

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE, TEXAS

DR. GILBERTO DELGADO

v.

TATER ORTIZ, PORT DIRECTOR,
NORMA A. LIMON, FIELD OFFICE DIRECTOR
U.S.C.I.S.,
CALEB VITELLO, DIRECTOR US IMMIGRATION AND
CUSTOMS ENFORCEMENT,
KRISTI NOEM,
SECRETARY, DEPARTMENT OF HOMELAND SECURITY.

PETITION FOR WRIT OF HABEAS CORPUS,
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF
REQUEST FOR ORDER TO SHOW CAUSE, and TEMPORARY RESTRAINING ORDER

Petitioner GILBERTO DELGADO ("DELGADO"), through counsel, files the instant, Petition for a Writ of Habeas Corpus, and Complaint for Declaratory and Injunctive Relief, under 28 U.S.C. §1331 (federal question), with the Administrative Procedure Act, 5 U.S.C. §702 et seq; and 28 U.S.C. §2201 (Declaratory Judgment Act).

I. INTRODUCTION

1. DELGADO was born in Brownsville, Texas, in July __, 1987. His birth was timely recorded in Brownsville, Texas one day after his birth. There are no allegations before the State of Texas that his Texas Birth Record was fraudulently registered. As evidence of that is that he has a Texas Birth Certificate issued by the State of Texas on May 30, 2023. His TBC would not have been issued by the State of Texas if there were any allegations of fraud on his TBC. When he was born, his parents were residing in Tamaulipas, Mexico, and his parents, when he was around 4 years old, also registered his birth there, using a date of birth different than his TBC. His Mexican Birth Registration shows he was born four days before his date of birth in Texas. He was registered in Mexico by his parents as if he was

born in Mexico, when he was not, for him to enroll in school. Mr. Delgado was placed in removal proceedings due to his Mexican birth certificate. Therefore, he cannot seek a declaration that he is a U.S. citizen, under 8 U.S.C. §1503(a), (denial of rights and privileges as a U.S. Citizen), with 28 U.S.C. §2201 (Declaratory Judgment Act).¹

2. Since he is detained and under proceedings, DELGADO cannot support his family. He is separated from his wife, who became a Legal Permanent Resident through him, and his four minor children. There is a pending N-600K that was filed for his son Gilberto, who is now 17 years old, since his son would become a citizen through him before he turns 18 years. This application was filed with USCIS on June 12, 2023, and despite attempts to get an appointment it remains pending. Exhibit A. This places significant restrictions on his liberty not shared by others born in the U.S.

3. As a result, Petitioner requests the issuance of an Order to Show Cause, pursuant to 28 U.S.C. §2243, and/or a Temporary Restraining Order, restraining and enjoining Respondent Johnson from not allowing him to pass back and forth from Mexico during the pendency of these proceedings, or, in the alternative, ordering Respondent Kerry to release him from custody, while it is being determined whether he was lawfully detained.

I. JURISDICTION AND VENUE

1. Jurisdiction lies under 28 U.S.C. §§2241 (habeas corpus); 1331 (federal question), 2201 et seq. (Declaratory Judgment Act); with 5 U.S.C. §702 et seq (Administrative Procedure Act), and 28 U.S.C. §2201 (Declaratory Judgment Act).

1

See, (sealed) Exhibit A, incorporated herein by reference.

2. In early 2023, DELGADO and his son, [REDACTED], then 16 years old, filed an application for a Certificate of Citizenship, in Harlingen, Texas, since [REDACTED] is the child born abroad of United States Citizen Father (Mr. DELGADO). On September 12, 2023, USCIS requested additional evidence regarding Mr. DELGADO's citizenship which he promptly responded too. Since then, Mr. DELGADO has been waiting for an appointment for his son [REDACTED]. An appointment that has to take place before March 7, 2025 when [REDACTED] will turn 18.

II. THE PARTIES

4. Mr. DELGADO is a native and citizen of the United States. He resides in Brownsville, Texas with his LPR wife and three minor US children. Mr. DELGADO also resides in Matamoros, with his now 17-year-old child, [REDACTED] who is in Mexico, and has pending N-600K.

5. Respondent Tater Ortiz, is the CBP Port Director, Norma Limon, is the Field Office Director for USCIS, Caleb Vitello, is the Director of U.S. Immigration and Customs Enforcement, and Kristin Noem, is the Secretary of Homeland Security. All Respondents are sued in their official capacities. The United States is also a named Defendant.

III. OTHER PERTINENT FACTS


6. Mr. DELGADO is a United States citizen, born in Brownsville, Texas, in July 1987. He was delivered by a midwife, Maria de los Angeles Lopez, who was not convicted of fraudulently registering his birth. His birth was timely filed one day after his birth in Texas. a reputable clinic with no history of falsifying birth records. Exhibit B


7. Year after his birth in Texas Petitioner's parents improperly registered his birth in Tamaulipas, Mexico, as having been born there

in four days before his birth in Texas among other reasons to attend school in Mexico. Exhibit C

8. Mr. DELGADO resides with his wife and children in Brownsville, Texas. Mr. DELGADO recently immigrate his wife, who is now a Legal Permanent Resident, since she immigrated as the spouse of a US citizen. Exhibit D

9. In 2023, DELGADO filed an N-600K for his then 16 year old son, whom he resides with in Matamoros, in order for him to get a certificate of citizenship. Shortly after the application was filed, and despite Mr. DELGADO having immigrated his wife as the spouse of a USC, was instructed by USCIS to provide further evidence of his U.S. citizenship, on pain of having the petition and application denied, which he provided. Since then, he has requested USCIS to expedite his son's case since to obtain his citizenship, his son has to be issued a certificate before he turns 18 years of age, that is on March 7, 2025.

10. This Monday, February 10, 2025, around 3 am in the morning, when DELGADO was returning from Matamoros, with his LPR wife and three minor USC children (Twins 5 year old, and a daughter 4 years old) after having spent the weekend with their 17-year-old child 

 who is residing in Matamoros, awaiting a decision on his pending N-600K, he was stopped at the port of entry. He was separated from his family and questioned his citizenship. Around 4:30 am, CBP officer asked his wife to provide them with the phone of name of Mr. DELGADO's mother. They called his mother who hangs up on the CBP officer after she did not believe the CBP officer. Mr. DELGADO's was asked to call her husband mother and tell her that her husband/her son was detained at that their were CBP officers that wanted to ask him about his birth. Around 5 a.m. office tell Mr. DELGADO's wife

that the problem is that her husband has a Mexican Birth Registration, that her LPR status is in jeopardy. Mr. DELGADO's wife is then escorted to another room where she hears her husband, Mr. DELGADO state that if he declares to them that he was born in Mexico, if they would release them. The wife whose saw the office where her husband was being interrogated was open, she stuck her head and told him not to do that. Mr. DELGADO is told by CBP that she cannot be there. Later on Mr. DELGADO's wife is approached by CBP who tells her that if her husband accepts he was born in Mexico, that they will all go free. Otherwise, they would both have to see an immigration judge. And they would have to figure out who to leave their children. Mr. DELGADO wife asked the CBP officer if she could call someone to pick the children. She was told she could. However, she was then told, that she didn't need to make a call. That she would be allowed to go on with her children. That her husband (Mr. DELGADO) will be detained. And maybe a Judge could come and see him this morning. As to filing of this petition, it is believed that Mr. DELGADO is still detained at the Port of Entry in Brownsville, Texas.

11. On information and belief, based on what Petitioner Mr. DELGADO and his LPR wife was told at the port of entry, it is now the position of the Department of State that anyone who has a Mexican birth certificate, reflecting birth in Mexico, was, in fact, born in Mexico, because, as he was then told that "in order for the Mexican authorities to have authorized a birth certificate, not only the child must be present, but the parent/s must provide sufficient evidence that the child was born in Mexico." As the honorable U.S. District Judge Hinojosa stated- "And if somebody doesn't know this, you can not go to school in Mexico unless you are an American—a Mexican Citizen. The people do that all the time. That doesn't mean the person was actually born there." See Exhibit E.

12. Moreover, there is a ICE memo directing all agencies not to detain or place in removal proceedings someone who has a claim to citizenship- Memo from Assistant Secretary of DHS, "Guidance on Reporting and Investigating Claims to Citizenship"- that guidance was intended to ensure that claims of U.S. citizenship receive immediate and careful investigation. That includes of course not detaining someone with his wife and three minor children's at a POE, and threatening him to admit he was not born in Texas so that his family could be released. (See Exhibit F)

13. It is believed that Mr. DELGADO has been issued an NTA. And placed in removal proceedings as an arriving alien. Ineligible for bond. And since he was served with an NTA the same day, and detained, he had no opportunity to come before this Court with a proceeding under 8 U.S.C. §1503(a) to prove his claim to U.S. citizenship. *Rios-Valenzuela v. DHS*, 506 F.3d 393 (5th Cir. 2007).

V. CAUSES OF ACTION
A. HABEAS CORPUS

14. Petitioner hereby incorporates by reference the allegations of paragraphs 1 - 14, *supra*.

15. DELGADO is in custody for purposes of habeas corpus because he is being deprived of the fundamental right to make a living, and of his Constitutional right to engage in international travel, and the deprivation of that right causes extreme hardship.

16. DELGADO asserts that it violates Due Process to detain him, without notice and an opportunity to be heard.

B. ADMINISTRATIVE PROCEDURE ACT

17. Petitioner hereby incorporates by reference the allegations of paragraphs 1 - 16, *supra*.

18. Petitioner was aggrieved by his detention at POE, within the meaning of 5 U.S.C. §702, which provides:

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof.

20. DELGADO therefore seeks judicial review of his detention because CBP believes he is not a US citizen. As further provided by 5 U.S.C. §703:

The form of proceeding for judicial review is the special statutory review proceeding relevant to the subject matter in a court specified by statute or, in the absence or inadequacy thereof, any applicable form of legal action, including actions for declaratory judgments or writs of prohibitory or mandatory injunction or habeas corpus, in a court of competent jurisdiction. If no special statutory review proceeding is applicable, the action for judicial review may be brought against the United States, the agency by its official title, or the appropriate officer.

See also, 5 U.S.C. §704:

Agency action made reviewable by statute and final agency action for which there is no other adequate remedy in a court are subject to judicial review.

And further, 5 U.S.C. §706.

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall — (1) compel agency action unlawfully withheld or unreasonably delayed; and (2) hold unlawful and set aside agency action, findings, and conclusions found to be — (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity;

19. Plaintiff, therefore, seeks a declaration that his detention by CBP without providing him with a hearing deprived him of Due Process, and urges the Court to set aside the action by CBP and order him release from detention. He therefore also requests a mandatory injunction, requiring Defendants to releasing him while the instant case is proceeding, and to refrain from detaining him without providing him with prior notice and an opportunity to be heard.

C. DECLARATORY JUDGMENT UNDER 28 U.S.C. §2201

20. Petitioner hereby incorporates by reference the allegations of paragraphs 1 - 19, *supra*.

21. Where an appropriate jurisdictional basis exists, (here, 28 U.S.C. §1331 and 2241, under *Rusk v. Cort*, 369 U.S. 367,372 (1962):
a declaratory judgment is available as a remedy to secure
a determination of citizenship").

See also Reyes v. Neelly, 264 F.2d 673, 676 (5th Cir.1959) Judge Rives, dissenting, ("Such a declaratory judgment is a declaration of status that binds not only governmental authorities but, also, the whole world").

22. Petitioner therefore urges the Court to issue a declaratory judgment, declaring him to be a United States citizen by virtue of his birth in Brownsville, Texas, in July, 1987.

**D. ADMINISTRATIVE PROCEDURE ACT
(DEFENDANT LIMON)**

23. Petitioner hereby incorporates by reference the allegations of paragraphs 1 - 22, *supra*.

24. Defendant Limon refused to adjudicate the N-600K Petitioner filed on behalf of his minor child. On information and belief, he asserts that said N-600 is still pending after a year and a half, and that the failure to adjudicate it constitutes unreasonable delay. Even though USCIS has already determined that Petitioner is a US

citizen, since he has already immigrated his wife, who is now an LPR, he has a valid Texas birth certificate, that has no allegations of fraud. And contrary to the position currently taken by UCIS-CBP, the existence of a Mexican birth certificate reflecting birth in Mexico is not sufficient proof of foreign birth in and of itself to justify the delay in adjudicating his son's application. Therefore, request that USCIS is order to issue a decision on that pending N-600K.

V. PRAYER FOR RELIEF

WHEREFORE, it is respectfully requested that this Honorable Court:

- 1) Issue an Order to Show Cause, pursuant to 28 U.S.C. §2243, directing Respondents to show cause why the requested Writ of Habeas Corpus should not be issued;
- 2) Conduct a prompt hearing on Petitioner's request for a Temporary Restraining Order.
- 3) Grant the requested Writ of Habeas Corpus, and a mandatory injunction, restraining and enjoining Respondents from detaining him, without providing him with prior notice and opportunity to be heard.
- 4) DELGADO further urges the Court to issue a Declaratory Judgment, declaring that he is a U.S. citizen, and thereafter, a permanent injunction, restraining and enjoining Respondents from not promptly adjudicating the N-600K he filed on behalf of his son.

Finally, it is also urged that the Court requires Respondents/ Defendants to pay costs, and reasonable attorney's fees, and grant such other and further relief as the Court considers appropriate.

Respectfully Submitted,

s/ Jaime Diez, Attorney
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CERTIFICATE OF SERVICE

I certify that a courtesy copy of the foregoing was electronically served on Nancy Masso, AUSA, this 11th day of February, 2025 and that a copy of Exhibits was sent to her on the same date.

s/ Jaime M. Diez