



*Presents*

# **Habeas Corpus 101**

April 30, 2026  
5:30 pm - 7:00 pm

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# Habeas Corpus 101

# Federal Court Immigration Actions

- **Administrative Procedures Act (Mandamus)** – 5 U.S.C. § 706(1), (2)
  - (1) compel agency action unlawfully withheld or unreasonably delayed
  - (2) hold unlawful and set aside agency action, findings, conclusions, found to be (A) arbitrary, capricious...; (B) contrary to constitutional power; (C) in excess of statutory jurisdiction; etc.)
- **Habeas Corpus**
  - “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.” U.S. Const. Art. I § 9 cl. 2
- **Petitions for Review in Federal Court of Appeals**
  - “a petition for review filed with an appropriate court of appeals...shall be the sole and exclusive means for judicial review of an order of removal” 8 U.S.C. § 1252(a)(5)


# What is Habeas Corpus?

4<sup>th</sup> Amendment?

8<sup>th</sup> Amendment?


1<sup>st</sup> Amendment?

## due process noun



1 : a course of formal proceedings (such as legal proceedings) carried out regularly and in accordance with established rules and principles

→ called also *procedural due process*



2 : a judicial requirement that enacted laws may not contain provisions that result in the unfair, arbitrary, or unreasonable treatment of an individual

→ called also *substantive due process*



- Every winning case has been decided on 5<sup>th</sup> Amendment grounds
- Procedural Due Process is all-encompassing
- Substantive Due Process = Procedural Due Process?

# Golden Rule—Immediate Custodian

“...the 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.”

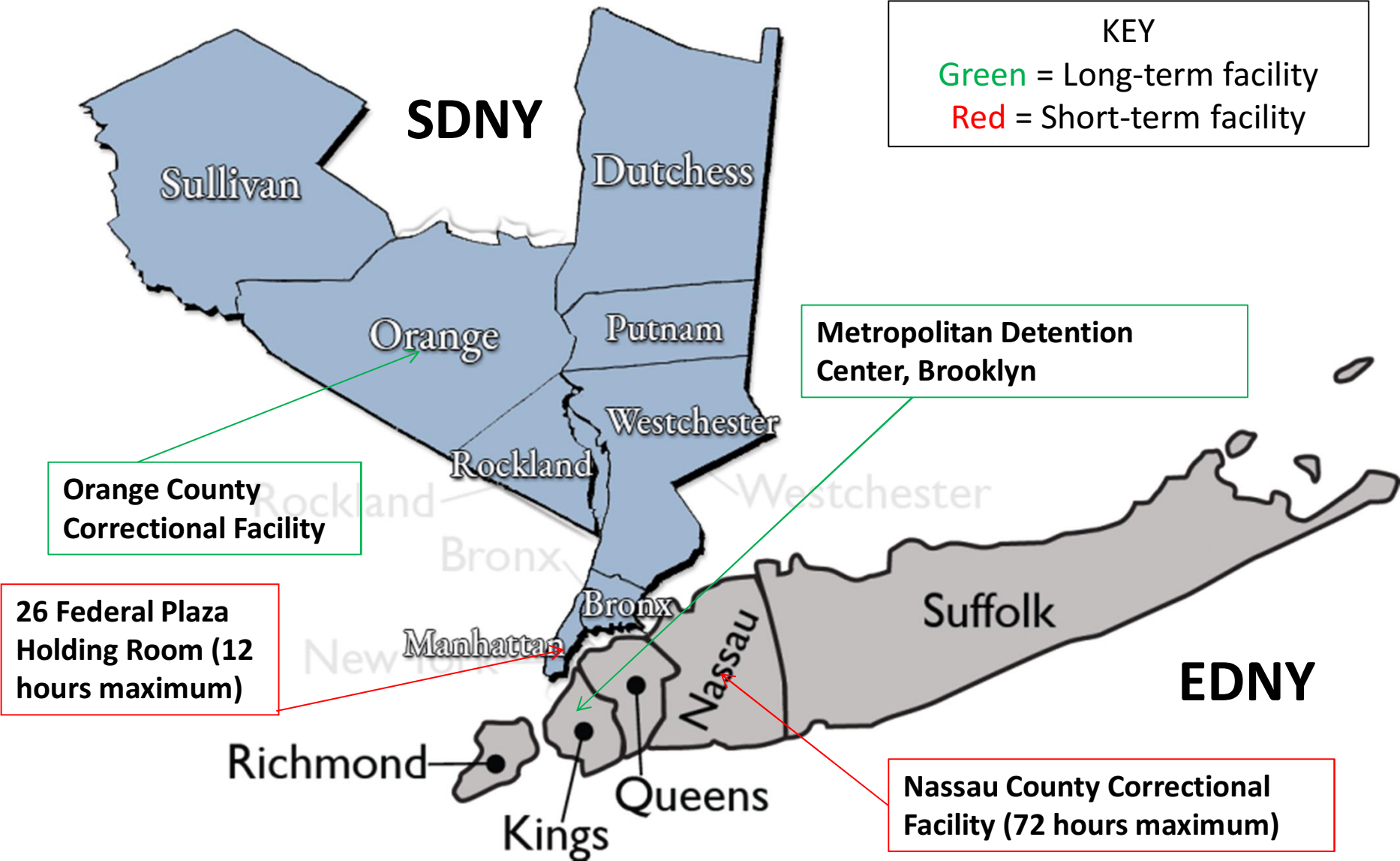
- *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004)

“...the general rule that for core habeas petitions challenging present physical confinement, **jurisdiction lies in only one district: the district of confinement.**”

- *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)

# New York Detention Centers

**KEY**  
Green = Long-term facility  
Red = Short-term facility



# Habeas Petition – Basic Elements

- Legal Framework
- Statement of Facts
- Jurisdiction (SMJ + PJ)
- Venue
- Parties
- App. for Order to Show Cause
- Claim for Relief
- Prayer for Relief

**DIFFERENT BETWEEN  
PETITIONS**

**GENERALLY THE SAME  
BETWEEN PETITIONS**

STATEMENT OF FACTS

13. Petitioner [REDACTED] (A [REDACTED]) is a male, native and citizen of Honduras.

14. On October 27, 2018, Petitioner entered the United States without inspection at or near Hidalgo, Texas.

15. On October 30, 2018, Petitioner was detained by Immigration and Customs Enforcement and placed into removal proceedings. Petitioner was charged as inadmissible as an alien present in the United States without being admitted or paroled. *See* 8 U.S.C. § 1182(a)(6)(A)(i). Petitioner applied for asylum.

16. On November 1, 2018, Petitioner was released into the United States on his own recognizance.

17. Petitioner has resided in [REDACTED] with his mother since his entrance into the United States.

18. On December 4, 2019, Petitioner's application for asylum was denied and he was ordered removed from the United States.

19. On December 23, 2019, Petitioner appealed his removal order to the Board of Immigration Appeals ("BIA")

20. On October 22, 2021, Petitioner timely submitted an appeal brief to the BIA. The Department of Homeland Security did not submit an appeal brief in response.

Basic  
Information

Posture of  
Immigration  
Proceedings

Entrance  
into U.S.

U.S.  
Residence

Posture of  
Immigration  
Proceedings

### NECESSARY INFORMATION

1. \*\*Basic Information
2. Last Entrance into the U.S.
3. Immigration Court Posture
4. Current Detention Location
5. Criminal Record

Current  
Detention  
Location

21. Petitioner's appeal before the BIA remains pending.

22. Upon information and belief, Petitioner is currently detained in the Metropolitan Detention Center at 80 29<sup>th</sup> St., Brooklyn, NY 11232.

23. Petitioner has never been arrested, charged for, or convicted of any crime in the United States.

Criminal  
Record

### OTHER INFORMATION

- U.S. Residence?
- Family connections?
- Work information?
- Arrest?

### \*\*BASIC INFORMATION

- Name
- Alien Number
- Country

# Legal Framework

<u>Removal Proceedings</u>	<u>Removal Order</u>
<ol style="list-style-type: none"><li>1. Entry Without Inspection</li><li>2. DHS Bond Appeal</li><li>3. “Arriving Alien”</li></ol>	<ol style="list-style-type: none"><li>1. 6+ Months of Detention</li><li>2. OSUP Revocation</li><li>3. Very Old Removal Order</li></ol>
<u>BONUS</u> – Transfer from NY to 5 <sup>th</sup> Circuit	

# R.P. #1 – Entry Without Inspection

On September 5, 2025, the Board of Immigration Appeals concluded an “applicant for admission” i.e. a noncitizen present in the U.S. without admission, is subject to mandatory detention during their removal proceedings. See *Matter of Yajure Hurtado*, 29 I&N Dec. 216 BIA (2025)

- Over 400 (>90% that have heard issue) federal District Court judges have concluded this position is incorrect
- The 5<sup>th</sup> Circuit and 8<sup>th</sup> Circuit Court of Appeals have sided with the BIA and DHS.
- The 2<sup>nd</sup> Circuit is currently hearing argument on this issue...

# R.P. #2 –Bond Appeal

- Noncitizen is detained in removal proceedings
- Noncitizen is approved release on bond or parole by Immigration Judge
- “Stay” of Custody Order in 2 circumstances:
  - “Automatic” – DHS files Form EOIR-43 Notice of Intent to Appeal. *See* 8 CFR 1003.19(i)(2)
  - “Discretionary” – BIA stays release pending appeal of custody decision. *See* 8 CFR 1003.19(i)(1)

# R.P. #3 – “Arriving Alien”

- An “arriving alien” is “an applicant for admission coming or attempting to come into the United States at a port-of-entry. *See* 8 CFR § 1.2
  - An immigration judge may not re-determine conditions of custody for “arriving aliens” *See* 8 CFR § 1003.19(h)(1)(i)(B)
  - An “arriving alien” remains an “arriving alien” even if paroled...and even after any such parole is terminated or revoked. *See* 8 CFR § 1.2
- Courts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024).

# R.O. #1 – 6+ months of “post-removal-order” detention

- *Zadvydas v. Davis*

## R.O. #2 – OSUP Revocation

- Noncitizen was ordered removed and detained
- Noncitizen was released because for whatever reason they could not be removed
- Noncitizen diligently reports to ICE
- ICE picks up noncitizen

# R.O. #3 – Very Old Removal Order

# BONUS – Transfer from NY to 5<sup>th</sup> Circuit