

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

ELIAS PANTOJA-CASTILLO, )  
BENEDICTOR DIAZ-RESENDEZ, and )  
CARLOS ALBERTO ROMERO-SALAZAR, )  
Individually on their own behalf, and )  
on behalf of all others similarly situated. )

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. )

CA M-07-204

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FIRST AMENDED PETITION FOR WRIT OF HABEAS CORPUS,  
AND WRIT OF MANDAMUS, AND CLASS ACTION COMPLAINT  
FOR DECLARATORY AND INJUNCTIVE RELIEF

Elias Pantoja-Castillo, through counsel, and pursuant to Rule 15(a), Fed. Rules. Civ. Proc., files the instant First Amended Petition for Writ of Habeas Corpus, (28 U.S.C. §2241); and for Writ of Mandamus, (28 U.S.C. §1361). Joined by Plaintiffs Benedictor Diaz-Resendez and Carlos Alberto Romero-Salazar, Mr. Pantoja also files a class action 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. INTRODUCTION AND SUMMARY OF THE CASE**

Under 8 U.S.C. §1304(d), Respondents have a non-discretionary duty to provide all lawful permanent residents, ("LPRs"), 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"); <sup>1</sup> *Loa-Herrera v. Trominski*, 231 F.3d 984,988,n.8 (5<sup>th</sup> Cir. 2000), quoting *Etuk v. Slattery*, 936 F.2d 1433,1444 (2<sup>nd</sup>

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<sup>1</sup> Historically, such alien registration cards for LPRs have been called "green cards." At present, such cards are issued on Form I-551, and both terms will be used herein.

Cir. 1991) ("The INA mandates that the Attorney General provide LPRs who register with proof of their legal status.")

Initially, green cards were issued without expiration dates. However, a number of years ago, the process was changed. The oldest cards were invalidated, and new cards were issued only for periods of ten years, after which, LPRs must renew them by filing Form I-90. Lost and mutilated cards are also replaced through the filing of an I-90. See, 8 C.F.R. §264.5. Said regulation sets forth the process of filing for replacement cards, and includes requirements that the applicant "include the prior Permanent Resident Card or other evidence of permanent residence or commuter status," §264.5(e)(1)(ii) (2007) (emphasis added). It also provides that the applicant be finger-printed on Form FD-258, §264.5(e)(3), and that s/he may be required to appear in person and "be interviewed under oath concerning eligibility," §264.5(e)(3)(ii).

Recently, Defendants have converted the process by which new green cards are issued into an enforcement procedure, and condition the issuance of such cards on Plaintiffs' compliance with requirements beyond those contemplated, or authorized, by law. Instead of simple fingerprint cards, applicants must now submit to a full biometric data collection, and most recently, they may be required to provide extensive documentation, *in addition to* their expiring green cards. For example, as in the case of Plaintiff Diaz, if Defendants' data system shows that the individual was once under deportation proceedings,<sup>2</sup> the applicant may be required to produce documentary evidence of the manner in which those proceedings were concluded, regardless of the time elapsed after such proceedings, the number of new green cards issued in the interim, and whether such evidence would be found in his or her A-file. And, as with Plaintiffs Pantoja and Romero, when there is a "hit" indicating possible involvement with the criminal justice system, Defendants

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<sup>2</sup> For convenience, the term "deportation proceedings" is used herein to include deportation, exclusion, and removal proceedings.

now demand that the applicant obtain and submit documents relating to this alleged involvement, so that Defendants may determine not whether the applicant is *eligible* for a card, *i.e.*, whether s/he continues to be an LPR, but whether s/he is vulnerable to removal proceedings, and if so, to obtain through the LPR the evidence necessary to prove removability.

Plaintiffs assert that Defendants' demands on Plaintiffs and the class they seek to represent are inconsistent with their statutory obligation to provide Plaintiffs with evidence of their LPR status. In some cases, as with Plaintiff Diaz, it represents the height of laziness on Defendants' part, since the evidence they seek is in his A-file.<sup>3</sup> In other cases, such as with Plaintiffs Pantoja and Romero, it places an undue burden on the LPR.<sup>4</sup> If, in fact, the documents demanded demonstrate that the LPR is subject to removal, this causes a shifting of the statutory burden of proving that an LPR is removable from the Defendants to the LPR, in violation of 8 U.S.C. §1229a(c)(3).

Consequently, Plaintiffs seek injunctive, and corresponding declaratory relief, limiting the demands which Defendants may make on an LPR applying for a replacement green card to that which is consistent with both 8 C.F.R. §264.5(e), and the underlying statutory provisions, including 8 U.S.C. §§1304(d) and 1229a(c)(3).

## **I. JURISDICTION AND VENUE**

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<sup>3</sup> Plaintiff Diaz' case is memorialized in *Diaz-Resendez v. INS*, 960 F.2d 493, 494 (5<sup>th</sup> Cir. 1992) ("Concluding that the Board's decision is arbitrary and beyond the pale of its discretion we grant review, vacate and remand"). Apparently Defendants seek the decision of the BIA on remand, which Mr. Diaz could obtain (from Defendants) through the Freedom of Information Act, and then submit back to them. This, however, would take months, if not years.

<sup>4</sup> Plaintiff Pantoja had to seek legal assistance, because he had no idea what documents he could provide to satisfy Defendants' demands. And among the documents requested of Plaintiff Romero is a police report from a minor incident which occurred years ago in Virginia. He, too, sought legal assistance, because he has no way of obtaining said document, other than by traveling to Virginia.

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. So far as he recalled at the time, he had never had any, except traffic violations. The CIS representative said that their computer showed otherwise, but did not give him any specifics of the problems shown by their computer. Rather, they refused to issue him an I-94, temporary proof of LPR status, and instructed him to return home and await correspondence from them. Exh. A.

3. Respondents' refusal to provide Mr. Pantoja with evidence of his LPR 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).

4. Petitioner Pantoja 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.

5. Mr. Pantoja, joined by Plaintiffs Benedictor Diaz and Carlos Romero, and on behalf of all others similarly situated, seek 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).

## **II. THE PARTIES**

6. 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. Plaintiff Benedictor Diaz has been an LPR for over fifty years, and resides in Roma, Texas. Plaintiff Carlos Romero has been an LPR since 1994, and resides in McAllen, Texas.

7. Respondent/Defendant Dora J. Sanchez is the Field Officer In Charge the Harlingen Office of the U.S.C.I.S. Respondent/Defendant Michael Chertoff is the Secretary of the Department of Homeland Security. Both are sued in their official capacities only. The United States of America is also a Defendant herein.

### **III. THE FACTS**

8. It takes CIS about a year to process I-90 applications for replacements for expiring I-551s. Consequently, it has been customary for years that Respondents provide applicants with I-94s as temporary proof of LPR status.

#### **A. ELIAS PANTOJA-CASTILLO**

9. Petitioner Pantoja is a native and citizen of Mexico who became an LPR on or about February 4, 1969, and has continuously resided here ever since. Exhibit A, *supra*.

10. On November 27, 2006, Mr. Pantoja filed a fee-paid Form I-90, in order to obtain a new green card. On February 14, 2007, he underwent the bio-metrics process, and was printed and photographed. At that time, his I-551 was extended through May, 2007. Exhibit A. Although he had fulfilled the requirements of 8 C.F.R. §264.5, his new card never 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.

11. At that time, Respondents interrogated him about problems he had allegedly experienced with the law, as shown by their computer. Mr. Pantoja did not recall ever having had such problems, and Respondents declined to identify any specific problems.

Respondents also 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 go home and await correspondence from them. Mr. Pantoja has since remembered that some 20 or 30 years ago, he spent about a week in jail in Michigan, as a result of a domestic disturbance.

12. As a result of the fact that he has no proof of his LPR status, Mr. Pantoja can no longer travel safely, either to the interior of the United States, or to visit Mexico. He was forced to cancel a planned trip up North with his family, although he now plans to try to go to Michigan, to see if he can find any records relating to the problem he had there. 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).

12. On August 15, 2007, two and a half months after his extended I-551 expired, Mr. Pantoja received an I-72 from Defendants, demanding "Certified copies of Judgment and Indictment/Conviction from the courts for any and all arrests," (emphasis in original), and "Termination of probation documents and proof you paid all fines (if any)." They gave him until September 11, 2007, in which to comply, and warned him that "FAILURE TO SUBMIT THE REQUESTED DOCUMENTATION ... COULD RESULT IN THE DENIAL OF YOUR APPLICATION." Plaintiff's Exhibit B, incorporated herein.

#### **B. BENEDICTOR DIAZ-RESENDEZ**

12. Bededictor Diaz-Resendez is a native and citizen of Mexico, and lawful permanent resident of the United States. On October 28, 1985, he was arrested by INS, when they found approximately 21 pounds of marijuana secreted in his vehicle. He pled guilty to possession of marihuana with intent to distribute, and was placed in deportation proceedings. *Diaz-Resendez, supra*, 960 F.2d at 494.

13. Mr. Diaz sought relief under prior Section 212(c) of the Immigration and Nationality Act. His application was denied, and he petitioned for review to the Fifth Circuit, which vacated the BIA's decision, and remanded the case for further proceedings. *Id.*

14. On remand, the BIA granted §212(c) relief, and terminated proceedings. Mr. Diaz no longer has the BIA decision, which decision would be found in his A-file, but he renewed his green card once, without problem, in approximately 1996.

15. In January 2006, as his card was about to expire, Mr. Diaz filed an I-90. He gave his mailing address as P.O. Box 1844, Roma TX 78584. His case was originally delayed because the initial correspondence from CIS was returned by the Postal Service as undeliverable, unknown reasons, since the Post Office Box address listed in his application has been valid at all pertinent times. Plaintiffs' Exhibit C, incorporated herein.

16. In January, 2007, and again in March, 2007, Mr. Diaz made telephone contact with CIS about his case. *Id.* In March, 2007, received, and attended, his biometrics appointment, at which time his expired I-551 was extended until the end of August, 2007.

17. In June, 2007, Mr. Diaz received a notice stating that "additional information" was required in order to adjudicate his case, and instructing him to make an appointment with CIS in Harlingen. Mr. Diaz complied, and on July 16, 2007, was informed that he had to provide evidence that "his case was completely in order" ["que el caso este todo en regla"]. *Id.* He was not given a Form I-72 seeking specific documents, or any other written document explaining what documents were required, or what was meant by the phrase "que el caso este todo en regla." *Id.* Nor was he given a specific date by which he had to produce the requested evidence.

**C. CARLOS ALBERTO ROMERO-SALAZAR**

18. Carlos Romero is a native and citizen of El Salvador who entered the United States as a lawful permanent resident on or

about July 15, 1994. On or about May 31, 2006, Mr. Romero filed a fee-paid Form I-90, in order to obtain a new card. On September 14, 2006, he complied with the requirement that he be printed and photographed, at which time his I-551 was extended through the end of March, 2007.<sup>5</sup> Although he complied with the requirements of 8 C.F.R. §264.5, his new card never arrived. Petitioner's Exhibit D, incorporated herein by reference.

19. On or about March 29, 2007, shortly before the expiration of the extension of his card, Mr. Romero went to the office of Department of Homeland Security in Harlingen, Texas, to inquire about his card, and obtain valid proof of his lawful permanent resident status. At that time, he was given a form I-72, demanding that he provide extensive documentation regarding a misdemeanor offense which occurred in Virginia, in May, 2002. The documents requested included arrest records, and proof that he had paid the pertinent fine. Said form gave him two months to provide the requested documents, and threatened that his application for a new permanent resident card could be denied if he failed to do so. *Id.*

20. Plaintiff Romero has never been under any form of removal proceedings, and has never lost his status as an LPR.

#### **IV. CLASS ALLEGATIONS**

21. The above are not isolated problems. Rather, they represent a nationwide practice adopted by Defendants. The purpose of this new practice is to force LPRs who have (or whom Defendants believe to have) some criminal history to provide sufficient documentation for Defendants to determine whether removal proceedings are appropriate, and if so, to obtain the documents necessary to be able to prove removability. Plaintiffs further allege, on

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<sup>5</sup> The bio-metrics appointment letter also demands that an applicant bring dispositions of all arrests, which is included in all bio-metrics appointment letters, regardless of the type of application involved. See, Plaintiffs' Exhibit D, at p. 2. Defendants apparently do not yet attempt to enforce this demand.



information and belief, that the sole purpose of demanding documents demonstrating the outcome of prior deportation proceedings, such as has occurred with Plaintiff Diaz-Resendez, is to save Defendants the trouble of checking his A-file.

22. Plaintiffs herein seek to represent a national class, consisting of all persons who have been afforded the status of permanent residents, who have filed or will in the future file I-90 applications to renew or replace their I-551s, and who have complied with the requirements of 8 C.F.R. §264.5 (2007), and in whose cases, in the course of processing the I-90 application, Defendants learned or came to believe that the applicant has had some involvement with the criminal justice system and/or has at some time been under deportation proceedings, and from whom they have requested or will request documentation with respect thereto, and in whose cases Defendants have not issued or will not issue a new I-551 in accordance with their published processing schedules.

23. On information and belief, Plaintiffs allege that the class as so defined numbers at least in the dozens, if not the hundreds, not counting future members.

24. The class is so numerous that joinder of all members would be impracticable. Joinder is particularly impracticable since the class includes future members.

25. The claims of the representative parties are typical of the claims of the class.

26. The representative parties, and their counsel, can and will fairly and adequately protect the interest of the class.

27. There are questions of law and fact that are common to the class which predominate over any individual questions. Further, Defendants have acted, or refused to act, on grounds generally applicable to the class, making appropriate final injunctive and declaratory relief, with respect to the class as a whole.

**V. THE CAUSES OF ACTION**  
**A. PETITIONER PANTOJA**  
**HABEAS CORPUS**

The deprivation of the liberty of Petitioner Pantoja as 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.

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 (5<sup>th</sup> Cir. 2000), quoting *Etuk v. Slattery*, 936 F.2d 1433,1444 (2<sup>nd</sup> 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. ALL NAMED PLAINTIFFS**  
**MANDAMUS - FAILURE TO ISSUE ALIEN REGISTRATION RECEIPT**

Under 8 U.S.C. §1304(d), Respondents have a duty to provide Plaintiffs with proof of their LPR status. The named Plaintiffs have all completed the requirements of 8 C.F.R. §264.5. Defendants have no lawful authority to condition the issuance of documentation evidencing their LPR status on the receipt from Plaintiffs of documents relating to their involvement with the criminal justice system, or of documents relating to prior immigration proceedings, (which documents are in Plaintiffs' A-files, and are already in the actual possession of Defendants). The duty to issue an I-551 after an LPR has filed an I-90, and complied with the requirements of 8 C.F.R. §264.5, is a purely ministerial one, and is subject to enforcement by Writ of Mandamus.

**C. CLASS-WIDE RELIEF**  
**INJUNCTIVE AND DECLARATORY RELIEF**

Under 8 U.S.C. §1304(d), Defendants have a duty to provide Plaintiffs, and the class they seek to represent, with alien registration receipt cards. Defendants have no lawful authority to condition the receipt of such cards on the provision by Plaintiffs of documents relating to Plaintiffs' involvement with the criminal justice system, or of documents relating to prior immigration proceedings, (which documents are in Plaintiffs' A-files, and are already in the actual possession of Defendants). The failure to issue such cards, absent the receipt of such documents from Plaintiffs, is a violation of Defendants' statutory duties. As a result, Plaintiffs are entitled to injunctive, and corresponding declaratory relief.

#### **VI. RELIEF REQUESTED**

Wherefore, Petitioner Pantoja seeks a Writ of Habeas Corpus, freeing him from the unlawful restraint on his liberty.

Plaintiffs Pantoja, Diaz-Resendez, and Romero-Salazar also seek a Writ of Mandamus, mandating that Defendants provide them forthwith with evidence of their status as lawful permanent residents;

Plaintiffs Pantoja, Diaz-Resendez, and Romero-Salazar also request, on their own behalf and on behalf of the class they seek to represent, an injunction, enjoining and restraining Defendants from demanding, as a precondition to issuing a new I-551 pursuant to a properly filed I-90, that Plaintiffs provide documents relating to Plaintiffs' involvement with the criminal justice system, and/or documents relating to prior immigration proceedings. Plaintiffs further seek corresponding declaratory relief, and such other and further relief as the Court may find to be just and appropriate.

Respectfully Submitted,

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