UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY

Case No. 3:25-cv-46-BJB

DANNIELYS PEREZ-PICHARDO,

Petitioner-Plaintiff,

v.

SUPERVISORY DETENTION AND DEPORTATION OFFICER, in his/her official capacity as Field Office Location Director, Louisville, Enforcement and Removal Operations, U.S. Immigration and Custom Enforcement,

ROBERT GUADIAN, in his official capacity as Field Office Director, Chicago Filed Office, Enforcement and Removal Operations, U.S. Immigration and Custom Enforcement,

TERRI ROBINSON, in her official capacity as Director, National Benefits Center, U.S. Citizenship and Immigration Services,

Respondent-Defendants.
_____/

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
COMPLAINT FOR INJUNCTIVE AND DECLARATORY RELIEF

The petitioner, by and through the undersigned, submits this verified petition and complaint seeking: (1) a writ of habeas corpus relieving him from the Order of Supervision placed upon him, because he was never subject to supervision under 8 U.S.C. § 1231(a)(3); (2) an order compelling agency action to provide the petitioner a "completely executed Form I-94, endorsed with a parole stamp," as mandated by 8 C.F.R. § 235.1(h)(2); and (3) an order compelling agency action on his pending application for lawful permanent resident status (Form I-485) under 5 U.S.C. §§ 555(b) and 706(1). In support thereof, the petitioner alleges as follows:

SUMMARY OF CLAIM

1. Following the conclusion of the special parole program for Cuban nationals that was implemented under 8 U.S.C. § 1225(b)(1)(F)—colloquially referred to as the "wet-foot/dry-foot policy"—the Department of Homeland Security (DHS) continued to release thousands of Cuban nationals into the United States without keeping them in mandatory detention under §§ 1225(b)(1) and (b)(2).

2. But rather than document their release as parole into the United States under § 1182(d)(5) as required by law, the Department purported to "conditionally parole" these Cuban nationals into the United States under § 1226(a), or release them under other provisions of the immigration code, as a method to preclude them from obtaining the benefits that Congress has historically offered to Cuban nationals under the Cuban Refugee Adjustment Act of 1966 (CAA), Pub. L. No. 89-732, 80 Stat. 1161 (as amended).

3. Many Cuban nationals who find themselves in this situation are currently in immigration limbo, left with no path to legal status or work authorization, often still awaiting the commencement of removal proceedings for years after having entered the United States.

4. In fact, many will not even be subject to physical removal under the current Migration Accords.

5. A putative class action case filed in Miami, Florida led to the resolution of this problem for some Cuban nationals. *See Rabelo-Rodriguez* v. *Mayorkas*, 1:21-cv-23213-BB (S.D. Fla.).

6. The petitioner is one of countless Cuban nationals subjected to the Department's refusal to abide by the immigration statutes.

7. Specifically, after failing an asylum pre-screening interview[1] and being subject to mandatory indefinite detention until removal under 8 U.S.C. § 1225(b)(1)(B)(IV)—a provision the government successfully argues precludes claims under *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), and makes noncitizens subject only to release for custody via parole under § 1182(d)(5)—the government released the petitioner with an I-220B, Order of Supervision under § 1231(a)(3), rather than § 1182(d)(5) parole document, in violation of law, *Jennings* v. *Rodriguez*, 138 S. Ct. 830, 837 (2018).

8. Additionally, while permitted to reside in the United States, the petitioner applied for permanent residence under the Cuban Refugee Adjustment Act.

9. The petitioner brings this action to challenge his unlawful subjection to supervision under § 1231(a)(3), and the agency's failure to recognize and document his release from custody as parole under § 1182(d)(5).

JURISDICTION

10. The Court has jurisdiction over this case under 28 U.S.C. §§ 1331 (federal question), and 1346(a)(2) (United States as defendant).

11. "[A]n individual is 'in custody' for habeas purposes when he is 'in actual physical custody in prison or jail' *or* when he is subject to 'significant' post-release 'restraints on [his] liberty' that are 'not shared by the public generally.'" *In re Stansell*, 828 F. 3d 412, 416 (CA6 2016) (citing *Jones v. Cunningham*, 371 U.S. 236, 236, 238, 240, 242 (1963)). In a case involving an immigrant who "sought a writ of habeas corpus and declaratory and injunctive relief under 28

[1] These interviews are referred to as "credible fear interviews" because the immigration code defines their purpose as being to determine whether an application for admission has a credible fear of persecution which is defined as "a significant possibility . . . that the alien could establish eligibility for asylum." 8 U.S.C. §§ 1225(b)(1)(B)(i)–(v).

U.S.C. § 2241, arguing that the government's ongoing supervision and planned removal subjected her to unlawful 'custody,'" it was held that habeas jurisdiction was proper because such persons "must endure restraints that aren't 'shared by the general public,'" *Howard v. Warden*, 776 F. 3d 772, 775 (CA11 2015), and those restraints are materially similar to the ones imposed on the petitioners in *Jones*, 371 U. S. 236 (1963) and *United States ex rel. Marcello* v. *Dist. Dir. of INS*, 634 F. 2d 964 (CA5 1981)." *Romero* v. *Sec'y, U. S. Dep't of Homeland Sec.*, 20 F. 4th 1374, 1378–79 (CA11 2021); *id.* at 1379 ("Accordingly, we conclude that Romero was 'in custody' and that the district court thus had jurisdiction under § 2241 to consider her petition.").

12. Further, none of the jurisdictional preclusion provisions under 8 U.S.C. § 1252 apply to a challenge to the validity of an order of supervision because such a claim "does not attack[ ] the legality of [the] final order[ ] of removal." *Kimone G. v. United States*, No. CV 22-1688 (PAM/ECW), 2023 WL 7115115, at *2 (D. Minn. Oct. 27, 2023) (citing to 8 U.S.C. § 1252(a)(5), (g)); *see Romero*, 20 F. 4th at 1379 ("Romero doesn't seek review of an existing removal order . . . ." And while § 1252(g) "bars courts from reviewing certain exercises of discretion by the attorney general, it does not proscribe substantive review of the underlying legal bases for those discretionary decisions and actions," *Madu* v. *U. S. Att'y Gen.*, 470 F. 3d 1362, 1368 (CA11 2006) (citations omitted). *Accord Djadju* v. *Vega*, 32 F. 4th 1102, 1105–06 (CA11 2022) ("Although our jurisdiction to consider challenges under § 2241 to an alien's detention is limited, we have jurisdiction to address a challenge to the legal basis of the detention, including constitutional challenges.") (citing *Madu*, 470 F. 3d at 1368).

13. And to the extent the Court finds that a jurisdictional preclusion provision applies to the petitioner's claim that he was unlawfully subjected to supervision under § 1231(a)(3), as opposed to the conditions of parole under § 1182(d)(5), the statute would violate the Suspension

Clause because "the privilege of habeas corpus entitles the prisoner to a meaningful opportunity to demonstrate that he is being held pursuant to 'the erroneous application or interpretation' of relevant law." *Boumediene* v. *Bush*, 553 U.S. 723, 779 (2008) (citation omitted); *id.* at 783 ("Where a person is detained by executive order, rather than, say, after being tried and convicted in a court, the need for collateral review is most pressing."); *id.* ("[T]he writ must be effective. The habeas court must have sufficient authority to conduct a meaningful review of both the cause for detention and the Executive's power to detain."); *id.* at 785 ("Even when the procedures authorizing detention are structurally sound, the Suspension Clause remains applicable and the writ relevant.").

14. The Court may grant relief pursuant to the U.S. Const., art. I, § 9, cl. 2 (Suspension Clause), 28 U.S.C. § 1651 (All Writs Act), 28 U.S.C. §§ 2201–02 (declaratory relief), 28 U.S.C. § 2241 (habeas corpus), and 5 U.S.C. §§ 701 et seq. (Administrative Procedure Act).

VENUE

15. Venue is proper in this district under 28 U.S.C. §§ 1391(e)(1) & 2241 because: (1) the petitioner resides in Jefferson County, Kentucky; (2) his order of supervision is administered by the ICE Enforcement and Removal Operations Louisville Field Office, which is headquartered in Chicago, Illinois who covers all of the State of Kentucky under its Area of Responsibility; and (3) and because this is the district where the "the custodian can be reached by service of process." *Rasul* v. *Bush*, 542 U.S. 466, 478–79 (2004).

PARTIES

16. The petitioner **Dannielys Perez-Picardo** is a Cuban national who resides in Louisville, Kentucky. He is being subjected to an order of supervision under 8 U.S.C. § 1231(a)(3) by the ICE Enforcement and Removal Operations Louisville Field Office. He applied for lawful

permanent resident status under the Cuban Refugee Adjustment Act on May 10, 2024, (Receipt No. M[redacted]), which is a subject of this complaint as well. (**App.**, pp. 41.)

17. The **Supervisory Detention and Deportation Officer** is sued in his official capacity as the supervising Deportation Officer (DO) for the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations, Louisville Field Office, where petitioner is required to periodically report to. In this capacity, he has jurisdiction over the order of supervision under which the petitioner is in custody, is authorized to release the petitioner from such, and is therefore the petitioner's custodian.

18. **Robert Guadian** is sued in his official capacity as the Senior Executive Service Field Office Director for the U.S. Immigration and Customs Enforcement and Removal Operations, Chicago Field Office, which has an area of responsibility including Illinois, Wisconsin, Indiana, Missouri, Kansas, and Kentucky. In this capacity, he has jurisdiction over the order of supervision under which the petitioner is in custody, is authorized to release the petitioner from such, and is therefore the petitioner's custodian.

19. **Terri Robinson** is sued in her official capacity as the Director of the U.S. Citizenship and Immigration Services (USCIS) National Benefits Center. In this capacity, she has supervisory authority over all operations of the USCIS National Benefits Center which is responsible for the adjudication of the plaintiff's application which is the subject of this complaint.

EXHAUSTION

20. No exhaustion is required for the petitioner's habeas claim because "Section 2241 itself does not impose an exhaustion requirement," *Santiago-Lugo* v. *Warden*, 785 F.3d 467, 474 (CA11 2015), and because "[c]ourts may excuse a failure to exhaust administrative remedies where exhaustion would be futile. *See Collins v. Butler*, No. CV 6:15-063-DCR, 2015 WL

4973620, at *3 (E.D. Ky. Aug. 19, 2015) (citing *Santiago-Lugo*, 785 F. 3d 467, 475); *see Boz* v. *United States*, 248 F.3d 1299, 1300 (CA11 2001) ("However, a petitioner need not exhaust his administrative remedies 'where the administrative remedy will not provide relief commensurate with the claim.'" (citation omitted)).

21. No statute, regulation, or other legal source with binding authority exists to provide the remedy that the petitioner's habeas claim seeks to remedy.

22. Regarding the petitioner's APA claim, there are no administrative remedies available that the petitioner is required to exhaust under *Darby* v. *Cisneros*, 509 U.S. 137 (1993), and an agency's failure to take action is reviewable agency action, *Norton* v. *S. Utah Wilderness Alliance*, 542 U.S. 55, 61–62 (2004).

STATUTORY FRAMEWORK FOR ENTRY AND DETENTION

23. Current immigration law provides for substantially different treatment between noncitizens who have been "admitted" to the United States, and those who are "applicants for admission."

24. "The terms 'admission' and 'admitted' mean, with respect to an alien, the **lawful entry** of the alien into the United States after inspection and authorization by an immigration officer." 8 U.S.C. § 1101(a)(13)(A) (emphasis added).

25. Aside from being "admitted," a noncitizen may also **lawfully enter** (at least physically) the United States following inspection and authorization through the process of "parole" that is codified at 8 U.S.C. § 1182(d)(5).

26. But these two concepts are expressly distinguished in that a parole "shall not be regarded as an admission." *Id.* § 1182(d)(5)(A); *Vega v. McAleenan*, No. 8:19-CV-189, 2019 WL 3219326, at *5 (D. Neb. July 17, 2019) ("But there isa difference in immigration law between

being 'paroled' into the United States and being 'admitted.'" (citing § 1101(a)(13)(B); 8 C.F.R. § 1001.1(q)); *accord* § 1101(a)(13)(B) ("An alien who is paroled under section 1182(d)(5) of this title or permitted to land temporarily as an alien crewman shall not be considered to have been admitted.").

27. This distinction between admission and parole has historical purpose because parole is a method to allow an "inadmissible" noncitizen, who has not been formally admitted to the United States, to be at liberty inside the country for a specific purpose within the agency's discretion. *Leng May Ma* v. *Barber*, 357 U.S. 185, 190 (1958) ("The parole of aliens seeking admission is simply a device through which needless confinement is avoided while administrative proceedings are conducted.").

28. Parole is in effect an "enlarge[ment]" from custody. *Id.* at 189. It preserves the legal fiction that an "entry" has not occurred. *Id.* at 188 ("For over a half century this Court has held that the detention of an alien in custody pending determination of his admissibility does not legally constitute an entry though the alien is physically within the United States.") (citations omitted).

29. This fiction arises from the "fundamental distinction between excludable aliens and deportable aliens which permeates our immigration law" which leads to, among other specific outcomes, a fiction where "[e]xcludable aliens are those who seek admission but have not been granted entry" and are thus "legally considered detained at the border." *Garcia-Mir* v. *Smith*, 766 F.2d 1478, 1483–84 (CA11 1985); *see also Jean* v. *Nelson*, 727 F.2d 957, 969 (CA11 1984) (en banc) (describing the origins of the "entry doctrine fiction").

30. Therefore, "parolees" are treated as applicants for admission even though they have been lawfully inspected and authorized to physically enter the United States. 8 U.S.C.

§ 1182(d)(5)(A) ("[W]hen the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.").

31. Both classes of lawful entrants are treated equally when requesting permanent residence under the Cuban Adjustment Act which is available to Cuban nationals "who ha[ve] been inspected and **admitted or paroled** into the United States." § 1, CAA, Pub. L. No. 89-732, 80 Stat. 116 (emphasis added).

32. However, whether a noncitizen has been admitted or paroled into the United States can be a crucial distinction.

33. An example of disparate treatment is that an admitted person (unlike a parolee) can only be removed from the United States based on a ground of deportability under 8 U.S C. § 1227(a), as opposed to a ground of inadmissibility under § 1182(a) which generally requires a lesser showing to support removal.

34. A parolee, who remains subject to inadmissibility under § 1182(a), is considered an "applicant for admission" under § 1225(a)(1).

35. Parolees are not the only type of "applicant for admission," as that classification applies to any noncitizen who is "present in the United States without admission or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international of United States waters)." 8 U.S.C. § 1225(a)(1).

36. When an immigration officer encounters an applicant for admission, they must "inspect" the applicant for admissibility. *Id.* §§ 1225(a)(3), (b).

37. Where doubts regarding admissibility arise during inspection, the immigration statute provides for two different methods of processing.

38. Under § 1225(b)(1), which applies to a limited class of noncitizens defined in §§ 1225(b)(1)(A)(i)–(iii), removal is automatic subject to the ability to request asylum in accordance with the procedures in § 1225(b)(1)(B).

39. Under § 1225(b)(2), which applies to all applicants for admission except those "to whom paragraph (1) applies," § 1225(b)(2)(B)(ii),[2] removal is pursued via full removal proceedings as generally used against admitted noncitizens. *Id.* § 1225(b)(2)(A).

40. "Both § 1225(b)(1) and § 1225(b)(2) authorize the detention of certain aliens," *Jennings* v. *Rodriguez*, 138 S. Ct. 830, 837 (2018), such that both "§§ 1225(b)(1) and (b)(2) thus **mandate detention** of applicants for admission until certain proceedings have concluded." *Id.* at 842 (emphasis added). "Until that point, however, nothing in the statutory text imposes any limit on the length of detention." *Id.* "And neither § 1225(b)(1) nor § 1225(b)(2) says anything whatsoever about bond hearings." *Id.*

41. "The plain meaning of those phrases is that detention must continue until immigration officers have finished 'consider[ing]' the application for asylum, § 1225(b)(1)(B)(ii), or until removal proceedings have concluded, § 1225(b)(2)(A)." *Id.* at 844. "[T]hey unequivocally mandate that aliens falling within their scope 'shall' be detained." *Id.*

42. And yet, "[r]egardless of which of those two sections authorizes their detention, applicants for admission may be temporarily released on parole 'for urgent humanitarian reasons or significant public benefit.'" *Id.* at 837 (citing § 1182(d)(5)(A); 8 C.F.R. §§ 212.5(b), 235.3

[2] Crewman and stowaways are other sub-classes of applicants for admission who are subject to other forms of automatic removal. 8 U.S.C. §§ 1225(a)(2), 1282(b), 1284(c).

(2017)); *accord id.* at 844 ("With a few exceptions not relevant here, the Attorney General may 'for urgent humanitarian reasons or significant public benefit' temporarily parole aliens detained under §§ 1225(b)(1) and (b)(2).") (citing § 1182(d)(5)(A)).

43. In fact, "[t]hat express exception to detention implies that there are no *other* circumstances under which aliens detained under § 1225(b) may be released." *Id.* (emphasis in original) (citation omitted).

44. In so holding, the Supreme Court was clear in rejecting the suggestion that bond hearings and conditional parole are available to applicants for admission. *Id.* at 845 ("For example, respondents argue that, once detention authority ends under §§ 1225(b)(1) and (b)(2), aliens can be detained only under § 1226(a) . . . . To put it lightly, that makes little sense."); *accord Florida v. United States*, — F. Supp. 3d. —, 2023 WL 2399883, *26–28 (N.D. Fla. Mar. 8, 2023).

STATUTORY FRAMEWORK FOR EXPEDITED REMOVAL DETENTION IN NEGATIVE FEAR CASES

45. With regard to applicants for admission who are found to be inadmissible by "an immigration officer" through the expedited removal process, "the officer shall order the alien removed from the United States without further hearing or review unless the alien indicates either an intention to apply for asylum under section 1158 of this title or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i).

46. In such cases, "the officer shall refer the alien for an interview by an asylum officer under subparagraph (B)." *Id.* § 1225(b)(1)(A)(ii).

47. The purpose of that interview, referred to as a credible fear interview, is to determine whether "there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum under section 1158 of this title." *Id.*

§ 1225(b)(1)(B)(v).

48. Should the applicant for admission be determined to have demonstrated a credible fear of persecution, "the alien **shall be detained** for further consideration of the application for asylum." *Id.* § 1225(b)(1)(B)(ii) (emphasis added).

49. However, prior to and alternatively to that, "[a]ny alien subject to the procedures under this clause **shall be detained** pending a final determination of credible fear of persecution and, **if found not to have such a fear, until removed**." *Id.* § 1225(b)(1)(B)(iii)(IV) (emphasis added); *accord* § 1225(b)(1)(B)(iii)(I) ("if the officer determines that an alien does not have a credible fear of persecution, the officer shall order the alien removed from the United States without further hearing or review").

50. Normally, post-order of removal detention is governed under 8 U. S. C. § 1231 which only mandates detention for 90 days during a "removal period" which can be suspended when a detainee interferes with the removal process. *Id.* §§ 1231(a)(1)(A) (defining the "removal period"), (a)(1)(C) (suspension of period), (a)(2) ("During the removal period, the Attorney General **shall detain** the alien.") (emphasis added).

51. After the removal period, the government is required to subject a detainee to supervision if removal does not occur, or if the government exercises discretion to grant the detainee an administrative stay of removal. §§ 1231(a)(3), (c)(2)(A) & (C).

52. Additionally, the government has discretion to continue a detainee's detention beyond the removal period under § 1231(a)(6), but that discretion is bounded by a reasonableness requirement under *Zadvydas v. Davis*, 533 U.S. 678, 682 (2001).

53. However, for persons who have received negative credible fear determinations, § 1225(b)(1)(B)(iii)(IV) mandatorily requires detention subject only to release on parole.

54. In fact, the government regularly argues this point, that persons like the petitioner are "rightfully detained indefinitely under 8 U. S. C. § 1225(b)(1)(B)(iii)(IV)." *Bertrand* v. *Holder*, No. CV-10-0604-PHX-GMS, 2011 WL 4356375, at *3 (D. Ariz. Aug. 16, 2011), *report and recommendation adopted,* No. CV-10-604-PHX-GMS, 2011 WL 4356369 (D. Ariz. Sept. 19, 2011).

55. That includes making those same arguments in the Southern District of Florida. *Ortiz* v. *Barr*, No. 20-CV-22449, 2021 WL 6280186, at *1 (S.D. Fla. Feb. 1, 2021), *report and recommendation adopted,* No. 20-22449-CIV, 2022 WL 44632 (S.D. Fla. Jan. 5, 2022) ("In response, the Respondent asserts that because Petitioner is detained under the expedited removal statute, 8 U.S.C. § 1225(b)(1), and not § 1231 . . . .").

56. The government has succeeded on those arguments in the Southern District of Florida, where case law in this area is highly developed. *Gueye v. Sessions*, No. 17-62232-CIV, 2018 WL 11447946, at *2 (S.D. Fla. Jan. 24, 2018) ("However, as set forth above, the Petitioner in this case is detained pursuant to the expedited removal procedures of 8 U.S.C. § 1225(b), not 8 U.S.C. § 1231(a). He is subject to the mandatory detention provision of 8 U.S.C. § 1225(b)(1)(A)(iii)(IV)."); *id.* ("The Petitioner cites to *Zadvydas v. Davis*, 533 U.S. 678 (2001) for the proposition that his continued detention is unlawful because his removal is not reasonably foreseeable. That decision is inapplicable to the instant case, as *Zadvydas* did not analyze detention in the context of expedited removal proceedings.").

57. And the government has succeeded on those arguments in other districts throughout the country. *E.g.*, *H.C.* v. *Warden, Stewart Det. Ctr.*, No. 4:22-CV-148-CDL-MSH, 2023 WL 2745176, at *5 (M.D. Ga. Mar. 31, 2023), *report and recommendation adopted sub nom. H.C. v. Washburn*, No. 4:22-CV-148-CDL-MSH, 2023 WL 3365166 (M.D. Ga. May 10, 2023)

("*Zadvydas*, however, only applies to aliens subject to a removal under 8 U.S.C. § 1231, not aliens detained under 8 U.S.C. § 1225(b)(1).") (citation omitted); *Amaglobeli* v. *Mayorkas*, No. 1:23-CV-00135, 2023 WL 4678428, at *2 (W.D. La. June 30, 2023), *report and recommendation adopted,* No. 23-CV-135, 2023 WL 4675412 (W.D. La. July 20, 2023) ("Since Amaglobeli failed to make a credible fear showing, his detention is mandatory.") (citing 8 U.S.C. § 1225(b)(1)(B)(iii)(IV)); *Singh* v. *Gillis*, No. 5:20-CV-121-DCB-MTP, 2021 WL 1214787, at *1 (S.D. Miss. Mar. 3, 2021), *report and recommendation adopted,* No. 5:20-CV-121-DCB-MTP, 2021 WL 1207724 (S.D. Miss. Mar. 30, 2021) ("The holding in *Zadvydas*, however, is not applicable to all ICE detainees. The guidance regarding periods of detention that exceed six months as set forth in *Zadvydas* is not applicable to Petitioner, who is being detained pending his removal under 8 U.S.C. § 1225(b)(1).").

58. If it is true that a person who has received a negative credible fear determination cannot seek release on an order of supervision under § 1231, and is subject only to being released from custody under a § 1182(d)(5) parole, then it is must also be true that the government can only release such a person on a § 1182(d)(5) parole rather than under § 1231 supervision. *See Heffernan* v. *City of Paterson, N.J.*, 578 U.S. 266, 272 (2016) ("[W]hy is the same not true here? After all, in the law, what is sauce for the goose is normally sauce for the gander.").

FACTUAL ALLEGATIONS

59. The petitioner is a native and citizen of Cuba.

60. He was encountered by Customs and Border Patrol agents on June 28, 2021, who determined him to be inadmissible and decided to proceed against the petitioner via expedited removal proceedings under 8 U.S.C. § 1225(b)(1), pending a credible fear interview. (**App.**, p. 1–3.)

61. On July 27, 2021, the Department of Homeland Security conducted the petitioner's credible fear interview with an asylum officer as required by §§ 1225(b)(1)(A)(ii) & (B)(i). (**App.**, p. 8.)

62. While the interviewing officer found the petitioner to be credible, the officer did not find that the petitioner established a credible fear of persecution. (**App.**, p. 11, 25.)

63. On July 29, 2021, the supervisory asylum officer issued the petitioner an Order of Removal Under Section 235(b)(1) after finding him to be inadmissible under 8 U.S.C. § 1225(b)(1)(7)(A)(i)(I). (**App.**, p. 29.)

64. The supervisory asylum officer also issued a Notice of Referral to Immigration Judge on July 29, 2021, to have the Department's finding reviewed. (**App.**, pp. 30-32.)

65. On August 10, 2021, the immigration judge affirmed the Department's findings, and returned the case to the Department. (**App.**, p. 33.)

66. Six days later, the Department of Homeland of Security released the petitioner from their custody with a Form I-220B, Order of Supervision, purportedly issued under 8 U.S.C. § 1231(a)(3). (**App.**, pp. 35-39.)

67. Under this order of supervision, the petitioner is subject to various conditions, including reporting to ICE at a certain date and time. (**App.**, p. 35.)

68. Since the petitioner's release from custody, he has been reporting to ICE on a yearly basis, and his next report date is on July 25, 2025. (**App.**, p. 36.)

69. On May 10, 2024, the petitioner filed his Form I-485, Application to Register Permanent Residence or Adjust Status, under the Cuban Adjustment Act with U.S. Citizenship and Immigration Services (USCIS). (**App.**, p. 40.)

70. Along with this filing the petitioner filed a brief stating that because he was subject to mandatory detention under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV), his release from detention on August 16, 2021, must have been a parole under § 1182(d)(5)(A) as a matter of law. (**App.**, pp. 42-46.)

71. On June 4, 2024, USCIS sent the petitioner a Request for Evidence ("RFE"), asking him to submit evidence of his parole into the United States. (**App.**, p. 47.)

72. USCIS received the petitioners RFE Response on August 12, 2024, which included a memorandum of law explaining his eligibility for Cuban adjustment. (**App.**, pp. 47-57.)

73. According to USCIS's "Case Status Online," the last action on the petitioner's case occurred on June 8, 2024, when it updated to reflect that the petitioner's fingerprints were taken and applied to the pending application. (**App.**, p. 58.)

74. In determining whether agency action has been unreasonably delayed, courts apply the six-factor test established by *Telecomms. Research & Action Center v. F.C.C.*, 750 F. 2d 70 (CADC 1984) ("*TRAC*").

75. The *TRAC* factors include:

> (1) the time agencies take to make decisions must be governed by a "rule of reason," (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, the statutory scheme may supply content for this rule of reason, (3) delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are

> at stake, (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority, (5) the court should also take into account the nature and extent of the interests prejudiced by delay, and (6) the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is 'unreasonably delayed.

TRAC, 750 F. 2d at 80.

76. "Delay is measured by a 'rule of reason,' informed whenever possible by discernible congressional expectations, respecting the pace at which proceedings should advance." *In re Monroe Commc'ns Corp.*, 840 F. 2d 942, 945 (CADC 1988).

77. "The ultimate issue, as in all such cases, will be whether the time the [agency] is taking to act upon the [plaintiff's] petition satisfies the "rule of reason." *Mashpee Wampanoag Tribal Council, Inc. v. Norton*, 336 F. 3d 1094, 1102 (CADC 2003).

78. Given that the petitioner is subject to removal, and the remedial purposes behind the Cuban Refugee Adjustment Act which includes a foreign policy objective to continue the fight against worldwide communism, USCIS—as a whole and at the service center level—is not abiding by whatever prioritization system that it publicly claims to be applying to be the adjudication of immigration benefits.

79. The law requires that, "[w]ith due regard for the convenience and necessity of the parties or their representatives and within a reasonable time, each agency shall proceed to conclude a matter presented to it." 5 U.S.C. § 555(b).

80. Regarding immigration cases specifically, it has long been "the sense of Congress that the processing of an immigration benefit application should be completed not later than 180 days after the initial filing of the application, except that [other classes of petitions not relevant here should be processed quicker]." Act of Oct. 17, 2000, Pub. L. No. 106-213, Title II, § 202, 114 Stat. 1262 (codified at 8 U.S.C. § 1571(b)).

81. Thus, on balance, the agency as unlawfully withheld action on the plaintiff's application, and has unreasonable delayed the adjudication of his Form I-485 as well.

CLAIMS FOR RELIEF

COUNT I

Petition for Writ of Habeas Corpus

82. The petitioner realleges and incorporates by reference paragraphs 1 through 81.

83. Given that the government proceeded against the petitioner via expedited removal proceedings wherein the petitioner was unable to demonstrate a legally cognizable credible fear of persecution, the petitioner was subject to mandatory, indefinite detention under 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) at the time of his release from custody.

84. As such, parole under § 1182(d)(5) would have been the only lawful basis to release the petitioner from immigration custody, and the petitioner is not lawfully subject to an order of supervision under § 1231(a)(3).

85. Therefore, the petitioner is entitled to a writ of habeas corpus releasing him from the order of supervision, and declaring that he was paroled out of custody, thereby making him subject only to lawful conditions of parole under § 1182(d)(5) and its implementing regulations.

COUNT II

Injunctive Relief Regarding Unlawful Withholding of Parole Document

86. The petitioner realleges and incorporates by reference paragraphs 1 through 81.

87. Under 8 C.F.R. § 235.1(h)(2), "[a]ny alien paroled into the United States under section 212(d)(5) of the Act, including any alien crewmember, **shall** be issued a completely executed Form I-94, endorsed with a parole stamp." (emphasis added).

88. The respondent has a mandatory obligation to provide evidence of parole under 8

C.F.R. § 235.1(h)(2).

89. Given that the only lawful explanation for the petitioner's release from DHS custody is via parole under 8 U.S.C. § 1182(d)(A), the defendant failed to provide the petitioner with evidence of his parole out of custody as required by the regulation.

90. The petitioner has "suffer[ed] legal wrong," and has been "adversely affected" and "aggrieved" by the actions of the defendant. 5 U.S.C. § 702.

91. The defendant's failure to provide the petitioner with evidence of his parole at the time of his release from custody as mandated by 8 C.F.R. § 235.1(h)(2) amounts to an unlawful withholding of agency action.

COUNT III

Agency Action Unlawful Withheld and Unreasonably Delayed

92. The petitioner realleges and incorporates by reference paragraphs 1 through 81.

93. The petitioner has "suffer[ed] legal wrong," and has been "adversely affected" and "aggrieved" by the actions of USCIS. 5 U.S.C. § 702.

94. USCIS has "unlawfully withheld" and "unreasonably delayed" action on the petitioner's application for permanent residence. *Id.* § 706(1).

95. As such, the petitioner is entitled to injunctive and declaratory relief, § 703, to compel, § 706(1), the defendant to adjudicate his application for permanent residence within a reasonable timeframe.

PRAYER FOR RELIEF

WHEREFORE, the petitioner prays that the Court grant the following relief:

(a) Assume jurisdiction over this matter;

(b) Set this matter for expedited consideration;

(c) Order the defendant to show cause why the writ should not be granted, and to produce records regarding the true cause for the petitioner's continued detention;

(d) Order the defendant to refrain from transferring the petitioner out of the jurisdiction of this Court during the pendency of this proceeding;

(e) Grant the petitioner a writ of habeas corpus: (1) releasing him from the order of supervision; and (2) declaring that he was paroled out of custody, thereby making him subject only to lawful conditions of parole under § 1182(d)(5) and its implementing regulations;

(f) Order the defendant to comply with 8 C.F.R. § 235.1(h)(2), and to provide the petitioner with evidence of his parole, via a Form I-94, relating to the time of his release from DHS custody;

(g) Declare that USCIS has unreasonably delayed, and has unreasonably failed to complete, the adjudication of the petitioner's application for adjustment of status under the Cuban Refugee Adjustment Act, in violation of law;

(h) Order the defendant to adjudicate the petitioner's Form I-485 as well, within 60 days of the Court's order, or within another reasonable period of time determined by the Court;

(i) Retain jurisdiction over this case to ensure compliance with all of the Court's orders;

(j) Award costs, and attorney's fees under the Equal Access to Justice Act (EAJA), as amended, 5 U. S. C. § 2412, and on any other basis justified under law; and

(k) Grant any other and further relief that the Court deems just and proper.

Dated: January 21, 2025

s/Anthony R. Dominguez
Motion for Pro Hac Vice Appearance Forthcoming
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VERIFICATION BY SOMEONE ACTING ON THE PETITIONER'S BEHALF PURSUANT TO 28 U.S.C. § 2242

I, Anthony R. Dominguez, am submitting this verification on behalf of the petitioner because I am the petitioner's attorney. I have discussed with the petitioner the events described in this petition. On the basis of those discussions, I hereby verify that the statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: January 21, 2025

s/ Anthony R. Dominguez
Fla. Bar No. 1002234

Counsel for Petitioner