IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

JUDGE LEON SCHYDLOWER

LEONEL NAVARRO RODRIGUEZ, §

Petitioner, §

§ EP25CV0420

v. § Civil Action No. ________

§

MERRICK B. GARLAND, Attorney General of the United States;

ALEJANDRO MAYORKAS, Secretary of Homeland Security;

CHRISTOPHER W. DEMPSEY, Acting Field Office Director,

ICE ERO El Paso Field Office; §

Respondents. §

MOTION TO VACATE FINAL ORDER OF REMOVAL PURSUANT TO FEDERAL RULE OF CIVIL PROCEDURE 60(b)(1), (b)(4), AND (b)(6), DECLARATORY RELIEF, AND TERMINATION OF PROCEEDINGS

TABLE OF CONTENTS

TABLE OF CONTENTS

I. INTRODUCTION

COMES NOW, Petitioner, Leonel Navarro Rodriguez, proceeding pro se, and respectfully moves this Honorable Court to vacate the Final Order of Removal issued on September 17, 2024, pursuant to Federal Rule of Civil Procedure 60(b)(1), (b)(4), and (b)(6). Petitioner asserts that the removal order was entered without jurisdiction, in violation of his constitutional right to due process, and tainted by a series of profound procedural and legal defects. Petitioner further requests that this Court vacate the unlawful removal order in full. In the alternative, Petitioner respectfully asks this Court to recommend that the Department of Homeland Security (DHS) consider Humanitarian Parole under 8 C.F.R. § 212.5(b), for urgent humanitarian reasons. Petitioner emphasizes that this motion is not a request for appellate review of the merits of the removal order. Rather, Petitioner seeks collateral relief from a judgment that was void *ab initio* because the immigration court never lawfully acquired jurisdiction. This motion constitutes a collateral attack, not an appeal, and the request to vacate is therefore limited to declaring the removal order null and void – it does not seek to reweigh the underlying evidence or relitigating the merits of the case.

EXECUTIVE SUMMARY

This case challenges a removal order that was void from the outset and tainted by constitutional and procedural defects. Relief under Federal Rule of Civil Procedure 60(b) is warranted for the following reasons:

1. Defective Notice to Appear (NTA): The charging document lacked a valid hearing date and was altered by hand without proper service. Under *Pereira v. Sessions* and *Niz-Chavez v. Garland,* the immigration court never lawfully acquired jurisdiction.

2. Improper Aggravated Felony Finding: The Immigration Judge improperly relied on a Presentence Investigation Report (PSR) to classify Petitioner's conviction as an aggravated felony. This is impermissible under *Shepard* and *Moncrieffe*, because a PSR is not among the approved conviction records, rendering the classification legally invalid.

3. Due Process Violations – Involuntary Medication and Competency: Petitioner was subjected to involuntary psychotropic medication in ICE custody and was never evaluated for competency, despite well-documented mental health conditions. He does not recall participating at the September 17, 2024 Master Calendar Hearing, demonstrating that the proceedings occurred without his meaningful participation.

4. Identity and Evidentiary Problems: DHS relied on conviction records under the name Leonel Rodriguez Navarro, while Petitioner's lawful permanent resident records consistently identify him as Leonel Navarro Rodriguez. DHS presented no contemporaneous fingerprint, biometric, or other linking evidence connecting Petitioner to the conviction. Although DHS represented to the IJ that biometrics were current and complete, those records related only to Petitioner's 2009 LPR application and had no bearing on the conviction at issue. DHS therefore failed to meet its burden of proof.

5. Humanitarian and Family Impact: Petitioner's removal has caused severe hardship to his U.S. citizen children, who suffer depression, anxiety, and academic decline due to separation from their father. Petitioner has shown rehabilitation and service by volunteering as a GED tutor, helping dozens of inmates earn their education. The cumulative weight of these procedural defects, compounded by involuntary medication, lack of representation, and prolonged detention, constitutes extraordinary circumstances warranting vacatur under Rule 60(b)(6).

II. JURISDICTION AND VENUE

This Court has jurisdiction pursuant to Federal Rule of Civil Procedure 60(b)(4) and 60(b)(6). Petitioner does not seek appellate review of a removal order under 8 U.S.C. § 1252. Instead, Petitioner seeks collateral relief from a judgment that was *void ab initio* because the immigration court never lawfully acquired jurisdiction and because proceedings were conducted in violation of fundamental due process. A judgment entered without jurisdiction or adequate notice is void and may be vacated by collateral attack. See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010); *Klapprott v. United States*, 335 U.S. 601, 613 (1949). This Court retains inherent power to vacate void judgments entered without jurisdiction, irrespective of statutory limitations on direct review.

This motion does not ask the Court to reopen removal proceedings or reconsider factual determinations made by the Immigration Judge. Rather, the relief requested is limited to vacating a judgment entered without lawful authority. District courts retain authority to consider such challenges where extraordinary circumstances undermine the integrity of the judgment. See *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 863–64 (1988). The Supreme Court has likewise recognized that habeas-style review in district courts remains available to noncitizens raising fundamental constitutional and jurisdictional defects. See *INS v. St. Cyr*, 533 U.S. 289, 314 (2001).

Here, Petitioner's separation from his U.S. citizen children and his inability to return lawfully to the United States are ongoing consequences directly traceable to a void removal judgment. The ongoing separation from his children and inability to return lawfully to the U.S. constitutes an extraordinary circumstance under Rule 60(b)(6). Venue is proper in the Western District of Texas, El Paso Division, because Petitioner was detained at the El Paso Processing Center at the time of the challenged proceedings, and the removal order was issued within this district.

III. LEGAL STANDARD

A. Rule 60(b) – Grounds for Relief

Federal Rule of Civil Procedure 60(b) authorizes relief from a final judgment under limited but well-established grounds. The following provisions are applicable here:

Rule 60(b)(1): Mistake, Inadvertence, or Excusable Neglect: Relief may be warranted where errors or omissions produced an unjust judgment. While Rule 60(b)(1) is typically invoked for clerical or procedural mistakes, in the immigration context courts recognize that fundamental unfairness may arise from circumstances such as ineffective assistance of counsel or failure to safeguard against adverse immigration consequences. See *Padilla v. Kentucky*, 559 U.S. 356 (2010); *Strickland v. Washington*, 466 U.S. 668 (1984).

Rule 60(b)(4): Void Judgment: A judgment entered without jurisdiction or in violation of due process is void and must be vacated. See *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260, 271 (2010). Immigration courts acquire jurisdiction only upon service of a valid Notice to Appear ("NTA"). Defective NTAs—those lacking date and time or improperly served—fail to vest jurisdiction. See *Pereira v. Sessions*, 138 S. Ct. 2105 (2018); *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). Likewise, proceedings conducted while a respondent is mentally impaired, without a competency inquiry, are void. See *Washington v. Harper*, 494 U.S. 210 (1990); *Sell v. United States*, 539 U.S. 166 (2003).

Rule 60(b)(6): Extraordinary Circumstances: This "catch-all" provision allows relief where extraordinary circumstances render a judgment fundamentally unjust. See *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 864 (1988); *Klapprott v. United States*, 335 U.S. 601, 613 (1949). Immigration proceedings marred by jurisdictional defects, lack of notice, involuntary medication, and lack of representation fall squarely within this standard.

B. Statutory and Regulatory Framework

INA § 237(a)(2)(A)(iii) (8 U.S.C. § 1227(a)(2)(A)(iii)): Provides that a noncitizen convicted of an "aggravated felony" is deportable. **INA § 101(a)(43) (8 U.S.C. § 1101(a)(43)):** Defines "aggravated felony," construed narrowly with ambiguities resolved in favor of the noncitizen. See *Moncrieffe v. Holder*, 569 U.S. 184 (2013). **INA § 240A (8 U.S.C. § 1229b):** Provides for cancellation of removal for lawful permanent residents, requiring an individualized hardship analysis for qualifying U.S. citizen relatives. **8 C.F.R. § 212.5(b):** Allows parole in urgent humanitarian circumstances or significant public benefit. **8 C.F.R. § 241.4:** Requires custody reviews to ensure detention complies with law. **Fifth Amendment Due Process Clause:** Prohibits deprivation of liberty without due process; protects family unity as a fundamental interest. *Moore v. City of East Cleveland*, 431 U.S. 494 (1977).

C. Key Authorities

- **Jurisdiction and Notice**
    - *Pereira v. Sessions*, 138 S. Ct. 2105 (2018) — Defective NTAs fail to vest jurisdiction.

- *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021) — NTA must be served as one complete document.

- **Conviction and Aggravated Felony Classification**
  - *Shepard v. United States*, 544 U.S. 13 (2005) — Limits record of conviction to a narrow set of documents.
  - *Moncrieffe v. Holder*, 569 U.S. 184 (2013) — Ambiguities in aggravated felony determinations resolved in favor of the noncitizen.
- **Due Process and Competency**
  - *Washington v. Harper*, 494 U.S. 210 (1990) — Due process protections in involuntary medication cases.
  - *Sell v. United States*, 539 U.S. 166 (2003) — Strict limits on involuntary medication in criminal/immigration contexts.
  - *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011) — IJ must assess competency when indicia are present.
  - *Zadvydas v. Davis*, 533 U.S. 678 (2001) — Immigration detention and proceedings must meet standards of fundamental fairness.
- **Rule 60(b) Standards**
  - *Klapprott v. United States*, 335 U.S. 601 (1949) — Relief available under Rule 60(b)(6) for denial of counsel or rights.
  - *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847 (1988) — Vacatur warranted where extraordinary circumstances undermine judicial integrity.
  - *United Student Aid Funds, Inc. v. Espinosa*, 559 U.S. 260 (2010) — Void judgments may be collaterally attacked at any time.

IV. FACTUAL BACKGROUND

The following material facts establish the extraordinary circumstances that render Petitioner's removal order void:

Petitioner is a native and citizen of Mexico who became a Lawful Permanent Resident (LPR) in 2010. At the time of his arrest for a controlled substance offense, he had no prior criminal history and was actively pursuing U.S. citizenship. His conviction stemmed from a limited role in transportation coordination. The Presentence Investigation Report (PSR) inconsistently characterized him as both a "coordinator" and an "organizer," triggering an aggravated role enhancement unsupported by adjudicated facts. Reliance on the PSR for immigration classification was legally impermissible, as the Supreme Court has made clear that only a narrow set of judicially approved conviction records may be consulted under the categorical and modified categorical approaches. See *Shepard v. United States*, 544 U.S. 13 (2005); *Moncrieffe v. Holder*, 569 U.S. 184 (2013). Though initially preparing to proceed to trial, Petitioner ultimately entered a plea after repeated assurances from defense counsel that immigration consequences would be addressed later. Counsel's failure to secure immigration-safe plea terms constitutes ineffective assistance under *Padilla v. Kentucky*, 559 U.S. 356 (2010), and constitutionally deficient performance under *Strickland v. Washington*, 466 U.S. 668 (1984).

While in Bureau of Prisons custody, Petitioner suffered a syncopal episode on December 28, 2022, and was diagnosed with Type 2 diabetes and a right adrenal gland abnormality. Despite the seriousness of his condition, no follow-up care occurred before his transfer to ICE custody.

In early 2023, while confined in the Special Housing Unit (SHU) under restrictive conditions, Petitioner submitted a written request asking DHS to ensure that BOP staff transported him to his upcoming April 20, 2023, immigration hearing. In that letter, Petitioner explained that he had missed the April 5, 2023 hearing because BOP staff failed to retrieve him for transport. No transcript, audio, or justification for his absence appears in the Record of Proceedings (ROP). Petitioner ultimately appeared at the April 20 hearing, where the Immigration Judge noted that DHS had not filed key charging documents. (Exhibit C). DHS counsel stated that these documents would be filed and served on Petitioner well before the next hearing. However, DHS did not file the documents until the morning of the May 18, 2023 hearing, and Petitioner was again not produced and absent from proceedings. (Exhibit D). No explanation for his absence appears in the record.

The Notice to Appear (NTA) in the case lacked a valid hearing date and was subsequently amended by hand without any evidence of proper service[1], in contravention of *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). (Exhibit B). Petitioner was again absent from the May 18 and June 15, 2023 hearings. (Exhibits D, E). At the June 15 hearing, the Immigration Judge confirmed on the record that Petitioner had been transferred to another facility and stated that the next hearing would be scheduled upon receipt of transfer documentation. DHS filed the charging documents around this same time. Frequent transfers between ICE and BOP facilities further obstructed Petitioner's access to legal support and communication (Exhibit F), which is a recognized due process concern.

On July 25, 2023, Petitioner appeared pro se, and multiple DHS exhibits were admitted without objection (Exhibits G, H). At his Convention Against Torture (CAT) merits hearing on December 12, 2023, Petitioner testified about his fear of return to Mexico and provided supporting documentation the previous day. The Judge ruled without reviewing those materials, stating they were "not in the system" (Exhibit J), disregarding evidence already in the record.

[1] See also *Matter of G-Y-R-*, 23 I&N Dec. 181, 189–90 (BIA 2001) (holding that jurisdiction does not vest absent proper service of an NTA providing notice of hearing).

During these proceedings, the Immigration Judge made statements – including "nobody wants any extra [problems]" and "you're a convicted drug trafficker" that reflect a tone of prejudgment rather than the neutral detachment required of an adjudicator. Such remarks undermine confidence in the fairness of the proceedings and implicate due process protections recognized in *Peters v. Kiff*, 407 U.S. 493 (1972). The BIA subsequently remanded the decision for reconsideration. (*Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006)). (Exhibit K). No further hearings occurred before Petitioner's release from BOP custody.

Petitioner was released on August 5, 2024, following a sentence reduction, and immediately transferred to ICE custody, where he was involuntarily medicated, causing confusion, disorientation, and diminished ability to participate in his defense. No hearing determined his competency to proceed, yet he was ordered removed at a September 17, 2024 hearing and deported three days later. (Exhibit F). These events violated procedural and substantive due process under *Washington v. Harper*, 494 U.S. 210 (1990), and *Sell v. United States*, 539 U.S. 166 (2003). Through an FOIA request, Petitioner later discovered that his Notice to Appear (NTA) contained conflicting and inaccurate hearing dates. No transcripts exist for either date, rendering the charging document void *ab initio*. (Exhibit A). Petitioner also submitted two requests for prosecutorial discretion, both of which remain unanswered. (Exhibit L).

During his incarceration at FCI Big Spring in 2023, Petitioner volunteered as a GED tutor and teacher's assistant, providing guidance and instruction to fellow inmates, many with limited prior educational experience. (Exhibit M). That year, the facility recorded 51 GED completions, the highest annual total on record. Petitioner's efforts were instrumental in mentoring, supporting, and teaching these individuals, effectively transforming the culture of the GED program. These contributions had tangible institutional impact: they increased educational attainment among inmates, fostered a collaborative and rehabilitative environment, and demonstrated leadership and accountability. Petitioner's commitment to education and peer support reflects exceptional rehabilitation and a sustained effort to contribute positively to his community, even while incarcerated.

In the context of BOP operations in 2023–2024, Petitioner's role is especially significant. During this period, the Bureau of Prisons faced challenges including overcrowding, limited access to medical care, and constrained educational opportunities. Inmates often relied on peer-led initiatives to achieve educational and rehabilitative goals. Petitioner's work in the GED program exemplifies how inmate initiative directly contributed to institutional improvements at a time when broader systemic support was minimal.

Petitioner's U.S. citizen children continue to suffer serious psychological and academic hardship as a result of his removal, as documented in supporting materials, including a personal letter from his youngest child. (Exhibit N).

V. ARGUMENT

A. Ineffective Assistance of Counsel and Jurisdictional Defects

The Sixth Amendment guarantees effective assistance of counsel at all critical stages of a criminal prosecution, including plea negotiations. *Padilla v. Kentucky*, 559 U.S. 356 (2010); *Strickland v. Washington*, 466 U.S. 668 (1984). Petitioner was denied this protection.

The Memorandum of Plea Agreement (Exhibit S) contains only generic warnings about immigration consequences and failed to disclose that Petitioner's conviction would presumptively result in mandatory removal. It omitted any admissions regarding drug quantity or role in the offense – facts central to removability under immigration law. Petitioner explicitly requested that the immigration clause be removed, yet counsel assured him that "immigration would be dealt with later," and pressured him to sign. This deficient advice rendered the plea neither knowing nor voluntary. Petitioner reasonably believed that his criminal attorney would represent him in immigration proceedings. When asked by the Immigration Judge whether he had legal counsel, he stated that he believed his criminal attorney would assist him (Exhibit K). The Immigration Judge observed: "It sounds like a whole lot of people left you hanging." Defense counsel compounded the harm by withholding Petitioner's case files unless formally requested by immigration counsel - an insurmountable barrier for a pro se, detained individual. No objections were filed to the aggravated role enhancement under U.S.S.G. § 3B1.1, which was imposed despite Petitioner's limited role. While defense counsel filed a Motion for Leave Out-of-Time the day before sentencing, Petitioner had no notice of the filing, denial, or vacatur, nor any opportunity to participate. All communications on this matter were handled exclusively by defense counsel and an individual with power of attorney, leaving Petitioner excluded from his own defense that same day. The timing and handling of this motion meant it had no practical effect on the PSR or the enhancement that ultimately triggered his aggravated felony classification for immigration purposes. The unchallenged enhancement inflated Petitioner's sentencing exposure, embedded a false "organizer" label into the record, and provided the sole basis for DHS and the Immigration Judge to classify him an aggravated felon. These errors caused actual prejudice because they directly led to a misclassification triggering mandatory removal. Counsel's omissions satisfy both prongs of *Strickland*: constitutionally deficient performance and actual prejudice.

At the July 25, 2023 immigration hearing, Petitioner appeared unrepresented via video conference. The Immigration Judge admitted multiple DHS exhibits into evidence without objection or meaningful participation from Petitioner. (Exhibit H). This proceeding – held without counsel – further illustrates the prejudice flowing from prior ineffective assistance, undermining both the fairness and legitimacy of the resulting removal order.

Additionally, Petitioner's counsel failed to challenge prejudicial findings in the PSR, including the "organizer" label applied based on vague coordination allegations. The enhancement was imposed "in the abundance of caution," without concrete evidentiary support. Counsel's failure to object led to an aggravated felony classification, triggering mandatory removal under immigration law. This unchallenged enhancement likewise constituted ineffective assistance under *Strickland* and severely prejudiced Petitioner's ability to mount an adequate immigration defense.

B. Defective Notice to Appear (NTA)

The Notice to Appear (NTA) issued in this case was jurisdictionally defective. Although the BIA has upheld NTAs lacking time-and-place information in some cases, such decisions either predate or are inconsistent with controlling Supreme Court precedent: *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), and *Niz-Chavez v. Garland*, 141 S. Ct. 1474 (2021). See also 8 C.F.R. § 1003.14, which provides that jurisdiction vests only upon the filing of a proper NTA. The BIA's decision in *Matter of Bermudez-Cota*, 27 I&N Dec. 441 (BIA 2018), stands in direct tension with *Pereira* and *Niz-Chavez* and should not control.

In this case, the NTA fails to meet the jurisdictional prerequisites. It originally listed a typed hearing date that was later crossed out and replaced by a handwritten date in a different ink color – neither date corresponds to any officially scheduled hearing date found in the court record (See

Exhibit B. No transcript exists for either date, and there is no indication that the amended NTA was ever properly filed, served, or docketed with the court.

Petitioner's absence from the April 5, 2023 hearing further underscores these jurisdictional and procedural deficiencies. He was not transported from the Bureau of Prisons' Special Housing Unit (SHU) as shown in his written request for assistance in attending. (Exhibit A). At the rescheduled hearing on April 20, 2023, DHS acknowledged on the record that the necessary charging documents had still not been filed and stated they would be submitted at a later date. (Exhibit C). Even if the Court were to disregard the NTA's defects, DHS's failure to file the charging documents at the hearing means jurisdiction still had not lawfully vested.

These procedural failures deprived Petitioner of constitutionally adequate notice and a meaningful opportunity to be heard, violating both statutory requirements and the Due Process Clause. Accordingly, the Final Order of Removal is void and must be vacated under Federal Rule of Civil Procedure 60(b)(4). Alternatively, relief is warranted under Rule 60(b)(6) due to extraordinary circumstances involving a fatally defective NTA, lack of notice, and structural due process violations.

C. Improper Use of the PSR and Invalid Aggravated Felony Designation

The Immigration Judge's designation of Petitioner's conviction as an aggravated felony rested almost entirely on the Presentence Investigation Report (PSR). However, the PSR is expressly excluded from the limited evidentiary set permitted under *Shepard* and *Moncrieffe*, which restrict adjudicators to judicially approved documents such as the indictment, plea agreement, and transcript of plea colloquy. Reliance on the PSR in this context violated both evidentiary standards and due process, rendering the aggravated felony classification invalid.

The Immigration Judge acknowledged that he did not have Petitioner's underlying criminal case files. Rather than requiring DHS to submit certified conviction records, the court permitted DHS to rely on PACER printouts and incomplete docket entries that are not among the limited evidentiary sources permitted under *Shepard v. United States*, 544 U.S. 13 (2005), or 8 C.F.R. § 1003.41. The PSR was not included in the official Record of Proceedings, further underscoring that the aggravated felony designation rested on documents outside the permissible record of conviction. Reliance on such materials, combined with the absence of certified judicial records, deprived Petitioner of due process and rendered the aggravated felony finding legally infirm. Even if DHS had obtained the PSR, its use would have been improper. Federal Rule of Criminal Procedure 32 strictly limits disclosure of PSRs, which may not be used outside sentencing absent authorization from the sentencing judge. No such authorization appears in the record. Thus, reliance on the PSR was impermissible both as a matter of evidentiary law and under the confidentiality protections governing such reports

D. Evidentiary Deficiencies and Material Identity Discrepancy

The validity of a removal charge depends not only on the legal sufficiency of the underlying conviction but also on the government's affirmative burden to establish that the conviction belongs to the respondent in removal proceedings. In this case, DHS failed to meet that burden. The Judgment in a Criminal Case (Exhibit Q) and the Indictment (Exhibit P) relied upon by DHS identify the defendant as Leonel Rodriguez Navarro, whereas, immigration records—including the Notice to Appear (NTA), Form I-213, and FOIA disclosures—identify Petitioner as Leonel Navarro Rodriguez or Navarro Rodriguez, Leonel, with alternate aliases listed as Rodriguez Navarro, Leonel. This is not a mere typographical variance; it constitutes a material discrepancy that undermines DHS's ability to establish Petitioner's identity for purposes of removability.

DHS has provided no fingerprint evidence, sworn declarations, biometric comparisons, or other corroborating documentation linking the criminal records to Petitioner. Under 8 U.S.C. § 1229a(c)(3)(A), DHS bears the burden of establishing alienage and removability by clear and convincing evidence. Where discrepancies exist between the name on a conviction record and of the respondent's identity, DHS must affirmatively reconcile those differences. See *Matter of Teixeria*, 21 I&N Dec. 316, 319 (BIA 1996); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006). Without such foundational proof, the charge of removability under 8 U.S.C. § 1227(a)(2)(A)(iii) fails as a matter of law. This evidentiary deficiency, compounded by DHS's improper reliance on the PSR (see Argument C), underscores both a procedural and substantive due process violation. Because DHS cannot demonstrate identity with the clarity required by statute and precedent, the Final Order of Removal cannot stand.

E. Involuntary Medication, Lack of Competency Evaluation, and Denial of Due Process

In the weeks leading up to the September 17, 2024 Master Calendar Hearing, Petitioner was detained in ICE custody and subjected to involuntary psychotropic medication. Medical records and intake documentation reflect serious chronic medical conditions, including poorly controlled Type 2 Diabetes (A1C 8.8 to 9.3), hypertension, hyperlipidemia, and an adrenal gland disorder, all requiring complex medication management (Exhibit N).

Petitioner also has multiple psychiatric diagnoses—unspecified mood disorder, anxiety, and depression—and was prescribed a combination of psychiatric medications, including buspirone, citalopram, and nortriptyline. The use of these medications, combined with ICE's own mental health referral at intake, strongly supports that Petitioner was mentally vulnerable and medically unsuited for abrupt disruption of treatment.

Despite these impairments, no judicial inquiry into Petitioner's mental competence was conducted, and no continuance was granted to allow for a medical evaluation. This violated due process protections articulated in *Washington v. Harper*, 494 U.S. 210 (1990), and *Sell v. United States*, 539 U.S. 166 (2003). Under *Matter of M-A-M-*, 25 I&N Dec. 474 (BIA 2011), Immigration Judges have an affirmative obligation to assess mental competency when any indicia of impairment are present.

The September 17 hearing transcript—based solely on the audio recording—contains no audible statements from Petitioner, despite the purported waiver of relief. No transcript, notation, or verified documentation confirms that Petitioner's responses were knowing, intelligent, or voluntary. Petitioner's involuntary medication, combined with chronical medical conditions and psychiatric diagnoses, rendered him unable to knowingly and intelligently participate in the hearing or waive relief. Accordingly, the removal order is constitutionally infirm and void under Rule 60(b)(4). Relief is also warranted under Rule 60(b)(6) due to the extraordinary medical, psychiatric, and procedural failures.

F. Systemic Procedural Failures and Denial of a Full and Fair Hearing

Petitioner's immigration proceedings were marred by systemic administrative failure, inter-agency miscommunication, and sustained failure to uphold procedural safeguards. From approximately January through July 2023, Petitioner was confined in a Special Housing Unit (SHU) for six consecutive months—far beyond standard limits and during critical stages of his removal proceedings. Such prolonged isolation, particularly for an individual with documented mental health conditions, severely impaired his ability to prepare a defense or meaningfully participate in his hearings. Research shows that extended solitary confinement results in cognitive deterioration, anxiety, and depression.

These conditions, coupled with repeated transfer delays and failures to produce Petitioner for hearings, deprived him of a full and fair opportunity to be heard, violating due process. Petitioner submitted a written request to ensure transportation to his April 5, 2023 hearing, yet he was never produced (Exhibit B). No transcript, audio, or explanation for his absence appears anywhere in the Record of Proceedings. Petitioner remained in restrictive SHU conditions while transferred between multiple BOP and ICE facilities. He was again absent from the May 18 and June 15, 2023 hearings. (Exhibits D, E).

Compounding these failures, DHS did not file critical charging documents—including the judgment of conviction and indictment—until May 18, 2023, the morning of a hearing Petitioner could not attend. These documents were uploaded at 7:23 AM CDT but were not served on Petitioner until that same day. This sequence of late filings and simultaneous service deprived Petitioner of any meaningful opportunity to review or challenge the evidence.

Even after his release from the SHU, BOP staff continued to restrict his access to the institutional phones, preventing communication with the outside world until late August 2023. The administrative record reflects a pattern of delayed notices, improper venue transfers, inconsistent document handling, and absent transcripts. Petitioner's initial FOIA request did not include the audio or transcript of the September 17, 2024 hearing. Only after a follow-up request did the government produce an uncertified audio CD—without accompanying transcript—and the recording captured only the Immigration Judge's statements. Petitioner's responses were inaudible or omitted entirely, rendering it impossible to establish whether any waiver of relief was knowing, voluntary, or intelligent.

These failures directly prevented Petitioner from meaningfully participating in hearings, reviewing evidence, or mounting a defense. They reflect a sustained breakdown of procedural due process and demonstrate that the system that failed to provide Petitioner a fair opportunity to be heard. As the Supreme Court reaffirmed in *Zadvydas v. Davis*, 533 U.S. 678 (2001), immigration proceedings must adhere to principles of fundamental fairness. That threshold was plainly unmet here. Relief is warranted under Rule 60(b)(6), which authorizes vacatur where extraordinary circumstances result in manifest injustice. Because the defects are jurisdictional, remand for new proceedings would only perpetuate injustice. Vacatur is the only remedy consistent with Rule 60(b)(4).

VI. RELIEF REQUESTED

Petitioner respectfully requests that this Court:

- Vacate the Final Order of Removal issued on September 17, 2024, as void ab initio under Federal Rule of Civil Procedure 60(b)(4) and 60(b)(6), on the grounds that the Immigration Court never lawfully acquired jurisdiction and due process was violated at every critical stage.
- In the alternative, recognize the extraordinary equities present in this case and recommend that DHS consider Humanitarian Parole under 8 C.F.R. § 212.5(b) due to the severe hardship caused to Petitioner's U.S. citizen children.
- Grant such other and further relief as is just and proper to prevent retraumatization and restore the rights that were unlawfully denied.

VII. CONCLUSION

This case is not about technicalities—it is about the unlawful separation of a father from his children, carried out under proceedings that were void from the start. Petitioner had no prior criminal record, earned a bachelor's degree, served his sentence in full, and even devoted himself to helping others as a GED tutor, enabling dozens of inmates to earn their diplomas. Yet instead of returning to his family and rebuilding his life, he was stripped of his rights through proceedings that ignored jurisdiction, disregarded due process, and left his children to suffer depression, anxiety, and academic decline without their father.

The Constitution protects both due process and the integrity of the family. Here, both were severed. It is difficult to imagine a more demeaning experience for a father and provider than being stripped of dignity through no fault of his own. He did everything that was asked of him and followed the policies and procedures in good faith, yet the process failed him at every stage. A judgment entered without jurisdiction or basic fairness is not a judgment at all—it is a nullity. Rule 60(b)(6) exists for precisely these rare and extraordinary circumstances, where the ongoing harm is as undeniable as the defects in the underlying proceedings.

The remedy is clear. Vacatur is not only warranted—it is required. Anything less would not simply perpetuate Petitioner's suffering but would ratify a system that failed him at every turn. This Court has the authority, and the duty, to correct that failure.

I, Leonel Navarro Rodriguez, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct to the best of my knowledge, information, and belief. Executed on this 11 day of September 2025.

Respectfully submitted,

Leonel Navarro Rodriguez, Pro Se Petitioner

VIII. CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of September 2025, I caused a true and correct copy of the foregoing Motion and to be served by U.S. Mail, postage prepaid, addressed as follows:

- **United States Attorney General**

  U.S. Department of Justice

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  Washington, D.C. 20530-0001

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  El Paso Service Processing Center

  8915 Montana Avenue

  El Paso, Texas 79925

IN THE UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF TEXAS

EL PASO DIVISION

JUDGE LEON SCHYDLOWER

LEONEL NAVARRO RODRIGUEZ,	§	
Petitioner,	§	
v.	§	**Civil Action No.** EP25CV0420
MERRICK B. GARLAND, et al.,	§	
Respondents.	§	

ORDER

On this day, the Court considered Petitioner's Motion to Vacate Final Order of Removal under Federal Rule of Civil Procedure 60(b).

IT IS THEREFORE ORDERED that the Final Order of Removal entered on September 17, 2024, is VACATED.

SO ORDERED.

Dated: ________________, 2025.

____

United States District Judge