Logs = \$\$\$



THE PETITION: SECTIONS

- Caption
- Introduction
- Jurisdiction and Venue
- Parties
- Exhaustion
- Factual Allegations & Procedural History
- Legal Framework
- Causes of Action (Counts)
- Prayer for Relief
- Signature Block

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MINNESOTA

Abdullahi Yasin MUSE,

Petitioner,

v.

Jefferson Beauregard SESSIONS III, Attorney
General;

Kirstjen NIELSEN, Secretary, Department of
Homeland Security;

Thomas HOMAN, Director, Immigration and
Customs Enforcement;

Peter BERG, Director, St. Paul Field Office
Immigration and Customs Enforcement; and

Kurt FREITAG, Sheriff, Freeborn County,

Respondents.

No. _____


PETITION FOR WRIT OF HABEAS
CORPUS

8 U.S.C. § 1226
28 U.S.C. § 2241



FILING THE PETITION


- Look at the Court's website (again) and review the ECF guides.
- Open ECF: ecf.mnd.uscourts.gov
- Log in to PACER
- Click on the Civil Menu / Open a Case / Civil Case
- Pay attention to instructions!
- Next, next

CM  ECF

[Civil](#) ▾ [Criminal](#) ▾ [Query](#) [Reports](#) ▾ [Utilities](#) ▾ [Search](#) [Help](#) [Log Out](#)

Open a Case ▾
Initial Pleadings, Service, and Sealed Filings ▾
Motions, Related Filings, and Sealed Filings ▾
Other Filings ▾
Letters ▾
Patent Cases ▾
Pro Se Early Settlement Conference ▾

Civil Case
Miscellaneous Case



U.S. District Court
U.S. District of Minnesota
Official Court Electronic Document Filing System

This facility is for Official Court Business only. Activity to and from this site is logged. Document filings on this system and criminal activity will be forwarded to the appropriate law enforcement officials.

Welcome to the U.S. District Court for the U.S. District of Minnesota Electronic Document Filing System. This page contains the most recent version of the Adobe PDF reader can be obtained by selecting the *PDF Settings* option listed below.



FILING THE PETITION

Open Civil Case

HELPFUL HINTS

1. Please enter below the information as it appears on the completed *Civil Cover Sheet*.
2. Only when selecting *Diversity* as the basis for **Jurisdiction**, enter the citizenship of the principal plaintiff and principal defendant in the fields provided.
3. Change **Fee Status** to *pend (IFP Pending)* if filing an *Application to Proceed in District Court without Prepaying Fees or Costs*.
4. Change **Fee Status** to *wv (waived)* if filing on behalf of the United States of America.

Jurisdiction	2 (U.S. Government Defendant) ▼		
Cause of action	28:2241 (28:2241 Petition for Writ of Habeas Corpus (federa) ▼	Filter: <input type="text"/>	<input type="button" value="Clear filter"/>
Nature of suit	463 (Habeas Corpus - Alien Detainee) ▼	Filter: <input type="text"/>	<input type="button" value="Clear filter"/>
Origin	1 (Original Proceeding) ▼		
Citizenship plaintiff	<input type="text" value=""/>		
Citizenship defendant	<input type="text" value=""/>		
Jury demand	n (None) ▼	Class action	n (No Class Action Alleged) ▼
Arbitration code	<input type="text" value=""/>	County	Sherburne ▼
Fee status	pd (paid) ▼	Fee date	4/17/2019
		Date transfer	<input type="text" value=""/>
<input type="button" value="Next"/> <input type="button" value="Clear"/>			



FILING THE PETITION

- Enter Party Names (review the Court's ECF guides! Again! Again!)
- Create Case: this will give you your case number
- Put the case number into your Petition and Exhibit Index/Declaration
- Save everything as PDFs
- Upload your Petition as the main document
- Upload your Exhibit Index as the first attachment, with the label Exhibit(s) and description "Exhibit Index"
- Upload your Exhibits (as one file or multiple files), with the label Exhibit(s) and description by Exhibit letter or range of letters
- Upload your Civil Cover Sheet ([form JS-044](#))
- Follow the rest of the directions to pay the filing fee and file the Petition
- All done!



FILING THE PETITION

- **Enter Party Names (review the Court's ECF guides! Again! Again!)**
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- Upload your Civil Cover Sheet ([form JS-044](#))
- Follow the rest of the directions to pay the filing fee and file the Petition
- All done!



Open Civil Case

HELPFUL HINTS FOR ATTORNEY CASE OPENING

1. Please consult the *Electronic Case Opening Instructions* and the *Party Name Guide* before entering parties on the case.
2. Use the fields below to search for or create a party name. Remember to select the appropriate party role (e.g., plaintiff, defendant) for each party entered.
3. When finished, all parties will appear on the left side of the screen. After entering all party names, click the **Create Case** button to complete PART I of the case opening process.
4. Leave all party contact fields blank. Do NOT enter address, phone, or email information and do NOT select a party with this information populated.

Add New Party

Create Case

[Collapse All](#)[Expand All](#)

0:19-cv-?????

Search for a party

Last / Business Name First Name Middle Name

Search Results

DOE, John
Doe, John
Doe, John A
Doe, John
Doe, John, 76B
Doe, John JS



Open Civil Case

HELPFUL HINTS FOR ATTORNEY CASE OPENING

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4. Leave all party contact fields blank. Do NOT enter address, phone, or email information and do NOT select a party with this information populated.

Add New Party

Create Case

[Collapse All](#)[Expand All](#)

0:19-cv-?????

Party Information

Last name	<input type="text" value="Doe"/>	First name	<input type="text" value="John"/>
Middle name	<input type="text"/>	Generation	<input type="text"/>
Title	<input type="text"/>		
Role	<input type="text" value="Petitioner (pet:pty)"/>		
Pro se	<input type="text" value="No"/>		
Prisoner Id	<input type="text"/>	Unit	<input type="text"/>
Office	<input type="text"/>		
Address1	<input type="text"/>		
Address 2	<input type="text"/>		
Address 3	<input type="text"/>		
State	<input type="text"/>	Zip	<input type="text"/>
Country	<input type="text"/>		
Prison	<input type="text"/>		
Phone	<input type="text"/>	Fax	<input type="text"/>
E-mail	<input type="text"/>		
Party text	<input type="text"/>		
Start date	<input type="text" value="10/23/2019"/>	End date	<input type="text"/>
Corporation	<input type="text" value="no"/>	Notice	<input type="text" value="yes"/>

☐ Show this address on the docket sheet

Add Party

Open Civil Case

HELPFUL HINTS FOR ATTORNEY CASE OPENING

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[Add New Party](#)
[Create Case](#)
[Collapse All](#)
[Expand All](#)

0:19-cv-?????

John Doe

pet

Alias

Corporate Parent or other affiliate

Attorney

Search for a party

Last / Business Name

First Name

Middle Name

Search Results

Barr, William P

Barr, William

Barr, William P.

Barrett, William

Barritt, William



Open Civil Case

HELPFUL HINTS FOR ATTORNEY CASE OPENING

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Add New Party

Create Case

[Collapse All](#)
[Expand All](#)

0:19-cv-?????

John Doe

pet

Alias

Corporate Parent or other affiliate

Attorney

Party Information

William P Barr

Title

Role Respondent (res:pty)

Pro se No

Prisoner Id

Unit

Office

Address1

Address 2

Address 3

State Zip

☐ Show this address on the docket sheet

City

Country

Prison

Phone Fax

E-mail

Party text

Start date 10/23/2019 End date

Corporation no Notice yes

Add Party

[Start a New Search](#)



Open Civil Case

HELPFUL HINTS FOR ATTORNEY CASE OPENING

1. Please consult the *Electronic Case Opening Instructions* and the *Party Name Guide* before entering parties on the case.
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4. Leave all party contact fields blank. Do NOT enter address, phone, or email information and do NOT select a party with this information populated.

Add New Party**Create Case**[Collapse All](#)[Expand All](#)

0:19-cv-?????

[-] John Doe pet  Alias Corporate Parent or other affiliate 

Attorney

[-] William P Barr res  Alias Corporate Parent or other affiliate 

Attorney

Search for a party

Last / Business Name

First Name

Middle Name



FILING THE PETITION

- Enter Party Names (review the Court's ECF guides! Again! Again!)
- **Create Case: this will give you your case number**
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- **Save everything as PDFs**
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- Upload your Exhibit Index as the first attachment, with the label Exhibit(s) and description "Exhibit Index"
- Upload your Exhibits (as one file or multiple files), with the label Exhibit(s) and description by Exhibit letter or range of letters
- Upload your Civil Cover Sheet ([form JS-044](#))
- Follow the rest of the directions to pay the filing fee and file the Petition
- All done!



Add New Party

Create Case



[Collapse All](#)

[Expand All](#)

0:12-cv-????

Jackie Ellingson

pla





Alias

Corporate Parent or other affiliate

Attorney

ABC Corporation

dft



Alias

Corporate Parent or other affiliate

Attorney

Case Opening

Case will be created. Proceed?

Yes

No

Middle

Open Civil Case

Case Number 12-216 has been opened.

[CLICK HERE NOW TO DOCKET THE COMPLAINT OR OTHER INITIATING DOCUMENT!](#)

Complaints and Other Initiating Documents

Civil Case Number

0:12-cv-216

Next

Clear



FILING THE PETITION

- Enter Party Names (review the Court's ECF guides! Again! Again!)
- Create Case: this will give you your case number
- Put the case number into your Petition and Exhibit Index/Declaration
- Save everything as PDFs
- **Upload your Petition as the main document**
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- **Upload your Exhibits (as one file or multiple files), with the label Exhibit(s) and description by Exhibit letter or range of letters**
- **Upload your Civil Cover Sheet ([form JS-044](#))**
- Follow the rest of the directions to pay the filing fee and file the Petition
- All done!



Complaints and Other Initiating Documents

0:12-cv-00216 Ellingson v. ABC Corporation

Available Events (click to select an event)

- Amended Complaint
- Amended Counterclaim
- Amended Crossclaim
- Amended FourthParty Complaint
- Amended Third Party Complaint
- Complaint**
- Counterclaim
- Crossclaim
- Fourth Party Complaint
- Intervenor Complaint
- Notice of Removal
- Petition (in a Civil Case)
- Petition for Writ of Habeas Corpus
- Petition re: Review of Naturalization Application
- Prisoner Complaint under 42 USC 1983

Selected Event

Complaint

Next Clear

The following attorney/party associations do not exist for the above case(s).

Please check the box on the left of the screen for associations which should be created.

If the association should *not* be created, be sure the box is *unchecked*<

☒ Jackie Ellingson (pty:pla) represented by Marsha Clark (aty) ☐ Lead ☒ Notice

Next Clear

Pick Filer

[Collapse All](#)

[Expand All](#)

ABC Corporation dft

+ Jackie Ellingson pla

Select the filer.

Select the Party:

ABC Corporation [dft]
Ellingson, Jackie [pla]

Next

Clear

New Filer

Pick Party

[Collapse All](#)

[Expand All](#)

+ Jackie Ellingson pla

ABC Corporation dft

Please select the party that this filing is **against**.

(For a *Notice of Removal*, select the filer(s) of the state court Complaint.)

Select the Party: OR Select a Group:

Ellingson, Jackie [pla]
ABC Corporation [dft]

- ☒ No Group
- ☐ All Defendants
- ☐ All Plaintiffs
- ☐ All Parties

Next

Clear

New Party



1. Attach the **Complaint** as the **Main Document**.
2. Attach **Exhibits** starting at **Attachment 1**. Exhibits can be attached as one PDF or separately up to 15 mb in size.
Select **Exhibit(s)** from the **Category** drop-down list and list the exhibit number(s) or letter(s) in the **Description**.
3. Attach the **Civil Cover Sheet** as the last Attachment. Select **Civil Cover Sheet** from the **Category** drop-down list.
4. File all other documents, including a **Notice of Appearance** separately.

Select the pdf document and any attachments.

Main Document

C:\Documents and Settings\ellingsol\ Browse...

Attachments	Category	Description
1. C:\Documents and Settings\ellingsol\ Browse...	Exhibit(s)	A-Z Remove
2. C:\Documents and Settings\ellingsol\ Browse...	Civil Cover Sheet	Remove
3. Browse...		

Next Clear



FILING THE PETITION

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- Upload your Civil Cover Sheet ([form JS-044](#))
- **Follow the rest of the directions to pay the filing fee and file the Petition**
- All done!



Do you request the Clerk's Office to issue a summons?

☐ Yes

☐ No

Next

Clear

Is this filed with an Application to Proceed Without Prepayment of Fees?

or

Is this case filed on behalf of the United States of America?

☐ Yes

☒ No

Next

Clear

Complaints and Other Initiating Documents

[0:12-cv-00216 Ellingson v. ABC Corporation](#)

Docket Text: Modify as Appropriate.

COMPLAINT against ABC Corporation. (Filing fee \$ 350 receipt number 0864-185079.), filed by Jackie Ellingson. **Filer requests summons issued.** (Attachments: # (1) Exhibit(s) A-Z, # (2) Civil Cover Sheet) (Clark, Marsha)

Next

Clear

Complaints and Other Initiating Documents

[0:12-cv-00216 Ellingson v. ABC Corporation](#)

Docket Text: Final Text

COMPLAINT against ABC Corporation. (Filing fee \$ 350 receipt number 0864-185079.), filed by Jackie Ellingson. **Filer requests summons issued.** (Attachments: # (1) Exhibit(s) A-Z, # (2) Civil Cover Sheet) (Clark, Marsha)

Attention!! Pressing the NEXT button on this screen commits this transaction. You will have no further opportunity to modify this transaction if you continue.

Have you redacted?

Source Document Path (for confirmation only):

C:\fakepath\Test document.pdf pages: 1

C:\fakepath\Test document 2.pdf pages: 1

C:\fakepath\Test document5.pdf pages: 1

Next

Clear



FILING THE PETITION

- Enter Party Names (review the Court's ECF guides! Again! Again!)
- Create Case: this will give you your case number
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- Upload your Civil Cover Sheet ([form JS-044](#))
- Follow the rest of the directions to pay the filing fee and file the Petition
- **All done!**



Complaints and Other Initiating Documents

[0:12-cv-00216 Ellingson v. ABC Corporation](#)

U.S. District Court

U.S. District Court Minnesota

Notice of Electronic Filing

The following transaction was entered by Clark, Marsha on 10/11/2012 at 12:17 PM CDT and filed on 10/11/2012

Case Name: Ellingson v. ABC Corporation

Case Number: [0:12-cv-00216](#)

Filer: Jackie Ellingson

Document Number: [1](#)

Docket Text:

COMPLAINT against ABC Corporation. (Filing fee \$ 350 receipt number 0864-185079.), filed by Jackie Ellingson. **Filer requests summons issued.** (Attachments: # (1) Exhibit(s) A-Z, # (2) Civil Cover Sheet) (Clark, Marsha)

0:12-cv-00216 Notice has been electronically mailed to:

Marsha Clark jackie_ellingson@mnd.uscourts.gov

0:12-cv-00216 Notice has been delivered by other means to:

The following document(s) are associated with this transaction:



U.S. District Court

U.S. District of Minnesota

Notice of Electronic Filing

The following transaction was entered on 1/9/2018 at 9:05 AM CST and filed on 1/9/2018

Case Name: Muse v. Sessions et al

Case Number: [0:18-cv-00054-PJS-LIB](#)

Filer:

Document Number: 2(No document attached)

Docket Text:

TEXT ONLY ENTRY: CLERK'S NOTICE OF INITIAL CASE ASSIGNMENT. Case assigned to Judge Patrick J. Schiltz per 3rd, 4th Prisoner list, referred to Magistrate Judge Leo I. Brisbois. Please use case number 18-cv-54 PJS/LIB. (LPH)

0:18-cv-00054-PJS-LIB Notice has been electronically mailed to:

Ana H Voss ana.voss@usdoj.gov, catherine.merle@usdoj.gov, muriel.holland@usdoj.gov, usamn.ecfcivil@usdoj.gov, usamn.ecfflu@usdoj.gov

Ann M Bildtsen ann.bildtsen@usdoj.gov, deb.kapinos@usdoj.gov, muriel.holland@usdoj.gov, usamn.ecfcivil@usdoj.gov

John R. Bruning john@kimhunterlaw.com

0:18-cv-00054-PJS-LIB Notice has been delivered by other means to:



NOW WHAT?

- Now we wait.
- After you get electronic notice with the summons, serve the Petition and Summons on your Respondents
 - Usually: Attorney General, DHS Office of Chief Counsel, Local US Attorney's Office, Sheriff
- Then we wait.
- The court clerk will assign the case to a judge and magistrate judge.
- The magistrate will issue an order to show cause, giving the US about 30 days to respond and you another 30 days to file a reply.
- File your reply.
 - Again, follow the FRCP, Local Rules, and Court website guides.
 - The reply needs a certificate of compliance under LR 7.1



AND THEN?

- We wait some more.
- Eventually, the magistrate will issue a Report & Recommendation.
- If you or the government don't agree with the R&R, you/they will have 14 days to file objections. And the other side has 14 days to respond. These also need LR 7.1 certificates of compliance.
- Then we wait even longer for the judge to issue an order adopting and/or overruling the R&R.



WHAT DO WE WIN?

- Mandatory Detention: usually a bond hearing before an IJ
- Bond challenges: usually a new bond hearing before an IJ
- Writ challenges: ICE honors the writ, our client goes to his state court hearing, and back to ICE
- In *some* cases, unconditional or conditional release may be granted (usually in *Zadvydas* cases or where there is not a criminal history)



LAST STEP: GET MONEY



LAST STEP: GET MONEY

- Maybe. But probably. See *Muse v. Barr*, No. 18-cv-0054 (PJS/LIB), 2019 WL 4254676 (D. Minn. Sept. 9, 2019).
- The Equal Access to Justice Act (28 USC 2412) allows for recovery of attorney's fees and costs in civil actions against the United States where the plaintiff/petitioner is a prevailing party and the position of the US was not substantially justified.
 - "Prevailing party": the case must go to a final, binding decision by the judge, which grants at least some of the relief sought by the petitioner and alters the legal relationship between parties. If the petition is granted by a final order (not settlement), your client is the prevailing party.
 - "Substantially justified": was the government's position based in reality? Was it reasonable? Should they have known it was illegal or unconstitutional? Likely substantially justified if the caselaw is unsettled or there are out of district authorities in the government's favor.
- EAJA means our client/we shouldn't have to pay just to keep ICE from violating their rights!

