

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

ERIK ARTURO PAREDES

v.

TATER ORTIZ, PORT DIRECTOR,
KRISTI NOEM,
SECRETARY, DEPARTMENT OF HOMELAND SECURITY.
MARCO RUBIO,
SECRETARY, SECRETARY OF STATE

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

Petitioner ERICK ARTURO PAREDES ("PAREDES"), 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. PAREDES was born in Brownsville, Texas, in May __, 1989. His birth was timely recorded in Brownsville, Texas ten days after his birth. There are no allegations before the State of Texas that his Texas Birth Record was fraudulently registered. When he was born, his parents were residing in Tamaulipas, Mexico. His parents, when he was around 1 month old, his parents registered his birth there stating he was born in Mexico when he was not. On June 24, 2023, Mr. PAREDES filed a Complaint for Declaratory Judgment- Paredes v. Blinken 1:230cv-0093). (See Exhibit 1) On September 1, 2023, Defendant Blinken filed a motion to dismiss based on the statute of limitation. (See Exhibit 2) On October 30, 2023 Plaintiff filed a response in objection to the motion to dismiss. See Exhibit 3. On November 3, 2023 the Court dismissed the complaint without prejudice based on

the statute of limitations. See Exhibit 4 On March 2024 Mr. Paredes filed a new application for a U.S. Passport. (See Exhibit 5) On April 26, 2024, PAREDES respondent to a request for evidence. See Exhibit 6 As to the filing of this petition, PAREDES application for a passport remains pending. On September 11, 2024, Ms. PAREDES' application to immigrate as a legal permanent through her spouse (Mr. PAREDES) was approved. Ms. PAREDES (DIANA B MENDOZA LIMAN) became a Legal Permanent Resident on September 11, 2024. PAREDES has been he will be detained and placed in removal proceedings. 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, PAREDES cannot support his family. He is separated from his wife, who became a Legal Permanent Resident through him, and his two minor children. 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 from not allowing him to pass back and forth from Mexico during the pendency of these proceedings, or, in the alternative, ordering Respondent to release him from custody, while it is being determined whether he was lawfully detained.

I. JURISDICTION AND VENUE

4. Jurisdiction lies under 28 U.S.C. §§2241 (habeas corpus); 1331 (federal question), 2201 et seq. (Declaratory Judgment Act); with

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

5 U.S.C. §702 et seq (Administrative Procedure Act), and 28 U.S.C. §2201 (Declaratory Judgment Act).

II. THE PARTIES

5. Mr. PAREDES is a native and citizen of the United States. He resides in Brownsville, Texas with his LPR wife and two minor US children.

6. Respondent Tater Ortiz is the CBP Port Director. Kristin Noem, is the Secretary of Homeland Security. Marco Rubio, is the Secretary of State. All Respondents are sued in their official capacities. The United States is also a named Defendant.

III. OTHER PERTINENT FACTS

7. Mr. PAREDES is a United States citizen, born in Brownsville, Texas, in May __, 1989. He was delivered by a midwife, Margarita, who was not convicted of fraudulently registering his birth. His birth certificate was timely filled ten days after his birth in Texas.

8. A month after his birth in Texas Petitioner's father registered his birth in Mexico as having been born in Mexico when he was not.

9. PAREDES lives with his wife and children in Brownsville, Texas. He recently immigrated his wife, who is now a Legal Permanent Resident, as the spouse of a US citizen.

10. On Friday, March 7th, 2015, when PAREDES was returning from Matamoros with his LPR wife and two minor children, he was stopped at the port of entry and told he was not born in Texas.

11. Instead, after been detained for almost one day, he called to state that he was going to be detained and served with a Notice to Appear,

12. On information and belief, based on what Petitioner was told

at the port of entry, it is now the position of the Department of State to deny cases to 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," In addition, using that denial allegedly as a "final administrative decision" when they know it is not a final administrative decision so that when the applicant files a 1503(a) cause of action, the DOS moves to dismiss alleging that the prior final administrative decision, is outside the five year statute of limitations provided by the statute and the complaint should be dismissed. Instead, the DOS knows that the prior denial is only a decision to inform the applicant that with the information they provided with that application they could not prove to the DOS by a preponderance of the evidence that he/she was born in the United States and telling the applicant that they can file a new application. As in this case, Plaintiff tried before to have the decision to deny his passport reviewed by the court just to find that according to the DOS that determination could not be made by a court because his "final administrative decision" was more than years before, and instead allowing him to file a new application in 2023 for a passport, and DOS instead of telling him that there was a final administrative decision stating he had not met his burden, the DOS send him a request for additional evidence, and have sat on this application without making a decision for almost a year.

13. 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 - 13, *supra*.

15. PAREDES is in custody for purposes of habeas corpus because he is being detained, and the deprivation of his liberty causes extreme hardship.

B. ADMINISTRATIVE PROCEDURE ACT

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

17. Petitioner was aggrieved by the denial of his US passport without an opportunity for a hearing to determine the basis for the denial. And then DOS position that his complaint for declaratory Judgment should be dismissed because the "final administrative decision" had been issued more than five years prior to the filing of the lawsuit on June 24, 2023, which clearly was not a final administrative decision, since this date that he was detained, he has a passport application that was filed more than year ago still pending with DOS, 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.

18. PAREDES therefore seeks judicial review of the denial of his U.S. passport. 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 his detention by DHS without providing him an opportunity to show them he is a U.S. citizen by birth, deprived him of Due Process, and urges the Court to set aside the action of DOS in denying him and then not adjudicating his passport application. He therefore also requests a mandatory injunction, requiring Defendants to return his documents while the instant case is proceeding, and to refrain from ever again 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 May ___, 1989.

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.
- 4) PAREDES further urges the Court to issue a Declaratory Judgment,
declaring that he is a U.S. citizen.

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 day was sent to him by email on March 8, 2025.

s/ Jaime M. Diez