

**PRESENTED AT**

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**Federal Court Litigation: Mandamus, Declaratory  
Judgement, and Habeas Corpus. What to Bring,  
How to Bring it, and How to Win**

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## **Mandamus, When all Else Fails**

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Your client is beyond upset? “What did I pay you for,” she asks. You have exhausted every avenue available to obtain a resolution of your client’s case and now you are at wits end. What do you do? You seek a Writ of Mandamus, which is an order from a federal court to a government official/agency ordering the government official/agency to fulfill their duty.

- 1) **When is seeking a Writ of Mandamus appropriate?** Districts Courts have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to them. 28 U.S.C. § 1361. The Plaintiff must show a clear right to the relief requested (e.g., you paid the government to adjudicate the case and it has not done so in a reasonable period of time). The statute and/or regulations must show a clear right to relief. The statute should show that the government owes a duty to Plaintiff. Courts have regularly found that the INA establishes a clear right to an adjudication of an application for adjustment of status. *See e.g. Yu v. Brown*, 36 F. Supp. 2d 922, 930 (D.N.M. 1999). Courts have also found that the INA establishes a clear right to an adjudication of a naturalization application, where no interview has taken place. *See Hadad v. Scharfen*, 08-22608, 2009 (S.D. Fla. March 12, 2009). Conversely, Courts have held that the INA does not create a clear right to relief in the context of many adjudication delays. *See e.g. Castillo v. Rice*, 581 F. Supp. 2d 468 (S.D.N.Y. 2008) (no right to expedite scheduling of K-1 or K-3 visa interviews). Courts have held that there is no right to have removal proceedings initiated. *Camps v. INS* 62 F. 3d 311, 314 (9<sup>th</sup> Cir. 1995).

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