

# Center for Constitutional Rights

## Discrimination, Detention, and Deportation: Immigration & Refugees

**<https://ccrjustice.org/home/what-we-do/our-cases/roberto-cardenas-abreu-v-eric-holder-jr>**

## Policy Issue Resources

In May 2011 the case was deemed moot by the Board of Immigration Appeals.

Mr. Cardenas Abreu was born in the Dominican Republic on February 17, 1979. He entered the United States as a lawful permanent resident at age 16 in 1996. His entire family, including his grandmother, live in the United States. On July 22, 2008, an Immigration Judge (IJ) ordered the petitioner, appearing pro se, removed during a video hearing. On September 26, 2008, the Appellate Division accepted Mr. Cardenas request to file a late appeal of his criminal conviction. Petitioners criminal conviction is now pending on direct appeal.

On October 14, 2008, the petitioner filed a timely pro se motion to reopen and terminate his removal proceedings based upon the pending direct appeal of his criminal conviction. On October 30, 2008, the IJ denied the petitioners motion, deciding that his conviction remained a valid predicate for the charge of removability. Petitioner filed a notice of appeal to the Board. He submitted a pro se brief to the Board arguing that the IJ erred in failing to reopen his proceedings because his conviction had not attained sufficient finality as required by the INA definition of conviction introduced by IIRIRA in section 101(a)(48)(A); 8 U.S.C. 1101(a)(48)(A). DHS argued in opposition to petitioners motion that under this definition, a formal judgment of guilt was entered and therefore the conviction would still be valid for immigration purposes.

On May 4, 2009, the Board published an 8-6 split en-banc decision dismissing the petitioners appeal. The lead majority opinion adopted neither the approach of Mr. Cardenas or DHS. It found Congress expressed clear intent that convictions in the deferred adjudication context remain convictions for immigration purposes. The opinion compared the New York procedure for a one-year late appeal of a criminal conviction to convictions in the deferred adjudication context and therefore held petitioners conviction, although pending, remained a valid predicate for removal purposes. It further distinguished a late re-instated direct appeal from a direct appeal.

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