

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

Eduardo H. JimenezPerez,
Petitioner, Pro Se,
v.

U.S. Department of Homeland Security (DHS),
Director of U.S. Immigration and Customs
Enforcement (ICE),
HON. PAM BONDI,
Attorney General of the United States,
U.S. Attorney for The District of New Jersey,
Statutory Respondent under 28 U.S.C. § 2243,
EOIR / BIA,
Nominal Federal Respondents,

Respondents.

File No.: 

Habeas Corpus

Civil Action

No.:

RECEIVED

APR 17 2025

AT 8:30 ^M
CLERK, U.S. DISTRICT COURT • DNJ

**Enclosed please find writ of Habeas Corpus pursuant to 28 U.S.C. § 2241
and application for order to show cause.**

DATE: Abril 8, 2025.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

**PETITION FOR WRIT OF HABEAS CORPUS, TEMPORARY RESTRAINING
ORDER, AND PRELIMINARY INJUNCTION TO BLOCK REMOVAL AND REQUIRE
DHS TO PROVIDE CLEAR AND CONVINCING EVIDENCE OF REMOVABILITY**

I. INTRODUCTION

I, Eduardo Jimenez Perez respectfully request that this Honorable Court grant an immediate stay of removal, issue a writ of habeas corpus, and bar the Department of Homeland Security (DHS) from using the judgment of conviction as conclusive evidence of removability. DHS bears the burden of proving that my conviction under 21 U.S.C. § 846 categorically qualifies as an aggravated felony under the Immigration and Nationality Act (INA) and has repeatedly failed to meet this requirement.

This motion seeks to:

1. Block DHS from proceeding with removal based on a conviction that does not categorically meet the definition of an aggravated felony.
2. Invoke habeas corpus jurisdiction under 28 U.S.C. § 2241 to challenge the legality of my removal based on erroneous and unverified evidence.
3. Compel DHS to present clear and convincing evidence beyond the certificate of sentence to justify its claims within a set timeframe.
4. If DHS fails to meet this burden, request that this Court dismiss removal proceedings entirely due to lack of a valid legal basis and procedural violations.

II. JURISDICTION

This Court has jurisdiction under **28 U.S.C. § 2241**, which authorizes federal courts to review the legality of immigration detention and removal orders when there are constitutional or statutory violations. In addition, under **8 U.S.C. § 1252(f)** and the **Administrative Procedure Act (APA)**, **5 U.S.C. §§ 702 and 706**, this Court retains the authority to review and enjoin unlawful agency actions that violate due process and federal law.¹

Custody Requirement and Federal Jurisprudence

For purposes of habeas corpus jurisdiction, "custody" is interpreted broadly and includes significant restraints on liberty, even in the absence of physical incarceration. **Petitioner, Eduardo Jimenez Perez**, remains under DHS-imposed supervised release conditions, including regular ICE check-ins, travel restrictions, and mandatory reporting obligations. **(See Exhibit A Order of Supervision, Addendum, Form I-220B.)**

¹ See *5 U.S.C. § 702* (granting judicial review to persons aggrieved by agency action) and *§ 706(2)(A)–(D)* (requiring courts to set aside agency actions that are arbitrary, capricious, or contrary to law, including violations of constitutional rights).

² Petitioner previously filed a writ of habeas corpus, **Civil Action No. 2:15-cv-07214-CCC**, on September 30, 2015, challenging two years of immigration detention without bond. During the immigration hearing, the DHS attorney failed to demonstrate that Petitioner posed any danger to the community. As a result, the Immigration Judge granted bond. Since then, Petitioner has remained under strict DHS supervision without further judicial review.

Since his release from DHS custody on **February 22, 2016**, Petitioner has lived under strict immigration supervision for more than nine years. These restrictions continue to limit his liberty and impose significant hardship on both him and his family.

Such ongoing conditions constitute “**custody**” for purposes of Habeas Corpus jurisdiction under well-established federal law. See *Jones v. Cunningham*, 371 U.S. 236 (1963).

These conditions fall squarely within the definition of custody established by the U.S. Supreme Court:

- *Hensley v. Municipal Court*, 411 U.S. 345 (1973) – Custody includes release under bail or conditional liberty.
- *Zadvydas v. Davis*, 533 U.S. 678 (2001) – Supervised release with restrictions satisfies the “Custody” requirement for purposes of Habeas Corpus.

Accordingly, **Petitioner clearly satisfies the custody requirement** under **28 U.S.C. § 2241**, and this Court has jurisdiction to hear this case.

Given that the Immigration Judge explicitly declined jurisdiction to compel DHS compliance, and no administrative remedy remains, federal habeas review under § 2241 is not only appropriate it is required to ensure constitutional oversight.



III. FACTUAL BACKGROUND

DEFECTIVE NOTICE TO APPEAR (NTA) VIOLATES DUE PROCESS AND NULLIFIES JURISDICTION

The Notice to Appear (NTA) issued in my case is jurisdictionally defective and legally insufficient under binding Supreme Court precedent. The NTA failed to comply with the statutory requirements of 8 U.S.C. § 1229(a)(1), which mandates that any charging document must include the date, time, and place of the initial hearing, and be properly served on the noncitizen.

In my case, no such notice was ever delivered not by personal service, certified mail, nor by any recognized administrative method. On **February 12, 2014**, I was arrested at my home without prior notice, placed in detention, and held for **19 days** before appearing before an Immigration Judge on **March 3, 2014**. I had no knowledge of the NTA prior to that appearance and had received no documentation or explanation during those 19 days. This sequence of events violates both statutory and constitutional norms of notice.³

³ *A charging document that lacks the time and date of a hearing does not confer jurisdiction on the Immigration Court. See Pereira v. Sessions*, 138 S. Ct. 2105, 2113–14 (2018) (“Only a notice to appear that includes all the statutorily required information triggers the stop-time rule and confers jurisdiction.”); *Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1480 (2021) (“The government must issue a single, complete document containing all necessary information.”); see also 8 C.F.R. § 1003.14(a) (jurisdiction vests only upon proper filing of a valid NTA).

The NTA was ultimately delivered on March 11, 2014, during my second hearing as part of a multi-page packet that included no date, time, or location of any hearing, and relied solely on criminal allegations copied from the sentencing certificate. It did not inform me of my rights, of any opportunity to appear voluntarily, nor of the consequences of failure to appear. This stands in direct violation of the statutory criteria under § 1229(a) and of due process under the Fifth Amendment.

A. Violation of *Pereira* and *Niz-Chavez*

As the Supreme Court held in *Pereira v. Sessions* and reaffirmed in *Niz-Chavez v. Garland*, an NTA that omits the date and time of the hearing is not a valid charging document and does not confer jurisdiction on the immigration court. The Court made clear that such a defect is not procedural but **jurisdictional** an NTA must be “a single document containing all the required information.”

My NTA was fundamentally non-compliant with these mandates. Despite this, DHS and the Immigration Court proceeded to initiate and sustain removal proceedings based on this defective notice. **No amended or corrected NTA** was ever filed in the subsequent eleven years, even after repeated motions and requests.

B. Lack of Valid Service and Consequences

Moreover, DHS has never provided proof of service, no certificate of service, no acknowledgment of receipt, and no documentation showing I was ever advised of my right to counsel or to present evidence. The government simply detained me, withheld notice, and proceeded as if I had been properly served. This is not merely a technical oversight; it is a **substantive constitutional violation**.

My first awareness of removal proceedings came **19 days after my detention**, at my first court appearance. This violates the constitutional guarantee of meaningful notice and an opportunity to be heard before a liberty interest is taken. See *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

C. Invalid Charging Document Means No Jurisdiction

Because the NTA was defective from the outset and no corrective action was ever taken, the Immigration Court **lacked jurisdiction** to commence removal proceedings under **8 C.F.R. § 1003.14(a)**, which states:

“Jurisdiction vests, and proceedings commence, when a charging document is filed with the Immigration Court by the Service.”

An invalid charging document one that does not comply with **§ 1229(a)(1)** cannot confer jurisdiction. DHS’s failure to correct this in over a decade, despite being repeatedly notified, constitutes a fatal procedural defect that renders all subsequent actions **ultra vires**.

See **Exhibit B** – Defective NTA lacking date, time, and proper service.

See **Exhibit C** – Transcript excerpts from March 3, 2014, and September 8, 2015, hearings confirming lack of proper notice and jurisdictional discussion.

D. Insufficient Basis for Removal Under Conviction

Petitioner’s conviction under 21 U.S.C. § 846 (conspiracy) does not categorically qualify as an aggravated felony under immigration law. Under the categorical approach, as required by *Taylor v. United States*, 495 U.S. 575 (1990), *Moncrieffe v. Holder*, 569 U.S. 184 (2013), *Descamps v. United States*, 570 U.S. 254 (2013), and *Mathis v. United States*, 579 U.S. 500 (2016), courts



must compare the elements of the statute of conviction to the generic federal definition of the offense in the Immigration and Nationality Act (INA). If the conviction covers both conduct that qualifies and conduct that does not, it **cannot serve as a basis for removal**.

Section 846 does not require proof of an overt act or completion of the underlying offense and therefore sweeps more broadly than the generic definition of a drug trafficking aggravated felony under INA § 101(a)(43)(B). In *United States v. Jimenez Recio*, 537 U.S. 270 (2003), the Supreme Court confirmed that conspiracy liability under § 846 exists even without completion of the substantive offense, which underscores why it fails the categorical test for removal purposes.

Additionally, the Department of Justice's **Criminal Resource Manual § 652** clearly explains that a **conspiracy conviction** is not categorically a deportable drug trafficking offense unless the **underlying substantive offense is proven or expressly admitted in the record of conviction**.

In Petitioner's case, the **Judgment of Conviction (Exhibit D)** contains no reference to drug quantity, completed trafficking activity, overt acts, or any violent conduct. Thus, DHS's reliance solely on this judgment fails to satisfy the "clear, unequivocal, and convincing evidence" standard under INA § 240(c)(3)(A).

While the BIA's decision in *Matter of L-G-H-*, 26 I&N Dec. 365 (BIA 2014), discussed the general use of conspiracy convictions in immigration proceedings, it did not squarely address the categorical limitations at issue here. Accordingly, it may be cited only as **secondary support**, but it **does not override binding Supreme Court precedent** or DOJ guidance. The Government's position remains unsupported both factually and legally and cannot sustain removal under established constitutional and statutory standards.

E. Exhaustive Administrative Efforts and Government Noncompliance

Petitioner has diligently pursued multiple administrative remedies to obtain crucial evidence supporting DHS's allegations and clarifying procedural irregularities, but **DHS has consistently failed to respond:**

- **Immigration Court (EOIR)**

Filed a motion to compel disclosure of evidence; the Immigration Judge denied the motion citing lack of jurisdiction and directed Petitioner to use FOIA procedures.

(Exhibit E)

- **FOIA Requests to DHS**

– Following the IJ's directive, Petitioner submitted several FOIA requests to DHS offices in Newark, NJ, explicitly requesting documentation concerning the NTA and criminal judgment. DHS provided **no substantive response. (Exhibit F)**

- **Essex County Correctional Facility**

– Petitioner filed FOIA requests seeking documentation about his detention and initial notification. These requests remain **unanswered. (Exhibit G)**

Despite years of administrative diligence, DHS has refused to provide any evidence that meets the evidentiary threshold under **INA § 240(c)(3)(A)**.

According to the **DOJ Criminal Resource Manual § 652** and **18 U.S.C. § 371**, a conspiracy charge alone does **not** qualify as a deportable aggravated felony unless the **substantive offense is proven or admitted**. No such underlying offense appears in Petitioner's certified judgment **See (Exhibit D)**.

Thus, DHS's continued inaction and procedural shortcuts are not only unlawful but represent a violation of due process. Petitioners have exhausted all administrative avenues. Federal court intervention is now the only remedy to ensure compliance with both constitutional and statutory requirements.

F. Immigration Judge's Refusal to Consider Termination Warrants

Immediate Judicial Intervention

Despite the Department of Homeland Security's failure to present clear and convincing evidence of removability as required by *Woodby v. INS*, 385 U.S. 276 (1966), the IJ declined to adjudicate Petitioner's March 3, 2025, motion to terminate proceedings. The IJ's refusal to adjudicate Petitioner's motion, not based on factual insufficiency but solely due to a rigid interpretation of the BIA's remand, exceeded the lawful scope of the Immigration Judge's adjudicative authority...

In effect, this constituted an **ultra vires action** one that falls outside the permissible boundaries set by 8 C.F.R. § 1240.8(a), which requires adjudication of whether DHS has met its burden of proof. Federal courts have consistently held that when administrative decisionmakers refuse to address core statutory or jurisdictional claims raised by a respondent, and when no other remedy is available, such conduct supports immediate judicial review under the *Administrative Procedure Act* and 28 U.S.C. § 2241. See *Avetisyan*, 25 I&N Dec. 688; *Singh v. Gonzales*, 499 F.3d 969 (9th Cir. 2007).

Therefore, because the IJ failed to fulfill his adjudicative duty under governing regulations, and no agency forum remains available to address the jurisdictional and evidentiary defects, this Court is now the only forum capable of ensuring constitutional compliance and protecting Petitioner's rights.

G. Administrative Remedies Are Effectively Exhausted and Futile

Petitioner has exhausted all viable administrative avenues. Multiple FOIA requests and a formal motion to compel discovery were denied or ignored by DHS and the EOIR (**See Exhibits E - G**). The IJ explicitly refused to address removability despite Petitioner's timely submissions and legal authority. Moreover, the BIA's remand order, narrowly limited to the CAT claim, renders any further agency appeal on removability futile and legally foreclosed.

The Supreme Court and circuit courts have recognized that exhaustion is not required when administrative remedies are unavailable, ineffective, or would cause undue prejudice. See *McCarthy v. Madigan*, 503 U.S. 140 (1992); *Darby v. Cisneros*, 509 U.S. 137 (1993); *Montes v. Thornburgh*, 919 F.2d 531 (9th Cir. 1990). These principles apply squarely here. Petitioner cannot compel the IJ or BIA to consider the jurisdictional defect, and the record makes clear that any further appeal would be a "vain act." See *Walker v. Southern R. Co.*, 165 U.S. 593 (1897) (excusing exhaustion where administrative delay was unreasonable or indefinite); *Accardi v. Shaughnessy*, 347 U.S. 260 (1954) (agencies must follow their own rules).

The IJ's declaration of incapacity to adjudicate the termination motion despite the constitutional stakes demonstrates that no "remedy available as of right" remains. Petitioner's situation fits squarely within all three recognized exceptions to exhaustion: (1) unreasonable delay; (2) agency lacks authority to grant the relief; and (3) procedural dead end due to remand limitations. Accordingly, federal Habeas jurisdiction is ripe and appropriate.

H. Irreparable Harm and Ongoing Constitutional Injury

Every day that Petitioner remains under DHS supervision without a valid removal order constitutes irreparable constitutional harm. Since the 2016 remand, Petitioner has been trapped in prolonged legal limbo under (ICE) & (ISAP) conditions, unable to rebuild his life. Federal courts have repeatedly recognized that prolonged governmental inaction and uncertainty, especially where due process is denied create an injury that no later remedy can cure. *See Zadvydas v. Davis*, 533 U.S. 678 (2001); *McCarthy*, 503 U.S. at 146 (“unreasonable or indefinite timeframe” causes irreparable injury).

The violation here is not merely procedural. It is a substantive denial of the right to be heard, to contest jurisdiction, and to demand that the government meet its burden **under *Woodby***⁴. Courts have long recognized that denial of constitutional rights constitutes per se irreparable injury. See *Boumediene v. Bush*, 553 U.S. 723 (2008); *Mendoza-Lopez*, 481 U.S. at 839. Every additional month under unlawful supervision, without opportunity for a proper defense, is a deprivation of liberty and dignity the Constitution does not permit.

⁴ *Under Woodby v. INS*, 385 U.S. 276 (1966), and pursuant to 8 C.F.R. § 1240.8(a), an Immigration Judge cannot lawfully proceed with removal or adjudicate CAT or other forms of relief unless the Government first establishes removability by clear, unequivocal, and convincing evidence. A limited demand by the BIA does not nullify this statutory and constitutional requirement. The DHS's failure to meet this threshold burden renders any further proceedings—absent adjudication of removability procedurally invalid and constitutionally deficient.

IV. LEGAL ARGUMENTS

A. The DHS's Lack of Clear and Convincing Evidence Constitutes a Violation of Due Process

- **Under INA § 240(c)(3)(A)**, DHS bears the burden of proving removability through clear, unequivocal, and convincing evidence. Utilizing the "Categorical Approach," as required by *Moncrieffe v. Holder*, 569 U.S. 184 (2013), and *Lopez v. Gonzales*, 549 U.S. 47 (2006), DHS must clearly demonstrate that all elements of my conviction categorically match an aggravated felony. DHS has failed this standard.

The recent objection filed by DHS further confirms that the agency continues to fail to meet the fundamental obligation set forth in INA § 240(c)(3)(A). DHS continues to limit itself to procedural arguments without providing any evidence.

B. The Categorical Approach Precludes Removal

- *Mathis v. United States*, 579 U.S. 500 (2016) prohibits courts from considering extraneous evidence beyond statutory elements.
- *Descamps v. United States*, 570 U.S. 254 (2013) confirms that DHS cannot rely on external documentation such as police reports or judicial commentary.
- 21 U.S.C. § 846, which does not require completion or an overt act, fails to categorically match the aggravated felony definition under 8 U.S.C. § 1101(a)(43)(B).

- Furthermore, under the Department of Justice's Criminal Resources Manual, § 652, and 18 U.S.C. § 371, a conspiracy charge cannot independently be considered a felony drug trafficking offense unless the Department of Homeland Security (DHS) proves, or the record clearly reflects, that the underlying substantive offense was committed or expressly admitted.⁵

Both the Supreme Court and the Department of Justice recognize that a simple conspiracy conviction, without a proven or admitted completed offense, does not meet the statutory definition in 8 U.S.C. § 1101(a)(43)(B). As demonstrated in **Exhibit D (Judgment of Sentencing)**, my conviction record contains no reference to any completed trafficking offense, drug quantity, or overt act, and therefore does not meet the categorical test.

The certificate of conviction, standing alone, is legally insufficient to meet the 'clear, unequivocal, and convincing' standard set forth under INA § 240(c)(3)(A). The agency has presented no authenticated documentation or admissible record to support removability."

C. The Categorical Approach Requires Explicit Evidence

- Federal Jurisprudence demands a "Categorical Approach" when evaluating convictions in immigration proceedings. Under this strict standard, the Court must only consider the statutory definition and documented facts explicitly in the record of conviction, not DHS's unsupported presumptions or external allegations. (**Moncrieffe v. Holder**, 569 U.S. 184; **Descamps v. United States**, 570 U.S. 254 (2013)).

⁵ See Department of Justice, Criminal Resource Manual § 652, "Conspiracy 18 U.S.C. § 371", available at <https://www.justice.gov/archives/jm/criminal-resource-manual-652-conspiracy-18-usc-371>. See also *United States v. Jimenez Recio*, 537 U.S. 270 (2003).

- The BIA, in **Matter of G-G-, 22 I&N Dec. 442 (BIA 1999)**, clearly stated that charges involving violence or firearms require explicit evidence and cannot rely on unsubstantiated assumptions. DHS's violation of this requirement undermines the legality and fairness of my removal proceedings.

D. DHSs Burden of Proof

- DHS must establish removability by clear and convincing evidence (8 U.S.C. § 1229a(c)(3)(A)).
- **Matter of G-G-S-, 26 I&N Dec. 339 (BIA 2014)**; *Lopez v. Gonzales*, 549 U.S. 47 (2006). And
- **Matter of Y-L-, A-G-, & R-S-R-, 23 I&N Dec. 270 (A.G. 2002)** collectively emphasize that any ambiguity must favor the noncitizen, and removability determinations must strictly adhere to statutory definitions without judicial inference.

E. Irreparable Harm Without Immediate Stay

- Without a stay, wrongful removal would eliminate meaningful legal recourse and violate my constitutional due process rights under the Fifth Amendment.
- The APA (5 U.S.C. § 706) authorizes courts to enjoin agency actions that are arbitrary or contrary to law.
- *United States v. Mendoza-Lopez*, 481 U.S. 828 (1987), demands a meaningful opportunity to contest removal.

F. DHS Contradictions and Due Process Violations

- DHS has consistently provided contradictory statements regarding my notification and removal charges, undermining procedural fairness. Furthermore, the recent objection of

March 19, 2025, exemplifies again how DHS continues to use contradictory and purely procedural arguments, avoiding addressing the merits of the case and further violating the petitioner's procedural rights.

G. Errors Cannot Be Considered Harmless

- Any procedural error or misrepresentation by DHS that materially affects the respondent's ability to prepare a defense or results in the misapplication of the law cannot be considered harmless, as it fundamentally undermines the fairness and legality of removal proceedings. Precedents such as **United States v. Mendoza-Lopez**, 481 U.S. 828 (1987), support that procedural errors that deprive a respondent of a full and fair hearing warrant judicial intervention and cannot be dismissed as minor or harmless.

H. DHS's Continued Reliance on a Defective NTA Confirms Jurisdictional Failure and Justifies Immediate Federal Review.

On March 3, 2025, Petitioner submitted a Motion to Reopen and Terminate Proceedings, **see (Exhibit H)**, specifically challenging the jurisdictional defects in the charging document and the Government's failure to meet its burden of proof. In its response dated March 19, 2025, DHS offered no new or substantive evidence to address the jurisdictional arguments, but merely recycled procedural objections already rejected by higher courts. **See (Exhibit I)**

DHS once again relied on the same **defective Notice to Appear (NTA)**—a document lacking the statutorily required date, time, and proper proof of service—as the sole basis for asserting jurisdiction. This continued reliance contradicts **binding Supreme Court precedent**, which holds that an NTA must contain *all* elements required by 8 U.S.C. § 1229(a)(1) in a **single document**:

- **Pereira v. Sessions**, 138 S. Ct. 2105 (2018) A deficient NTA does not trigger jurisdiction or the stop-time rule.
- **Niz-Chavez v. Garland**, 141 S. Ct. 1474 (2021) Jurisdiction vests only upon service of a complete, unified notice.

The Government's failure to produce a corrected or valid NTA over an eleven (11) year span, despite repeated motions, not only violates these rulings but also undermines the foundation of this removal proceeding. DHS's March 19, 2025, objection is further proof of the agency's **refusal to confront the legal and constitutional implications** of a jurisdictionally void proceeding.

Instead of curing the defect, DHS improperly invoked **administrative precedent** such as *Matter of Fernandes*, 28 I&N Dec. 605 (BIA 2022), and *Matter of Larios-Gutierrez De Pablo*, 28 I&N Dec. 868 (BIA 2024) which do not override Supreme Court authority and do not address the constitutional violation at stake. These BIA decisions are not binding on this Court and fail to resolve the jurisdictional and procedural deficiencies that render this proceeding invalid.

Because the Petitioner exhausted all available administrative remedies by raising the jurisdictional challenge before the Immigration Court. **See (Exhibit J) and** receiving a summary denial without, adjudication of the core issue, **judicial intervention is now both justified and necessary. See (Exhibit K) IJ's Summary Denial of Terminate Motion.** The Court must act to prevent further violations of due process, to enforce DHS's burden under INA § 240(c)(3)(A), and to terminate proceedings resting on a legally void foundation.

I. Prolonged Delay and Constitutional Harm from Eleven Years of Governmental Inaction

Petitioner has endured more than **eleven years of unresolved removal proceedings**, an extraordinary period marked by systemic governmental failure, due process violations, and indefinite legal limbo. Since his initial arrest on **February 12, 2014**, and first appearance before an Immigration Judge on **March 3, 2014**, the Department of Homeland Security (DHS) has failed to present the clear and convincing evidence required under INA § 240(c)(3)(A). Instead, DHS has relied on deficient documentation, procedural evasions, and delay tactics that have denied Petitioner the finality and fairness guaranteed by law.

During this time, Petitioner was **detained for two (2) years and eight (8) days** and has remained under **strict ICE supervision for more than nine years**, subject to surveillance, travel restrictions, employment limitations, and the constant threat of deportation without adjudication of the merits of his case. These conditions have caused significant **psychological, emotional, and economic harm** to Petitioner and his family.

Federal Courts have long held that **prolonged immigration proceedings and indefinite supervision** may constitute a violation of Constitutional rights. The following authorities underscore the legal urgency for judicial relief:

- **Zadvydas v. Davis**, 533 U.S. 678 (2001) Indefinite detention or supervision without justification violates due process.
- **Singh v. Gonzales**, 499 F.3d 969 (9th Cir. 2007) Delays that obstruct access to evidence or adjudication may violate constitutional protections.
- **Diouf v. Napolitano**, 634 F.3d 1081 (9th Cir. 2011) Long-term supervision requires heightened procedural safeguards.

- **Boumediene v. Bush**, 553 U.S. 723 (2008) Habeas corpus remains available to challenge prolonged executive control.
- **Rosales v. Bureau of Immigration and Customs Enforcement**, 426 F.3d 733 (5th Cir. 2005) Administrative delays may violate statutory and constitutional rights.
- **McCarthy v. Madigan**, 503 U.S. 140 (1992) Federal Courts must act when administrative remedies are ineffective or result in undue delay.

These precedents make clear that when an individual remains trapped for over a decade under burdensome supervision and unending legal uncertainty **without a resolution based on law or evidence**, Federal Courts not only have jurisdiction but an obligation to act.

Petitioner's experience is not merely an administrative inconvenience; it is a continuing **constitutional injury**. The indefinite duration of ICE supervision, combined with the absence of any lawful adjudication or evidentiary foundation, represents a **denial of liberty without due process**, in direct violation of the Fifth Amendment. This Court must intervene to prevent further irreparable harm and restore constitutional order.

V. EQUITABLE CONSIDERATIONS

For over two years and eight days, I was detained in DHS custody without valid legal justification. Since my release in 2016, I have remained under strict supervision for over nine (9) years, subjected to regular ICE check-ins, travel limitations, and the constant threat of unjust removal. These conditions have caused serious emotional, financial, and psychological harm to me and my family.

Continued government inaction and the failure to bring forth substantiated, lawful justification, have transformed what should have been a fair and timely process into an indefinite ordeal. This Court's intervention is not only legally justified, but also necessary to restore Constitutional fairness and bring closure to this prolonged and unjust situation. The extended deprivation of liberty, combined with DHS's refusal to resolve this matter through valid legal procedures, has created an ongoing state of uncertainty and distress that constitutes irreparable harm under Constitutional standards.

Since February 2016, I have remained under prolonged (ICE) supervision administered by the private contractor (ISAP). This supervision now extending beyond nine (9) years has included frequent check-ins, mobility restrictions, and continuous monitoring, all imposed without a final removal order or any individualized judicial finding of dangerousness.

The Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678 (2001), held that government-imposed Custody beyond a reasonable period, absent evidence of danger or a real prospect of removal, is unconstitutional. Likewise, in *Clark v. Martinez*, 543 U.S. 371 (2005), and *Diouf v. Napolitano*, 634 F.3d 1081 (9th Cir. 2011), the Courts recognized that extended supervision without judicial oversight violates due process when unsupported by facts or law.

After more than a decade under these conditions, the government has failed to demonstrate either categorically or factually that I pose a threat to the community or that my removal is imminent. This continued restraint on liberty, without justification, is incompatible with the Constitutional standards established by **Hensley v. Municipal Court**, 411 U.S. 345 (1973), and **Jones v. Cunningham**, 371 U.S. 236 (1963), both of which recognize supervised release as “custody” subject to Habeas Review.

I therefore respectfully request that this Court terminate ICE supervision as part of the relief warranted by the accumulated due process violations and prolonged governmental inaction.

The cumulative effect of these procedural obstructions, lack of evidence, and indefinite supervision constitutes a deprivation of liberty without due process of law, in violation of the Fifth Amendment.”

Given the duration, severity, and cumulative nature of the Constitutional injuries inflicted upon the Petitioner over the past eleven (11) years, this Honorable Court is not merely authorized to intervene, it is constitutionally compelled to do so. The doctrine of separation of powers assigns judiciary to a vital role in checking executive overreach and preventing the erosion of individual rights. When administrative bodies refuse to adjudicate core legal issues, or when they perpetuate indefinite supervision without lawful justification, it becomes the solemn duty of the federal judiciary to step in. The Courts have long held that they cannot abdicate their responsibility to safeguard liberty simply because an agency has failed to act. Where the administrative process has become ineffective, evasive, or fundamentally unfair, the Constitution demands judicial protection.

Justice delayed is justice denied. After more than a decade of unresolved proceedings, I respectfully urge this Court to act decisively to uphold Constitutional protections and

restore fairness. This is not merely a matter of administrative delay it is a Constitutional breakdown. The law demands finality, and justice delayed this long becomes a denial of justice itself.

After more than eleven (11) years of unjustified delay and constitutional injury, this Court's intervention is not merely appropriate. It is indispensable to preserve the integrity of due process in immigration enforcement.



VI. CONCLUSION

The IJ's recent refusal to consider terminating proceedings despite DHS's evidentiary shortfall and the pendency of this case for years confirms that Petitioner has no effective relief left but in this Court. The agency's inaction and arbitrary limitations have constructively exhausted any administrative remedies and subjected the Petitioner to ongoing prejudice. The Court's Habeas power exists to guard against exactly this sort of unlawful executive restraint and due process denial. Petitioners respectfully urge the Court to recognize the IJ's conduct as a due process violation that voids the fundamental fairness of the removal proceedings. Because the Government has not carried its burden to establish removability, and the administrative process has failed to provide a forum for relief, the Court should grant habeas relief. At a minimum, the Court should order the agency to vacate the defective proceedings or fully adjudicate the Petitioner's termination motion forthwith. The Constitution does not countenance an indefinite march toward deportation when the predicate for removability is unproven and the noncitizen's rights to be heard have been trampled. This new evidence of the IJ's refusal to act only reinforces that judicial intervention is justified and necessary now to prevent further irreparable harm and to ensure that the Petitioner's removal, if it is to proceed at all, comports with the due process of law



Moreover, when the administrative process fails to function as designed by refusing to adjudicate core jurisdictional issues, ignoring binding precedent, or perpetuating indefinite supervision without legal basis the Constitution does not permit the judiciary to stand idle. The Court is not merely permitted but constitutionally obligated to intervene when executive agencies engage in unlawful conduct that results in prolonged harm and deprivation of fundamental rights. As the Supreme Court has emphasized, “the Courts cannot abdicate their responsibility to safeguard liberty simply because an agency has failed to act.” (*Boumediene v. Bush*, 553 U.S. 723 (2008)).

The Immigration Judge’s refusal to adjudicate Petitioner’s termination motion despite the Government’s failure to meet its evidentiary burden was not only a denial of due process, but an **ultra vires act**, exceeding the lawful scope of authority conferred under 8 C.F.R. § 1240.8(a). Such conduct invalidates the proceedings and confirms that this Court must now act to prevent further irreparable harm and ensure that any removal decision comports with constitutional guarantees of fairness and legality.

VII. RELIEF REQUESTED

The petitioner respectfully requests this Honorable Court to grant Habeas Corpus relief, including a stay of removal, judicial review of the agency's actions, and, if warranted, the vacatur of removal proceedings due to procedural and constitutional violations.

WHEREFORE, the Petitioner respectfully prays that this Honorable Court:

1. **Issue an immediate stay of removal** pending final resolution of this petition.
2. **Grant a writ of habeas corpus pursuant to 28 U.S.C. § 2241**, declaring that the ongoing removal proceedings are constitutionally defective due to fundamental procedural violations and lack of jurisdictional foundation.
3. **Order the Department of Homeland Security (DHS)** to submit, within a time frame set by the Court, clear and convincing evidence that Petitioner's conviction under 21 U.S.C. § 846 qualifies as an aggravated felony under INA § 101(a)(43)(B), consistent with the Categorical Approach and due process requirements.
4. **If DHS fails to meet this burden**, permanently terminate the removal proceedings **with prejudice**, vacate any existing removal orders, and bar DHS from initiating or reinstating proceedings based on the same defective record.

5. **In the alternative**, only if DHS satisfies its evidentiary burden, remand the matter to the Immigration Court **with explicit instructions** to reopen proceedings in accordance with constitutional guarantees and controlling Supreme Court precedent.
6. **Order the immediate termination of (ICE) & (ISAP) supervision**, as it constitutes unlawful and unconstitutional custody resulting in ongoing and irreparable harm, in violation of the Fifth Amendment.
7. **Grant such further relief** as this Court deems just and equitable in the interests of justice and due process.

CERTIFICATE OF SERVICE

I hereby certify that on April 8, 2025, a true and correct copy of this Motion was served on:

- Office of Chief Counsel, U.S. Immigration and Customs Enforcement (ICE) U.S.
Department of Homeland Security 970 Broad Street, Room 1300 Newark, NJ 07102
- U.S. Attorney's Office, District of Martin Luther King Jr., Courthouse & Federal
Building. 50 Walnut Street, Suite 700 Newark New Jersey 07102
- U.S. District Court District of New Jersey Clerk of Court Martin Luther King Jr. Federal
Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

Signature: Eduardo Jimenez Perez Pro Se Petitioner

DATE: April 8, 2025

Respectfully Submitted,



Eduardo H. Jimenez

PROOF OF SERVICE

I, Eduardo H. Jimenez Perez, certify that, on April 8, 2025, I mailed a copy of this brief and all attachments via first class mail to the following parties, at the address listed below.

- Office of Chief Counsel, U.S. Immigration and Customs Enforcement (ICE) U.S.
Department of Homeland Security 970 Broad Street, Room 1300 Newark, NJ 07102
- U.S. Attorney's Office, District of Martin Luther King Jr., Courthouse & Federal
Building. 50 Walnut Street, Suite 700 Newark New Jersey 07102
- U.S. District Court District of New Jersey Clerk of Court Martin Luther King Jr. Federal
Building & U.S. Courthouse
50 Walnut Street
Newark, NJ 07102

I, Eduardo H. Jimenez Perez, certify that this document was given to on April 8, 2025, Post Office I certify under penalty of perjury that the foregoing is true and correct. **28. U.S.C. § 1746.**

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APR 17 2025

AT 8:30 _____ M
CLERK, U.S. DISTRICT COURT - DNJ

Respectfully Submitted,

DATED: April 8, 2025



Eduardo H. Jimenez Perez