

25-5494

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CERIORARI

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

DONALD A. ALLEN — PETITIONER

(Your Name)

vs.

STATE OF NEW JERSEY — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

SUPREME COURT OF NEW JERSEY

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

DONALD A. ALLEN #21217-509

(Your Name) (PETITIONER-Pro Se.)

F.C.I. SEAGOVILLE

(Address)

P.O. BOX 9000

SEAGOVILLE, TEXAS 75159

(CITY, STATE and ZIP CODE)

NONE

(Phone Number)

QUESTION(S) PRESENTED

1. Whether the State of New Jersey violated Petitioner's rights under the Due Process Clause of the Fourteenth Amendment by sentencing him more than six (6) years after his scheduled sentencing date, set by the court when the delay was caused by his involuntary deportation by federal authorities, and the State made no effort to secure his presence?
2. Whether sentencing a defendant six (6) years later under these circumstances, despite knowledge of the defendant's location and inability to appear due to federal deportation, violates the Fifth and Six Amendment rights to be present and to a fundamentally fair sentencing hearing.
3. Whether the issuance of a fugitive warrant in such circumstances improperly shifts the burden to the defendant/petitioner to appear despite being legally and physically unable to return to the United States, thereby denying access to judicial process.
4. Whether the State Court violates the Due Process Clause of the Fourteenth Amendment by continuing the criminal proceedings by issuing a fugitive warrant against defendant who has been deported by Federal Authorities and whose absence was known or reasonably discoverable by the court.
5. Whether the prosecuting Official granted permission for Petitioner Allen removal or not?
6. Whether a State violates the Due Process Clause of the Fourteenth Amendment by allowing a noncitizen defendant to be deported prior to final sentencing, and then later issued a fugitive warrant to prosecute and sentenced the defendant.

QUESTION(S) PRESENTED

7. Whether a State may reassert jurisdiction over a deported defendant whose removal it allowed to occur without objection, without violating principles of federalism and the constitutional separation between **federal immigration enforcement and state criminal proceedings.**

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[] All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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**jurisdiction and have Petitioner Allen's returned to be
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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the United States district court appears at Appendix _____ to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix c to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

The opinion of the Appellate Division Superior court appears at Appendix A to the petition and is

reported at _____; or,
 has been designated for publication but is not yet reported; or,
 is unpublished.

JURISDICTION

[] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was _____.

[] No petition for rehearing was timely filed in my case.

[] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was April 36, 2025. A copy of that decision appears at Appendix c .

[] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

[] An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

JURISTICTIONAL STATEMENT

The judgment of the New Jersey Supreme Court was entered on 6th, day of May, 2025. This Court has jurisdiction under 28 U.S.C. §1257(a), which provides for review of final judgements rendered by the highest court of the state in which a decision could be held, where a federal question is properly questioned and presented. Petitioner seeks review of a state court judgement that implicates substantial questions under the Due Process Clause of the Fourteenth Amendment, particularly as they relate to federal immigration enforcement and the constructive notice doctrine. As both the state criminal justice system whom had an interest in prosecuting petitioner while the federal immigration enforcement division also had an interest in petitioner to deport him from the United States, and both agency are very much aware of petitioner circumstance nevertheless the federal immigration enforcement division acted without regard for the state criminal proceedings and removed petitioner from the country and the State shifts the burden on petitioner knowing that he is out the country involuntarily by issuing a fugitive warrant for petitioner, and subsequently sentence petitioner some six (6) years and three (3) months and twelve (12) days after the original sentencing date was schedule for June 23rd, 2006 petitioner was sentenced on October 3rd, 2012.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. CONST. AMEND. V

U.S. CONST. AMEND. VI

U.S. CONST. AMEND. XIV

N.J. Const. Art. 1 § 10

N.J. Const. Art. 1 § 1

STATEMENT OF THE CASE

Petitioner was arrested in August 2003 without incident, and was charged with violating N.J.S.A. 2C:35-5A(1), 2c;5-2. Petitioner subsequently plead guilty in the New Jersey Superior Court in the County of Essex on May 1st, 2006, pursuant to a plea agreement. At the plea hearing, Petitioner Allen informed the Court that he was 'Ordered Deported,' based upon a federal deportation order. The Court nevertheless acknowledged this information and accepted the plea and scheduled sentencing for June 23rd, 2006.

Before the sentencing date on June 1st, 2006, U.S. Immigration and Customs Enforcement deported Petitioner to his native country of Jamaica. The State of New Jersey was made aware of the petitioners deportation , and declined to seek petitioner's extradition or seek to have petitioner paroled back into the country in order to complete the criminal prosecution or otherwise secure his presence after they learnt of the existing deportation order . Instead the State issued a fugitive warrant for petitioner knowing that he was removed from the United States by the Federal Authorities. (DHS/ICE).

Petitioner reentered the country illegally after a number of years while waiting in Jamaica to see if he would have been placed in extradition proceedings. Upon **petitioner's return he was arrested in** Arizona and after completing his matter he was extradited to New Jersey based upon the fugitive warrant that was issued on July 21st, 2006 after petitioner was deported. More than six (6) years later on October 3rd, 2012 petitioner was sentenced based on the same 2006 plea agreement that now outdated , and without a new plea colloquy or

STATEMENT OF CASE Cont'd

assessment of its continued voluntariness.

Petitioner challenged the constitutionality of his sentence, including through post-conviction relief proceedings, Motion to Withdraw his Plea after sentencing, Motion to Vacate His Conviction and Dismissing The Indictment , which the Superior Court and Appellate Court denied relief and The New Jersey Supreme Court Denied relief in May, 2025. Petitioner Allen now seeks review of the constitutionality of the state court proceedings, particularly the delay in sentencing some six (6) years after conviction that was ascertained by plea and sentencing was set by the court for June 23rd, 2006 which prejudiced petitioner Allen.

Petitioner seeks certiorari to review the constitutionality and legality of his removal under federal immigration law and the Due Process Clause of the Fifth Amendment knowing that he had an open criminal matter pending in a court in the United States. Whereas the Due Process Clause of the Fourteenth Amendment prohibits a court from proceeding against a criminal defendant who has not been afforded a meaningful opportunity to be present, heard, and represented in a timely and meaningful manner. In this case, the state court knowingly accepted a guilty plea and subsequently entered a conviction against Petitioner after Petitioner had been ordered deported from the United States pursuant to a 'Final Administrative Order.'

Petitioner Allen was physically removed from the country and unable to appear, at the date and time set by the court for sentencing,

STATEMENT OF CASE CONT'D

consult with counsel, or otherwise participate in the critical stages of the proceedings. The court's decision to proceed by shifting the burden on Petitioner by issuing a 'FUGITIVE WARRANT,' under these circumstances without a valid waiver of appearance or any mechanism for Petitioner's participation in a timely manner resulted in a fundamental violation of constitutional due process.

Petitioner's Allen removal before final judgment violated Federal Immigration Law and BIA Precedent. As Federal laws defines a "conviction" for immigration purposes as a formal judgment of guilt entered by a court. See 8 U.S.C. §1101(a)(48)(A). Courts and the BIA have consistently held that a conviction is not "final" until all direct appeals have been exhausted and a sentence has been imposed . See Matter of Ozkok, 19 I&N Dec. 546(BIA 1988); Matter of Punu, 22 I&N Dec. 224 (BIA 1998). In Petitioner's Allen case, no final judgment had been entered prior to removal. The sentencing hearing was schedule for June 23, 2006, but Petitioner was deported on June 1st, 2006 while his conviction remained unfinalized under both state and immigration law. To further compound this matter the underlying case that created the order of deportation was Petitioner New York conviction that's unrelated however that conviction was on "Direct Appeal, " therefore not final for immigration purposes supported by the BIA precedent of Matter of Punu (BIA 1998); Matter of Ozkok (BIA 1988).

At the time of removal, Petitioner retained the legal right to appear at sentencing at the time set by the court, and file a direct appeal, rights which were rendered meaningless by the government's

STATEMENT OF THE CASE CONT'D

actions. Therefore, DHS and ICE lacked legal authority to execute removal based on a conviction that did not meet the statutory definition of finality.

The Fifth Amendment guarantees that no person shall be "deprived of life, liberty, or property without due process of law." This protection applies to non-citizens present in the United States, including those in removal proceedings. See; Zadvydas v. Davis, 533 U.S. 678, 693(2001); Reno v. Flores, 507 U.S. 292, 306 (1993). Due process requires fair procedures and a meaningful opportunity to be heard. By deporting petitioner Allen prior to the entry of a final judgment, the government denied him the opportunity to appear for sentencing, challenge the conviction on direct appeal or raise potential constitutional claims before removal. See; Padilla v. Kentucky, 559 U.S. 356, 130 S.Ct. 1473, 176 L.ED.2d 284 (2010)

Further, sentencing is a critical stage of criminal proceedings. Removal of Petitioner prior that stage denied Petitioner a fundamental aspect of his defense and prejudiced his rights under both criminal and immigration law. This departure from legal norms and procedural fairness constitute a violation of due process.

REASONS FOR GRANTING THE PETITION

1. The Sentencing Delay Violated Petitioner's Due Process Rights:

More than six (6) year delay in sentencing , where the government had knowledge of the Petitioner's deportation and made no effort to secure his presence , violates fundamental notions of fairness and due process under the Fourteenth Amendment. Courts have recognized that such delays must be justifiable. In this case, the State took no steps to accommodate or communicate with Petitioner after deportation when Petitioner initiated contact by calling the State authorities and providing them with his contact information while in Jamaica.

2. IMPOSING A SENTENCE BASED ON A SIX (6) YEAR OLD PLEA VIOLATED FUNDAMENTAL FAIRNESS:

Petitioner's circumstances changed materially over the six year period between plea and sentencing . He suffered immigration consequences, reentered the United States under duress, and was not afforded the opportunity to withdraw his plea or challenge the voluntariness of its continuation. See Boykin v. Alabama, 395 U.S. 238 (1969).

3. LABELING PETITIONER A FUGITIVE DESPITE KNOWN DEPORTATION VIOLATED HIS RIGHTS:

By labeling Petitioner a fugitive and issuing a fugitive warrant on July 21, 2006 , the State Court misrepresented Petitioner's status and created an appearance of flight where none existed. The false designation delayed resolution of the case and unjustly shifted the burden onto petitioner. See; Smith v. Hooey, 393 U.S. 374 (1969).

4. THIS CASE PRESENTS A CRITICAL CONSTITUTIONAL QUESTION:

Whether a state court may lawfully accept a guilty plea and enter a conviction against a defendant who has been ordered deported/removed from the United States pursuant to a 'Final

REASONS FOR GRANTING THE PETITION

Order of Deportation, and who is therefore potentially will be unable to be present , confer with counsel, or meaningfully participate in the sentencing proceedings at the date and time set by the court due to his removal.

The decision below conflicts with well-establish principles of due process and the right to a fair trial. The State court proceeded to secure a conviction and impose sentence years after the Petitioner had been deported by Federal Immigration Authorities and returned illegally. The State had knowledge or at the minimum, was on constructive notice of the Petitioner's deportation and absence from the country. Despite this, it continued with the criminal prosecution by shifting the burden on petitioner by issuing a 'Fugitive Warrant,' labeling him as a fugitive from justice, instead of making an attempt to secure petitioner presence by enacting the, N.J.S.A. 2A:160-6 et seq; Uniform Criminal Extradition Act, or have petitioner "Baroled in the country pursuant to INA §212(d)(5).

Proceeding to sentenced defendant/petitioner six (6) years later where his absence results not from flight or waiver but from government-ordered removal undermines the integrity of the criminal justice system and creates a manifest injustice.

5. DUE PROCESS AND COORDINATION FAILURE BETWEEN STATE AND FEDERAL AUTHORITIES:

This case also presents a critical constitutional issue concerning the sentencing of a criminal defendant whom returned illegally after the federal government through DHS and ICE deported the defendant prior to sentencing , despite having full knowledge of

an ongoing , unresolved state criminal proceeding. Specifically, the Department of Homeland Security removed the Petitioner from the United States 22 days before his schedule sentencing hearing, even though DHS and ICE had notice of the open case pending in state court. This raises the constitutional question :

Whether it violates due process for a state court to impose a sentence on a defendant who was deported by federal immigration authorities before sentencing where the deporting agency knew or should have known of the defendant's unresolved criminal case.

The deportation of the defendant prior to the completion of his criminal case creates a structural defect that taints the entire proceeding. The failure of inter-agency coordination between DHS and the state court system, and the State's subsequent decision to proceed with the prosecution by issuing a fugitive warrant for the defendant's arrest which shifts the burden on the defendant, when petitioner was deprived of his rights to be present thus clearly resulted in the Petitioner being permanently deprived of his rights to :

Be present at sentencing at the date and time ordered;
Confront the evidence and arguments presented against him;
Exercise his right to allocution and;
Challenge or mitigate the sentence imposed.

These rights are not trivial. They are fundamental to our adversarial system and guaranteed by the Fifth , Sixth, and Fourteenth Amendments. Moreover sentencing petitioner pursuant to a plea agreement negotiated after petitioner was ordered deported and was actually deported before his schedule sentencing date issued by the court, which he could not modify, withdraw, or clarify once removed

REASON FOR GRANTING THE PETITION

from the country . Sentencing under such outdated terms further compounds the injustice and deprives the proceeding of legitimacy. The sentencing court acted on a record that no longer reflected the defendant's circumstances or allowed for contemporaneous defense input.

By criminalizing a nonappearance that was legally unavoidable, the state created ~~an~~ unconstitutional procedural bar to any further criminal or immigration relief. Such action is irreconcilable with this Court's precedent, including United States v. Mendoza-Lopez, 481 U.S. 828, 839 (1987), which held that a removal proceeding that deprives a person of a meaningful opportunity to challenge the basis for removal violates due process. This situation undermines the integrity of both state criminal law and federal immigration policy, and calls for the Supreme Court to restore clarity and protect due process in this uniquely recurring context.

As review is necessary to resolve a growing conflict among lower courts regarding the permissibility and constitutional validity of issuing a fugitive **warrant** to shift the burden onto the defendant in order to continue the prosecution and sentencing defendants who have been deported and are unavailable due to government actions. Absent review state courts may continue to enter convictions against defendants that as been ordered deported prior to conviction and whom is **likely** to be unavailable for sentencing at the time scheduled by the court, defendants in a manner that violates basic due process and undermines public confidence in the justice system.

REASON FOR GRANTING THE PETITION

Furthermore this issue also raises questions of professional fairness and structural error, where the procedural default was not the result of the Petitioner's conduct but rather of State and **Federal Authorities' failure to coordinate proceedings and protect** core constitutional rights. As the resulting conviction is not merely flawed but constitutionally infirm , warranting review by this Court. Courts across jurisdictions are divided on how to treat criminal prosecutions where the defendant has been deported . Some courts have held that criminal convictions entered under such circumstances violate due process and must be vacated. Others as here, permit prosecution to continue and place the burden on the deportee/ defendant to appear.

This inconsistency raises an important and recurring federal question: Does it violate due process for a state court to treat a deported defendant as a fugitive , continue criminal proceedings, and sentencing defendant upon his return illegally after they failed to seek his return by the various legal and constitutional mechanism that available? This Court has not squarely addressed this issue, as guidance is urgently needed to ensure uniformity in the administration of justice. As the record is crystal clear : Petitioner was ordered deported on March 6th, 2006 , the State Court accepted a guilty plea from petitioner knowing that he was ordered deported on May 1st, 2006 and subsequently scheduled sentencing for June 23rd. Petitioner was nevertheless deported on June 1st, 2006. The State was notified by petitioner upon his arrival in his native country of

REASONS FOR GRANTING THE PETITION

Jamaica, or at the minimum, should have known. Nonetheless, the court proceeded to issue a fugitive warrant and sentenced petitioner some six (6) years and three (3) months and twelve (12) days later than the original date scheduled.

Therefore the petition should be granted to address the constitutional implications of state courts continuing prosecutions against noncitizens known to have been deported by the federal government by issuing fugitive warrants to preserve there judicial interest when they have clear opportunity to stop/ delay the removal of the noncitizen defendant. The Court should clarify whether such a proceedings violate the Due Process Clause of the Fourteenth Amendment and whether states may lawfully shift the burden to deported individuals by issuing fugitive warrants under such circumstances. Further whether states courts continuing criminal prosecution when they allow a civil matter to override their jurisdiction and fulfil there federal duties and then the state imposed there sanctions after . When the laws are clear that criminal prosecution takes precedence over removal.

This case presents an urgent need for Supreme Court Review because it implicates systemic constitutional failures at the intersection of immigration enforcement and criminal justice, which lower courts have failed to adequately address. Absent this Court's intervention, federal immigration authorities will remain free to preempt state criminal proceedings by deporting defendants before trial or sentencing, while state courts may then proceed to adjudicate

REASONS FOR GRANTING THE PETITION

and punish in absentia, when there is no evidence of flight by a defendant and issuing fugitive warrants and place the burden upon the defendant, violating the most basic norms of fairness.

The federal government's deportation of defendant prior to sentencing in his pending New Jersey state criminal case violates defendant's constitutional and legal rights.

(1) Violation of State Court Orders:

The state court had issue an order requiring the defendant's prese presence for sentencing, the federal government actions of removal prevent compliance with that order violates the principle of judicial supremacy and interfere with the administration of justice.

(2) Violation of the New Jersey State Constitution:

The removal/deportation conflict with the defendant's rights under the New Jersey Constitution, particularly rights related to due process and equal protection under state law.

(3) Violation of Due Process U.S. Constitution, 14 Amendment:

Deporting petitioner before he was sentenced in a pending criminal case interferes with the fundamental right to a fair and complete adjudication , including the opportunity to present mitigating evidence, participate in sentencing at the time scheduled by the court, and appeal the conviction or sentence if necessary in a timely manner.

(4) Violation of Court Rules:

New Jersey Court Rules mandate the presence of a defendant at sentencing R.3:21-4. Deporting the defendant resulted in an improper/invalid sentencing procedure.

(5) Violation of the Bail Reform Act (1984) :

Defendant was released under conditions **consistent with the Bail**

REASONS FOR GRANTING THE PETITION

Reform Act, deportation of Petitioner in 2006 prior to sentencing undermines the court's ability to enforce those conditions and ensure the defendant's appearance in court.

Wherefore under these circumstances issuing a fugitive warrant based on nonappearance violates fundamental due process principles. Petitioner's Allen absence was not voluntary, it was the direct result of government action. A state court cannot lawfully continue prosecution by shifting the burden to the deported defendant to somehow return to court, especially when that defendant is legally barred from re-entering the country. See; Griffin v. Illinois, 351 U.S. 12, 19 (1956) (Due process protects access to justice, regardless of indigence or other barriers beyond the defendant's control).

Petitioner's case raises a fundamental due process and jurisdictional question; 'Can a state continue to prosecute a defendant by placing a 'fugitive warrant because of his absence from the most critical stage of his criminal matter when he has been deported by federal authorities, despite being entitled to pretrial release under state law and federal statutory protections? The answer is "NO." The continuing prosecution by issuance of a fugitive warrant due to petitioner's absence after ICE deported him before sentencing violates both New Jersey Rules of Criminal Procedure (N.J. Court Rule 3:26-1; N.J. Stat. Ann. § 2A:162-15 to §2A:162-26 (New Jersey Bail Reform Act)), and the Bail Reform Act (BRA), 18 U.S.C. §3141 et seq., which guarantees a meaningful right to pretrial release and presence at trial.

Petitioner Allen was deported on June 1st, 2006, while his

REASONS FOR GRANTING PETITION

criminal matter was still pending. The trial court, fully aware of Petitioner's Allen removal, later proceeded to sentence him upon his returned illegally in 2012, having issued a fugitive warrant that ignored the fact that Petitioner was in DHS custody and was removed from the United States. Such actions subvert the statutory and constitutional rights that attach prior to the finality of conviction and sentencing.

This disparate treatment raises significant equal protection concerns. See Yick Wo v. Hopkins, 118 U.S. 356, 369 (1886) ("The equal protection of the laws is pledge of the protection of equal laws"); Plyler v. Doe, 457 U.S. 202, 210 (1982) (noncitizens are protected by the Fourteenth Amendment). As a U.S. citizen defendant on pretrial release would not be removed by federal authorities, nor denied access to the courts. The removal of Petitioner violated the constitutional rights of Petitioner Allen, whom did not waive the right to be present and who was subsequently sentenced upon his illegal reentry to the United States. The Court has never resolved whether continuation of a criminal proceeding and sentencing a defendant after his unlawful deportation that occurred during pending criminal proceedings violated defendant's due process rights, nor has it addressed whether a noncitizen's removal, when in violation of state law and court orders, voids the jurisdiction of the convicting court or requires vacating the conviction, and dismissal of the indictment. Absent review, deported defendants remain unable to participate in their defense, or challenge their convictions, creating a structural due process violation and undermining the integrity of the criminal justice system.

REASON FOR GRANTING PETITION

There is a Conflict Among State and Federal Courts on How To Remedy Prosecution Following Deportation:

Lower courts are divided on whether criminal proceedings may lawfully continue when a defendant has been removed from the United States before final adjudication. Some courts have found dismissal to be appropriate when the government contributes to or fails to remedy a defendant's absence. Others have upheld convictions obtained while been fully aware of defendant's immigration status of been "Ordered Deported," despite compelling due process concerns, under the rationale that deportation does not absolve the defendant of responsibility to appear. Thus this case provides a clean vehicle to resolve that conflict and to reinforce that federal deportation cannot be used to frustrate state or federal procedural gurantees. Petitioner's case **highlights the dangers of a fragmented approach where coordination between federal immigration authorities and state criminal courts is lacking or ignored.**

This Case Raises an Issue of National Importance Affecting the Integrity of Criminal Proceedings Involving Noncitizens:

As the number of noncitizen defendants continues to grow, so too does the need for clarity on the legal consequences of deportation prior to the conclusion of the state criminal proceedings. The Government should not be permitted to evade constitutional protections by deporting defendants mid -proceeding, then labeling him as a Fugitive , or defaulting them in absentia. The systemic implications

REASONS FOR GRANTING PETITION

are profound; unless this Court intervenes, courts may continue to sanction convictions and sentences entered in blatant disregard of pretrial rights simply because a defendant has been forcibly removed from the country. The rule of law demands a more principled resolution.

Constitutional and Systemic Implications For Noncitizens

Criminal Charges:

Petitioner's case present a serious Constitutional violation arising from the intersection of federal immigration enforcement and state criminal prosecution. Specifically, ICE detained and deported Petitioner while criminal charges were pending, despite a valid pretrial release order issued under New Jersey law. This action deprived Petitioner of his right to be present at trial, to participate in his defense timely , and to receive the benefits of the bail protections guranteed under both federal and state law. As under New Jersey law, the right to pretrial release is governed by ; N.J. Court Rule 3:26-1(" A person charged with an offense shall be admitted to bail; N.J. Stat. Ann. §2A:162-15 to § 2A:162-26 (New Jersey Bail Reform Act): Establishes the presumption of pretrial release on personal recognizance or non-monetary conditions. State v. Robinson, 229 N.J. 44, 61 (2017), recognizes that pretrial detention is only permissible when the State meets its burden under the Bail Reform Act. to justify it.

Federal statutory authority similarly supports pretrial liberty. The Bail Reform Act (BRA), 18 U.S.C. §§3141 3156; presumes release pending trial and requires an individualized determination of risk. 18U.S.C. § 3142(b); a judicial officer shall order the release of a defendant unless

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the government establishes that no conditions will reasonably assure appearance and the public safety. And 8 C.F.R. § 215.3(g); prohibits the departure of any individual facing criminal charges in the United States without specific authorization from the Attorney General. Thus Petitioner's Allen removal by ICE before sentencing, without the state's **court's consent and in direct conflict with the bail order, violated these provisions.**

The U.S. Supreme Court has long recognised the central importance of presence, confrontation, and fairness in criminal proceedings; Faretta v. California, 422 U.S. 806, 819 (1975); The Sixth Amendment guarantees "the right of the accused personally to manage and conduct his own defense"; Smith v. United States, 431 U.S. 291 (1977): Due process requires that defendants not be prejudice by their absence from critical stages of criminal proceedings; Zadvydas v. Davis, 533 U.S. 678, 695 (2001); Immigration detention must be limited by Due process; indefinite removal-related detention raises serious constitutional questions, Padilla v. Kentucky, 559 U.S. 356, 368-69 (2010); Recognizes that deportation is an integral consequence of criminal prosecution for noncitizens and that the constitutional protections afforded during criminal proceedings must account for that reality.

The State's continuation of prosecution after Petitioner's deportation violated these principles and rendered the proceedings fundamentally unfair.

New Jersey Case Law Supporting Dismissal

State v. Langan, 219 N.J. Super. 133 (App. Div. 1987)" Dismissal is

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appropriate where prosecutorial delay or misconduct prejudices the defendant's ability to receive a fair trial." State v. Gallegan, 117 N.J. Super. 403 (App.Div. 1971); " Conviction reversed where the defendant was not personally present reaffirming that presence is a fundamental right. State v. Fields, 280 N.J. Super 206 (App.Div.1995). A trial court lacks jurisdiction to proceed in absentia unless there is a knowing , voluntary waiver of the right to be present. Petitioner Allen was removed from the country involuntarily by federal authorities and therefore could not have waived his right to be present . Proceeding in his absence by issuing a "Fugitive Warrant," knowing that Petitioner did not leave on his own will constitutes a jurisdictional and due process violation under New Jersey Law.

Equal Protection and Due Process Concerns:

The removal of a noncitizen defendant who is on pretrial release under state law, but detained and deported by ICE, creates an unequal and unconstitutional system in which noncitizens are systematically denied the same access to trial and defense rights as citizens. Yick Wo v. Hopkins, 118 U.S. 356 (1886)" The Equal Protection Clause applies to all persons within the jurisdiction, regardless of citizenship." Plyler v. Doe, 457 U.S. 202, 210 (1982)" Noncitizens are entitled to the same protections of the Due Process Clause as citizens. " United States v. Restrepo, 802 F.Supp. 781 (E.D.N.Y. 1992)" The Government may not remove a defendant under deportation proceedings in a way that frustrates criminal adjudication unless authorized by the court. By removing Petitioner Allen without

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securing permission from the State court or ensuring his ability to return and defend himself, the government created a discriminatory and constitutionally defective process that disproportionately harms noncitizens.

Reversal of The Conviction and Dismissal of the Indictment Is the Only Appropriate Remedy for the State's and Federal Violation of Petitioner's Right to Pretrial Release.

Under both New Jersey law and federal principles of due process, pretrial detention must comport with statutory and constitutional protections. The state's failure to object to Petitioner's unlawful deportation and its subsequent continuation of the prosecution in absentia by issuing a Fugitive Warrant amounts to a structural violation that cannot be cured by post hoc proceedings. The only appropriate remedy is vacating the conviction and dismissal of the indictment.

New Jersey Rule 3:26-1 requires that defendants be afforded a hearing on pretrial release. Similarly, under the BRA, individuals facing federal removal remain entitled to full due process protections including release conditions and adjudication of detention status. When those rights are bypassed by deportation effectively any possibility of appearance the court loses the moral and legal authority to continue proceedings.

This Court has long recognized that where government action renders it impossible for a defendant to appear or be heard particularly when such action is attributable to the government's

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own conduct dismissal may be warranted as a matter of justice and jurisdiction. See Smith v. United States, 431 U.S. 291 (1977); United States v. Marion, 404 U.S. 307 (1971). The continued prosecution and eventual sentencing of Petitioner after he had been deported through no fault of his own has caused irreversible harm to his rights under :

- (A) The Sixth Amendment (right to be present, right to counsel, right to confrontation);
- (B) The Fourteenth Amendment Due process and equal protection;
- (C) New Jersey Rules of Criminal Procedure and Bail Reform;
- (D) And federal statutes and regulations governing release and removal.

As courts have held, when the government causes or fails to remedy a defendant's absence, dismissal is the appropriate remedy. See United States v. Pacheco-Velez, 531 F.Supp. 2d 602, 607 (E.D. pa. 2008); Dismissal warranted where government action prevents defendant from appearing, and United States v. Gonzalez-Aparicio, 663 F.Supp. 2d 467 (E.D. Va. 2009). " Conviction reversed where the defendant was deported while appeal was pending. Their's no alternative remedy that can restore the lost rights or reverse the structural prejudice caused by proceeding in absentia by issuing a "Fugitive Warrant." Accordingly reversal of the conviction and dismissal of the indictment is the only remedy consistent with due process, statutory mandates, and the intergerity of the criminal justice system. As there are important question of constitutional and statutory law that needs to be resolved.

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Furthermore the BRA requires the Executive Branch to defer removal proceedings when DOJ elects to pursue criminal prosecution is also supported by other regulations and authorized under the Immigration and Nationality Act, 8 U.S.C. §1101 et seq. Deportation control orders provide a mechanism by which prosecutors may prevent a noncitizen from leaving the country . As herein its crystal clear that the state prosecutor at the time failed to effectuate this mechanism or any other mechanism that available constitutionally to prevent Petitioner Allen's removal while his criminal prosecution is pending .

The regulation state that deportation of a noncitizen who is party to a criminal case pending in a United States Court shall be deemed prejudicial to the interest of the United States. 8 C.F.R. §215(3)(g). The regulation further instruct ICE not to remove such a defendant without the prosecuting official consent . Id. These regulations indicate the Executive Branch's determination that criminal proceeding takes priority over deportation or removal . See Trujillo-Alvarez, 900 F.Supp. 2d at 1178 (noting the same).

The precedence of a criminal prosecution over removal proceedings necessarily means that "the government cannot ...proceed on a dual criminal prosecution and deportation track...Ventura, 2017 WL 5129012 at *2, quoting United States v. Resendiz-Guevara, 145 F.Supp 3d 1128, 1136 (M.D, Fla. 2015)(internal quotation omitted). Once the government has invoked the State's jurisdiction the criminal prosecution it must comply with the Bail Reform Act. See; Boutin, 269 F.Supp. 3d 24, 27-28. As herein the instant case DHS was aware of Petitioner criminal matter

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in the State of New Jersey as they released Petitioner Allen on two occasion to the State's Attorney for prosecution proceedings.

However the Executive Branch "opts for deportation over the prosecution and deported Petitioner as the State failed to invoke their jurisdiction which would have given them priority over an administrative deportation proceeding which should have taken the back seat until the criminal prosecution comes to an end. Thus once the Executive Branch makes an election to proceed with removal proceedings and removed Petitioner Allen the prosecution cannot stand. As herein its crystal clear that the Executive branch fail to invoke its jurisdiction in order to complete the criminal prosecution and issued a "Fugitive Warrant," after the fact in order to restore its jurisdiction , clearly demonstrating prosecutorial misconduct to circumvent its failure. These acts clearly disregard the meaning of Due Process , Equal Protection of Law under the Fifth and Fourteenth Amendment U.S. Const., which is rooted in the meaning of JUSTICE. The Constitution does not permit the State to wash its hand of a prosecution , allow deportation to proceed unimpeded, and then resurrect its jurisdiction when convenient. Allowing this practice will effectively allows States to abandon defendants to immigration enforcement and later revive dormant prosecutions , presents serious due process and federalism concerns. The question is ripe for this Court's review because there is no uniform standard governing how state courts may proceed in the faces of federal removal, leading to arbitrary and constitutionally questionable outcomes nationwide. As here the State took no action to prevent Petitioner's Allen deportation,

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where they could issued a detainer , or coordinate with federal officials to preserve its jurisdiction .

THE State's Reassertion of Jurisdiction After Allowing Federal Deportation Undermines the Constitutional Balance Between Federal and State Authority.

This Court has repeatedly affirmed that immigration enforcement is a function of the federal government and that States must not interfere with or exploit federal immigration actions to circumvent constitutional safeguards. In Arizona v. United States, 567 U.S. 387, 394 95 (2012), the Court held that "the Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens," and that state action in this domain is limited by federal supremacy and the need for uniformity.

The State's conduct here subverts the constitutional balance. By failing to act to preserve its criminal jurisdiction, the State effectively deferred to federal removal authority only to later use the defendant's deportation as a pretext to declare **him** a fugitive and sentence him in later proceedings. This inconsistent use of jurisdiction both invades the federal role in immigration enforcement and disregards the protections afforded by the Due Process Clause. The implications of this case extend beyond Petitioner's individual circumstances.

The practice of allowing federal deportation to proceed without objection , then reasserting jurisdiction years later to impose a sentence, invites procedural chaos and legal inconsistency across jurisdictions. Without intervention from this Court, similarly situated

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defendants may continue to be deprived of their constitutional rights due to conflicting exercises of state and federal power.

The State's Conduct Violated Fundamental Due Process by Prosecuting Petitioner in later Proceedings After Permitting His Removal.

The Fourteenth Amendment guarantees a criminal defendant the right to be present at all stages of prosecution and to be heard "at a meaningful time and in a meaningful manner." Mathews v. Eldridge, 424 U.S. 319, 333 (1976); Armstrong v. Manzo, 380 U.S. 545, 552 (1965). These protections are undermined when a State allows deportation of a defendant before the conclusion of proceedings and then later treats the absence as a voluntary act of flight. This Court has made clear that a defendant may not be deemed a fugitive unless they willfully abscond. In Stancil v. United States, 633 F.3d 1191, 1195 (D.C. Cir. 2011), the court emphasized that a person who is absent due to government action is not a fugitive imminent deportation. The State made no effort to object, seek a writ of habeas corpus ad prosequendum, file no detainer, and made no effort to prevent or delay the deportation. Its silence and inaction amounted to a abandonment of jurisdiction. By allowing the Petitioner's deportation and then treating **him as a fugitive the State improperly shifted the consequences of its own inaction onto the Petitioner.** These actions are constitutionally infirm and fundamentally unfair.

Thus by allowing states to relinquish control over criminal proceedings and then revive them post-deportation jeopardizes the uniformity and supremacy of federal immigration law. Thus the

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constitutional questions raised are both urgent and recurring, and only this Court can resolve the growing confusion over the lawful limits of state authority in this context.

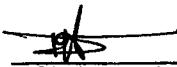
CONCLUSION

This case raises an issue of national importance , as to how should courts handle criminal defendants deported by the federal government before sentencing? The lower courts have not adequately addressed this constitutional gap, and guidance is necessary to prevent similar injustices. As the Sixth Amendment guarantees a defendant's right to be present at sentencing. Deportation, without a knowing and voluntary waiver, does not extinguish this right. The sentencing court acted knowing Petitioner Allen could not be present and failed to ensure any procedural fairness.

Furthermore this case raises more important recurring questions of federal law as courts across the country have differed on how finality is treated in removal contexts and whether immigration authorities can rely on pending or incomplete convictions to justify removal. The government's premature removal of individuals as Petitioner Allen whose convictions are not final raises systemic concerns about legal error, fairness, and access to judicial review. Which presents a clear and compelling opportunity for the Court to clarify, as whether a criminal conviction not final can form the legal basis for removal or whether removal before sentencing violates procedural due process. And most importantly whether federal immigration agencies may lawfully remove individuals without complying with their own statutory and regulatory requirements. Therefore for the reason and questions presented and articulated within the petition for writ of certiorari should be GRANTED.

DATED: 06-16-2025

Respectfully Submitted;


DONALD A. ALLEN pro se.