

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
McALLEN DIVISION

ELIAS PANTOJA-CASTILLO,)
)
v.)
)
DORA J. SANCHEZ, FIELD OFFICER IN CHARGE,)
U.S.C.I.S., HARLINGEN, TEXAS,)
MICHAEL CHERTOFF, SECRETARY,)
DEPARTMENT OF HOMELAND SECURITY, AND)
THE UNITED STATES OF AMERICA.)

PETITION FOR WRIT OF HABEAS CORPUS, WRIT OF MANDAMUS,
AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Elias Pantoja-Castillo, through the undersigned, files the instant Petition for Writ of Habeas Corpus, (28 U.S.C. §2241); Petition for Writ of Mandamus, (28 U.S.C. §1361), and Complaint for declaratory and injunctive relief, under 28 U.S.C. §§1331 (federal question), and 1346(a)(2) (actions against Officers of the United States), together with 28 U.S.C. §2201 (Declaratory Judgment Act).

I. JURISDICTION AND VENUE

1. Petitioner Elias Pantoja, ("Mr. Pantoja"), seeks a Writ of Habeas Corpus, Writ of Mandamus, and Declaratory and Injunctive relief, mandating that Respondents immediately provide him with proof of his lawful permanent resident status, as required by 8 U.S.C. §1304(d). Petitioner's current card expired in 2006. He filed an I-90 for a new card on November 27, 2006, and was ordered to report to have his prints taken on February 14, 2007. He appeared as required. At that time, his expired card was extended through May, 2007. Petitioner's Exhibit "A" incorporated herein.

2. In or about June, 2007, after the extension had expired, Mr. Pantoja went to the Harlingen CIS Office to ask about his card. He was interrogated about any problems he might have experienced with the law. He stated that he had had none, except traffic violations. The CIS representative informed him that their computer showed otherwise, and that they were therefore unable to issue him an I-94, temporary proof of lawful permanent resident status.

2. Respondents' refusal to provide Mr. Pantoja with evidence of

his lawful permanent resident status places significant restrictions on his liberty not shared by the populace at large, within the meaning of *Jones v. Cunningham*, 371 U.S. 236,240 (1963).

3. Petitioner is a resident of Pharr, Texas, and the primary events at issue occurred in McAllen and Harlingen, Texas, all of which are within the jurisdiction of this Honorable Court.

II. THE PARTIES

3. Petitioner Elias Pantoja, is a native and citizen of Mexico, who has been a lawful permanent resident since February 4, 1969. He resides in Pharr, Texas.

4. Respondent Dora J. Sanchez is the Field Officer In Charge the Harlingen Office of the U.S.C.I.S. Respondent Michael Chertoff is the Secretary of the Department of Homeland Security. Both are sued in their official capacities only.

III. THE FACTS

5. Petitioner is a native and citizen of Mexico who became a lawful permanent resident of the U.S. ("LPR"), on or about February 4, 1969, and has continuously resided here ever since. Exhibit A.

6. On or about November 27, 2007, Mr. Pantoja filed a fee-paid Form I-90, in order to obtain a new card. On February 14, 2007, he complied with the requirement that he be printed and photographed, at which time his I-551 was extended through May, 2007. Exhibit "A." Although he had complied with the requirements of 8 C.F.R. §264.5, his new card has not arrived. Therefore, shortly after the expiration of the extension of his card, Mr. Pantoja went to the Respondents' office in Harlingen, Texas, to inquire about his card, and obtain valid proof of his LPR status.

7. Respondents interrogated him about problems he had allegedly experienced with the law, as shown by their computer, but without identifying the alleged problems. Although the regulations do not

so specify, given that it takes CIS about a year to process I-90 applications for replacements for expiring I-551s, it has been customary for years that Respondents provide applicants with I-94s as temporary proof of LPR status. However, because Petitioner denied having had such problems, Respondents declined to either further extend his expired I-551, or provide any other form of temporary proof of his status, as required by 8 U.S.C. §1304(d). Instead, they instructed him to await correspondence from them.

8. As a result, Petitioner can no longer travel, either to the interior of the United States, or to visit Mexico. He has been forced to cancel a planned trip up North with his family. Similarly, he lacks valid proof of his lawful status in the United States to show to immigration or other law enforcement officers, if asked, or for other valid purposes. This places significant restrictions on his liberty not shared by the populace at large, within the meaning of *Jones v. Cunningham*, 371 U.S. 236,240 (1963).

IV. THE CAUSES OF ACTION - REFUSAL TO PROVIDE PROOF OF ALIEN REGISTRATION: 8 U.S.C. §1304(d)

The deprivation of liberty complained of herein violates the laws and Constitution of the United States, which claims are cognizable in habeas corpus under 28 U.S.C. §2241.

A. HABEAS CORPUS

Under 8 U.S.C. §1304(d), Respondents have a non-discretionary duty to provide Petitioner with "a certificate of alien registration or an alien registration receipt card in such form and manner and at such time as shall be prescribed under regulations issued by the Attorney General." See, 8 C.F.R. §264.1 ("Prescribed Registration Forms") and 8 C.F.R. §299.1 (showing I-551 as the "Prescribed Form" for a "Permanent Resident Card"); *Loa-Herrera v. Trominski*, 231 F.3d 984,988,n.8 (5th Cir. 2000), quoting *Etuk v. Slattery*, 936 F.2d 1433,1444 (2nd Cir. 1991) ("The INA mandates that the Attorney General provide LPRs who register with proof of their legal status.") Respondents' refusal to provide Petitioner with such a

document violates the laws and Constitution of the United States.

B. MANDAMUS - FAILURE TO ISSUE ALIEN REGISTRATION RECEIPT

Respondents have a duty to provide Petitioner with proof of his LPR status. Petitioner herein completed the requirements of 8 C.F.R. §264.5 on February 14, 2007, as shown by the fact that his expiring card was extended until the end of May, 2007. This duty is a purely ministerial one, subject to enforcement by Writ of Mandamus.

C. INJUNCTIVE AND DECLARATORY RELIEF

Under 8 U.S.C. §1304(d), Respondents have a duty to provide Mr. Pantoja with a certificate of alien registration or an alien registration receipt card. Their recent policy of refusing to do so after the initial extension of an expired I-551 is unreasonable and an abuse of discretion. As a result, Petitioner is entitled to injunctive, and corresponding declaratory relief.

V. RELIEF REQUESTED

Wherefore, Petitioner seeks a Writ of Habeas Corpus, freeing him from the unlawful restraint on his liberty. He also seeks a Writ of Mandamus, mandating that Respondents provide him with evidence of his status as a lawful permanent resident, and corresponding injunctive and declaratory relief, as well as such other and further relief as the Court may find to be just and appropriate.

Respectfully Submitted,

s/ Lisa S. Brodyaga
17891 Landrum Park Rd.
San Benito, TX 78586
(956) 421-3226

TX Bar No: 03052800
Federal ID: 1178