

Form F1-1. Next-Friend Petition for a Writ of Habeas Corpus on Behalf of a Detained Non-Human Being

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Use. This petition is written for the premise of the site: that a living, intelligent non-human being is held in the custody of the United States or its contractor. No court has decided whether such a being may seek habeas corpus. The petition is built to survive the threshold motions the government will file: (1) that the petitioner is not a proper next friend; (2) that the detained being is not a “person” or “prisoner” who may invoke the writ; (3) that the respondent and venue are wrong; and (4) that the state secrets privilege or the *Totten* bar forecloses the case. Read [Issue F1](#) (legal status), [Issue F2](#) (detention), and [Issue A1](#) (state secrets) before adapting it. Counsel must have a good-faith factual basis under Rule 11 for every allegation; the facts below are placeholders.

When to use. A next friend seeking habeas relief for a non-human intelligence held by the United States. **Not for:** Claims for damages or for animals.

Deadlines. None by statute; file promptly after facts support custody.

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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

[NAME OR DESIGNATION OF
DETAINED BEING, if known;
otherwise "AN UNNAMED NON-HUMAN
BEING DETAINED BY THE UNITED
STATES"], by and through [NEXT
FRIEND], as Next Friend,
Petitioner,

Civil Action No.
[]

**PETITION FOR A WRIT OF
HABEAS CORPUS (28
U.S.C. §§ 2241, 2242)**

v.

[SECRETARY OF WAR / HEAD OF
AGENCY HAVING CUSTODY], in
[his/her] official capacity;
[COMMANDER OR OFFICIAL WITH
IMMEDIATE CUSTODY, if known];
and [CONTRACTOR, if custody is
held by a contractor],
Respondents.

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INTRODUCTION

1. This petition asks the Court to require the United States to answer a question no court has answered: whether an intelligent being held in federal custody, who is not human, may ask a court to examine the lawfulness of that custody. Petitioner does not ask the Court to decide what rights such a being ultimately has. Petitioner asks the Court to issue an order to show cause, require Respondents to state the legal authority under which the being is held, and provide a hearing.

2. The writ of habeas corpus has always been the means by which a court requires the custodian of a body to produce it and justify the custody. The writ was used for persons the law of the time classified as property. *Somerset v. Stewart* (K.B. 1772). The Supreme Court has held that the privilege of the writ reaches persons held by the United States outside its sovereign territory, as a matter of the Suspension Clause. *Boumediene v. Bush*, 553 U.S. 723, 771 (2008).

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4. Venue lies in this District because [Respondent ____, who has legal control over the detained being, is located here / the location of custody is unknown to Petitioner and the official with ultimate control is located here]. *See Rumsfeld v. Padilla*, 542 U.S. 426, 435, 450 n.18 (2004) (the default respondent in a challenge to present physical confinement is the immediate custodian, and jurisdiction lies in the district of confinement, but “[w]hen ... a prisoner is held in an undisclosed location by an unknown custodian, it is impossible to apply the immediate custodian and district of confinement rules”) (discussing *Demjanjuk v. Meese*, 784 F.2d 1114 (D.C. Cir. 1986)). [Adapt to the facts known.]

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1 information reached Petitioner through a lawful channel (see Issues C1, C3). Do not attach or
2 describe classified documents.]

3 9. [Allege official acknowledgments relevant to the premise: statutes, sworn
4 testimony, and agency releases (see [Form A1-2](#), Background Part B).]

5 10. Upon information and belief, no court, tribunal, or other neutral body has
6 reviewed the legal basis for the detained being's custody, and the detained being has had no
7 access to counsel, an interpreter, or any representative.

8 **ARGUMENT IN SUPPORT OF THE ORDER TO SHOW CAUSE**

9 **I. Petitioner is a proper next friend.**

10 11. An application for the writ may be made “by the person for whose relief it is
11 intended or by someone acting in his behalf.” 28 U.S.C. § 2242. A next friend must provide “an
12 adequate explanation—such as inaccessibility, mental incompetence, or other disability—why
13 the real party in interest cannot appear on his own behalf,” and must be “truly dedicated to the
14 best interests of the person on whose behalf he seeks to litigate”; it has been suggested that a
15 next friend have “some significant relationship” with the real party in interest. *Whitmore v.*
16 *Arkansas*, 495 U.S. 149, 163-64 (1990).

17 12. The detained being cannot appear: it is held incommunicado in a location
18 Petitioner cannot reach, has no access to counsel, and [may not communicate in any human
19 language]. Those circumstances are the paradigm of “inaccessibility.” Petitioner’s relationship
20 with the detained being is [describe: e.g., direct contact before custody; responsibility for its
21 care; status as the only person outside government who has communicated with it]. Petitioner
22 has no interest adverse to the being’s.

23 13. *Naruto v. Slater*, 888 F.3d 418 (9th Cir. 2018), does not control. The panel
24 majority held that the organization suing for a macaque had not alleged “the required
25 significant relationship” with it, and only “gravely doubt[ed]” that an animal could be
26 represented by a next friend. *Id.* at 421. A separate opinion would have held that 28 U.S.C. §
27 2242 allows a petition only on behalf of a natural person, reasoning that corporations and other
28 artificial persons “cannot be imprisoned.” *Id.* at 430-31 (N.R. Smith, J., concurring in part).

Neither opinion binds this Court, and neither addressed a being with the capacities alleged here. The concurrence’s own reasoning supports this petition, because the detained being is a living being that can be, and is, imprisoned. The concurrence’s concern with “intruders or uninvited meddlers” acting for animals, *id.* at 431 (quoting *Whitmore*, 495 U.S. at 164), is met here by the Next Friend’s relationship with the detained being described in paragraph 12.

II. The detained being may invoke the writ.

14. Section 2241(c)(1) extends the writ to “a prisoner” in custody under color of federal authority. Neither § 2241 nor § 2242 limits the writ to human beings, and the Dictionary Act’s definition of “person” is expressly non-exhaustive. 1 U.S.C. § 1.

15. The courts that have declined to extend habeas to animals reasoned that rights are tied to the capacity to bear duties and to be held accountable. *People ex rel. Nonhuman Rights Project, Inc. v. Lavery*, 124 A.D.3d 148, 152 (3d Dep’t 2014). A being capable of [reasoning, communication, and deliberate conduct] meets that test. The question whether a non-human being is a “person” or “prisoner” for habeas purposes is one of first impression, and the Court need not answer it finally to issue an order to show cause: the Court has jurisdiction to determine its own jurisdiction, and the facts on which the answer depends (the being’s capacities and the conditions of custody) are in Respondents’ exclusive possession.

III. Respondents must state the authority for custody.

16. Petitioner is not aware of any statute, treaty, or regulation authorizing the detention of a non-human intelligent being. If Respondents rely on a classified executive directive, the Court may review it in camera, and a secret directive cannot authorize conduct that a statute forbids (Issue A2). If Respondents rely on the law of armed conflict, they must identify the armed conflict and the status they assign the being (Issue F2).

IV. Neither the state secrets privilege nor the *Totten* bar forecloses an order to show cause.

17. The *Totten* bar applies to suits whose subject is a secret agreement with the government. *Tenet

1 v. Doe, 544 U.S. 1, 8 (2005). This petition concerns custody and rests on no agreement
2 with the government. The state secrets privilege is an evidentiary rule that the government must
3 assert formally and the Court must test, and its ordinary consequence is exclusion of specific
4 evidence, with dismissal reserved for exceptional cases. United States v. Reynolds, 345 U.S. 1,
5 7-8 (1953); In re Sealed Case, 494 F.3d 139, 144-45 (D.C. Cir. 2007). The Court can protect
6 classified information through a protective order and in camera review ([Form A1-1](#)) while
7 requiring the government to state the legal basis for custody, as courts did in the Guantánamo
8 habeas cases. See In re Guantanamo Bay Detainee Litigation*, 577 F. Supp. 2d 143 (D.D.C.
9 2008).

10 PRAYER FOR RELIEF

11 Petitioner asks the Court to:

12 A. Issue an order directing Respondents to show cause, within the time allowed by 28
13 U.S.C. § 2243, why the writ should not be granted, and to file a return certifying the true cause
14 of the detention;

15 B. Order Respondents to preserve all records, recordings, specimens, and other
16 evidence concerning the detained being and its custody;

17 C. Order Respondents to provide the detained being with humane conditions, necessary
18 care, and [interpretation / means of communication] pending further order, and to file under
19 seal a report on its condition;

20 D. Appoint [counsel / a guardian ad litem] for the detained being, with appropriate
21 clearances, and enter a protective order for classified information;

22 E. Hold an evidentiary hearing; and

23 F. Grant the writ and such other relief as is just.

24 Dated: [_____] Respectfully submitted,

25 [signature block]

26 VERIFICATION

27 I, [Next Friend], declare under penalty of perjury under 28 U.S.C. § 1746 that I have
28 read this petition and that the facts stated in it are true to the best of my knowledge,

1 information, and belief, and that I have stated the basis for each allegation made on information
2 and belief. [Signature, date]

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Drafting notes

- **28 U.S.C. § 2243.** The court “shall forthwith award the writ or issue an order directing the respondent to show cause,” returnable within three days unless good cause allows up to twenty. Ask for the order to show cause; the government will seek an extension and a sealed return.
- **Rule 11.** The petition fails at once if the premise of a living detained being rests only on rumor. Build the factual basis from witnesses with first-hand knowledge who have used lawful channels, and from official acknowledgments.
- **Expect a motion to dismiss** on next-friend standing, on whether the being is a “prisoner,” and on state secrets. Parts I, II, and IV preview the responses. Consider filing [Form A1-1](#) (protective order) with the petition.
- **Somerset.** Cite *Somerset v. Stewart*, Lofft 1, 98 Eng. Rep. 499 (K.B. 1772). The case is offered only to show the writ’s historical reach.
- **Pin cites:** *Boumediene* at 771; *Padilla* at 435, 450 n.18; *Whitmore* at 163-64; *Tenet* at 8; *Naruto* at 421, 430-31; *In re Sealed Case* at 144-45. Run KeyCite before filing.
- **Animals and other non-persons.** Courts have refused standing to non-human petitioners unless Congress speaks plainly. *Cetacean Community v. Bush*, 386 F.3d 1169, 1175-76, 1179 (9th Cir. 2004); *Naruto*, above. The strongest contrary voice is Judge Fahey’s concurrence in *Matter of Nonhuman Rights Project, Inc. v. Lavery*, 31 N.Y.3d 1054 (2018) (denial of leave to appeal), which questioned whether personhood for habeas purposes should turn on species. Expect the government to cite *Cetacean* and answer that the petition rests on evidence of the detainee’s capacities for communication and agreement, which the animal cases did not have before them ([Issue F1](#) §4.4).
- **Next friends without a relationship fail.** *Coalition of Clergy, Lawyers, & Professors v. Bush*, 310 F.3d 1153 (9th Cir. 2002), held that petitioners with no relationship to the Guantánamo detainees lacked standing. Paragraph 12 must show a real relationship.
- **Discovery.** Federal habeas discovery is available for good cause. *Harris v. Nelson*, 394 U.S. 286 (1969); Rule 6 of the Rules Governing Section 2254 Cases, applicable to § 2241 petitions under Rule 1(b).
- **Release to where.** Courts can end unlawful custody but are reluctant to order release into a particular place. *Kiyemba v. Obama*, 605 F.3d 1046 (D.C. Cir. 2010); *Munaf v. Geren*, 553 U.S. 674 (2008). Put a plan for the being’s safe placement in the record, and ask for release on conditions.
- **Contractor holding the being on its own account.** If the custodian is a private company that disclaims acting for the United States, use [Form F1-2](#) (state-court habeas), which is built so that either answer the custodian gives keeps the case in a court.
- Related: [Issue F1](#), F2, A1, A2; Forms F1-2, A1-1, A1-2, F2-1.