UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Alexander HERRERA ACOSTA,
Petitioner,

vs.

U.S. DEPARTMENT OF HOMELAND SECURITY; Kristi NOEM, Secretary, U.S. Department of Homeland Security; Pamela BONDI, U.S. Attorney General, in her official capacity; Garret RIPA, Miami Field Office Director of Immigration and Customs Enforcement, Enforcement and Removal Operations; Charles PARRA, Assistant Field Office Director, Krome Service Processing Center,
Respondents.

Case No.

Complaint

Petitioner, by and through undersigned counsel, seeks judicial review of his continued detention under 28 U.S.C. § 2241; and pursuant to federal question jurisdiction, 28 U.S.C. § 1331, files this Complaint under the Administrative Procedures Act (APA) pursuant to 5 U.S.C. § 706(1).

Introduction

1. Petitioner is currently detained at an unknown location, but the Department of Homeland Security [DHS] states jurisdiction over Petitioner's

body resides with the "Krome, Miami, FL, Docket Control Office." Pet'r's App. at 1.

2. Petitioner, a native of Cuba, with an unexecuted order of removal from January 8, 2002. Despite this order of removal, because Petitioner is an arriving alien, United States Citizenship and Immigration Services' [USCIS], and arm of the DHS, has exclusive jurisdiction to adjudicate any application for adjustment of status to lawful permanent resident. *See* 8 CFR § 245.2(a); 8 CFR § 1245.2(a).

3. On November 14, 2025, Petitioner mailed his application for adjustment of status to USCIS. This application was filed under the Cuban Adjustment Act of 1966 [CAA], Pub. L. No. 89–732, 80 Stat. 1161, with USCIS

4. Petitioner brings this complaint to challenge the policy or practice of the DHS of seeking to deport him before the adjudication of his application for adjustment of status, thereby circumventing the laws and regulations permitting individuals the opportunity to apply for adjustment of status.

5. Plaintiff also brings this complaint to challenge the policy or practice of the DHS in seeking deport Plaintiff to a third country without notice or opportunity to contest removal on the basis of fear of persecution, torture, and even death if deported to that third country.

6. Plaintiff fears removal to a third country without warning. Plaintiff further fears DHS is seeks to withhold him a fair adjudication of his application for adjustment of status.

7. DHS' policy and practice unlawfully restricts Petitioner's opportunity to seek adjustment of status under the law and regulations; and DHS failure to provide a meaningful notice and opportunity to present a fear-based claim before removal to a third country, has caused, and is causing, Petitioner irreparable harm.

8. Petitioner asks this Court to declare these policies unlawful and to set them aside, to enjoin DHS from continuing to fail to provide meaningful advance notice in writing and the meaningful opportunity to present a fear-based claim to an immigration judge prior to any removal to a third country, and to enjoin DHS from failing to provide Petitioner a fair and meaningful opportunity to have his application for adjustment of status adjudicated.

9. Petitioner also requests this Court issue a writ of habeas corpus and order Petitioner's release from custody, with appropriate conditions of supervision if necessary so he may complete his application for adjustment of status. In the alternative, Petitioner requests that this Court conduct or order an immigration judge to conduct a bond hearing at which (1) the government bears the burden of proving flight risk and dangerousness by clear and convincing evidence and (2) the reviewing court considers alternatives to

detention that could mitigate risk of flight. Continued detention under these circumstances serves no legitimate governmental purpose and violates the humanitarian and constitutional principles that govern civil immigration custody.

Jurisdiction

Habeas

10. This Court has jurisdiction under 28 U.S.C. § 2241 because Petitioner is in federal custody and seeks a writ of habeas corpus challenging the legality of his continued civil detention by DHS in violation of the Constitution and laws of the United States.

11. This Court may grant relief pursuant to 28 U.S.C. § 2241, the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq., and the All Writs Act, 28 U.S.C. § 1651.

APA and Declaratory Judgment

12. This action is brought against the DHS for refusing to comply with its duties under the Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, 66 Stat. 163 (8 U.S.C. § 1101 *et seq.*), Cuban Adjustment Act of 1966, Pub. L. No. 89–732, 80 Stat. 1161, the Foreign Affairs Reform and Restructuring Act of 1998 [FARRA], Pub. L. No. 105-277, div. G, Title XXII, § 2242(a), 112 Stat. 2681, 2681–822 (1998) (8 U.S.C. § 1231), and Title 8 of the Code of Federal Regulations.

13. The court has jurisdiction pursuant to federal question jurisdiction, 28 U.S.C. § 1331, in combination with the APA, 5 U.S.C. § 702 ("a person suffering a legal wrong because of agency action or adversely affected or aggrieved by an agency action within the meaning of a relevant statute, is entitled to judicial review thereof.").

14. 5 U.S.C. § 706 allows this Court to "compel agency action unlawfully withheld or unreasonably delayed."

15. Moreover, pursuant to 28 U.S.C. § 2201, this Court may, in the case of actual controversy, "declare the rights and other legal relations of any interested party." 28 U.S.C. § 2201 [Declaratory Judgment Act].

Venue

16. Venue is proper in this Court under 28 U.S.C. § 2241(a) because Petitioner is detained within the geographic boundaries of the Southern District of Florida, i.e., power over Petitioner lies with the DHS officers at the Krome Processing Center in Miami, Florida.

17. Venue properly lies within this Court pursuant to 28 U.S.C. § 1391(e)(1) in that this is an action against U.S. officers in their official capacity brought in the District where "a substantial part of the events or omissions giving rise to [Plaintiff's] claims occurred," or "[where] the Plaintiff reside[], [as] no real property is involved in this action." 28 U.S.C. §§ 1391(e)(1)(B)–(C).

Exhaustion of Remedies

18. Petitioner has no other adequate remedy available for the harm suffered. *See Darby V. Cisneros*, 509 U.S. 137 (1993) (held that Federal Courts do not have authority to require plaintiff to exhaust available administrative remedies before seeking judicial review under the APA, where neither relevant statute nor agency rules specifically mandate exhaustion as prerequisite to judicial review.").

19. Here, because the DHS is acting outside the scope of the law by seeking to strip Petitioner of his opportunity to file for lawful permanent resident status, Petitioner has exhausted all remedies and may file a habeas petition immediately before this Honorable Court.

20. The Court must grant the petition for writ of habeas corpus or issue an order to show cause to the Respondents "forthwith," unless the Petitioner is not entitled to relief. 28 U.S.C. § 2243. If an order to show cause is issued, the Cour must require Respondents to file a return "within three days unless for good cause additional time, not exceeding twenty days, is allowed." *Id.*

21. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. The Great Writ has been referred to as "perhaps the most important writ known to the constitutional law of England, affording as it does a swift and imperative

remedy in all cases of illegal restraint or confinement." *Fay v. Noia*, 372 U.S. 391, 400 (1963).

Parties

22. Petitioner is a native of Cuba. Petitioner has been in DHS custody since October of 2025. Petitioner is under the auspices of DHS located at the Krome Detention Center.

23. U.S. Department of Homeland Security [DHS] is the federal agency responsible for implementing and enforcing our nation's immigration laws. DHS oversees its component agencies, e.g., ICE and USCIS.

24. Defendant Kristi Noem is the Secretary of DHS. In that capacity, she is charged with the administration and enforcement of the nation's immigration laws. She is used in her official capacity.

25. Defendant Pamela Bondi is the United States Attorney General. In this capacity, she directs agencies within the United States Department of Justice, including the Executive Office for Immigration Review [EOIR], which houses the immigration courts and the Board of Immigration Appeals. Defendant Bondi is responsible for the administration of immigration laws pursuant to 8 U.S.C. § 1103(g) and oversees EOIR. She is sued in her capacity.

26. Garret Ripa, is named in his official capacity as Miami Field Office Director of the ICE Enforcement & Removal Operations ("ERO"). In this capacity, he is responsible for the administration of immigration laws and the execution of immigration confinement and the institution of removal proceedings within the Miami Dade Area, which includes Krome Processing Center, the jurisdiction where Petitioner is confined. As such, he is a custodian of Petitioner.

27. Charles Parra, is named in his official capacity as the Assistant Field Office Director of the Krome Processing Center. In this capacity, he is responsible for the immediate execution of detention over Petitioner and is the immediate custodian of Petitioner.

Relevant Factual Background

28. Petitioner is a Cuban national. Pet'r's App. at 71.

29. Petitioner was paroled into the United States on December 27, 1995. *Id.*

30. Petitioner never adjusted status to that of a lawful permanent resident.

31. Sometime in 2002, Petitioner was placed in removal proceedings due to crimes committed in February of 2000. *See* Pet'r's App. at 68.

32. On January 8, 2002, Petitioner was issued an order of removal by the immigration court at the Krome Detention Center. Pet'r's App. at 2.

33. Petitioner, an arriving alien, was unable to apply for adjustment of status before the immigration court due to the immigration court's lack of jurisdiction to adjudicate an application for adjustment of status.

34. Petitioner's status remains as an arriving alien.

35. Sometime in October of 2025, Immigration and Customs Enforcement [ICE], an arm of DHS, detained Petitioner.

36. As of the date of this complaint the ERO office at Krome Miami claims jurisdiction of Petitioner's Detention. Pet'r's App. at 1.

37. On November 14, 2025, Petitioner filed an application to adjust status to that of lawful permanent resident with USCIS, as permitted by the CAA and federal regulations. Pet't's App. at 4.

38. Prior to his ICE detention, Petitioner resided with his U.S. citizen wife.

39. Petitioner is the father of 5 U.S. citizen children.

Legal Background

40. Generally, if a person has a right to apply for a benefit, then the agency has a clear duty to act on the application. *See e. g.*, *Yu v. Brown*, 36 F. Supp. 2d 922, 930 (D.N.M. 1999) (the court resolves the question of whether the agency owes a duty to the plaintiff by applying the "zone of interest test" for standing under the APA); *see Lujan v. Defenders of Wildlife*, 504 U. S. 555, 561–62 (1992) ("When the suit is on challenging

> government action or inaction, ... [and] the plaintiff is himself an object of the action (or forgone action) at issue, ... there is ordinarily little question that the action or inaction caused him injury, and that a judgment preventing or requiring the action will redress it.").

41. The duty to act is reflected in the regulations, which generally require that the agency "shall" issue a decision. *See, e.g.*, 8 C.F.R. § 103.3(a)(1)("the officer shall explain in writing the specific reasons for denial."); 8 C.F.R. § 245.2(a)(5)(i) ("The applicant shall be notified of the decision ...."); *Kashkool v. Chertoff*, 553 F. Supp. 2d 1131, 1141 (D. Ariz. 2008) ("Language in the applicable regulations indicates that USCIS has a nondiscretionary duty to process and make a decision on the adjustment of status application.").

42. An agency must "conclude a matter presented to it . . . within a *reasonable* time." 5 U.S.C. § 555(b) (emphasis added).

43. Under the APA, the Court is authorized to compel agency action that has been unreasonably delayed or withheld. 5 U.S.C. § 706(1).

44. Assessing reasonableness frequently involves a balancing test, in which a statutory requirement is a very substantial factor. *See Telecommunications Research & Action Center v. FCC*, 750 F.2d 70, 77–78 (D.C. Cir. 1984).

45. In determining the reasonableness, the court applies the *TRAC* factors:

> (1)the time agencies take to make decision 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 agency action on agency activities of a higher or competing priority; (5) the court should also take in to 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.

46. *Nguyen Xi Van v. Chertoff*, No. 05-80308, 2006 WL 8433671 (S.D. FL March 15, 2006) (citing to *Telecomm. Research & Action Ctr. [TRAC] v. FCC*, 750 F.2d at 79–80.

47. In the case of an individual placed in removal proceedings—other than an arriving alien—the immigration judge has exclusive jurisdiction to adjudicate any application for adjustment of status. See 8 CFR § 1245.2(a).

48. In turn, "USCIS has jurisdiction to adjudicate an application for adjustment of status filed by any alien, unless the immigration judge has jurisdiction to adjudicate the application under 8 CFR § 1245.2(a)(1)." 8 CFR § 245.2(a).

49. These regulations, i.e., 8 CFR §§ 1245.2 and 245.2, were adopted in response to decision of several courts of appeals which held that, consistent with the statutory scheme, an arriving alien noncitizen in removal proceedings must be afforded some forum in which to apply for adjustment of status. *See Scheerer v. Attorney General,* 445 F. 3d 1311, 1318-22 (11th Cir. 2006); *Bona v. Gonzales,* 425 F.3d 663, 667-70 (9th Cir. 2005); *Zheng v. Gonzales,* 422 F.3d 98, 111-20 (3d Cir. 2005); *Succar v. Ashcroft*, 394 F.3d 8, 20-36 (1st Cir. 2005); *but see Momin v. Gonzales,* 447 F.3d 447, 452-61 (5th Cir. 2006), *vacated and remanded,* 462 F.3d 497 (5th Cir. 2006); *Mouelle v. Gonzales,* 416 F.3d 923, 926-30 (8th Cir. 2006), *vacated and remanded,* 548 U.S. 901 (2006).

50. The current regulations have been upheld by several courts. *See, e.g., Gazeli v. Sessions*, 856 F.3d 1101, 1108-09 (6th Cir. 2017); *Scheerer v. U.S. Att'y Gen.*, 513 F.3d 1244, 1249-52 (11th Cir. 2008); *Cardella v. Sessions*, 700 F. App'x. 712, 712-13 (9th Cir. 2017); *Osazee v. Holder*, 324 F. App'x. 338, 340 (5th Cir. 2009).

51. The immigration court's order of removal does not disqualify Petitioner from adjusting status because "[t]he removal order, itself, does not make the [noncitizen] inadmissible until it is executed." *See* USCIS Memorandum, "Eligibility of Arriving Aliens in Removal Proceedings to Apply for Adjustment of Status and Jurisdiction to Adjudicate

applications for Adjustment of Status" (Jan. 12, 2007), https://www.aila.org/infonet/uscis-adjustment-by-arriving-aliens-in removal ("The removal order, itself, does not make the alien inadmissible until it is executed."); *Matter of C-H-,* 9 I&N Dec. at 265; *see also Matter of Yauri*, 25 I&N Dec. 103, 106-107 (BIA 2009) (relying on statements by counsel for DHS and concluding that USCIS retains jurisdiction over the adjustment application of an arriving noncitizen even when there is a final order of removal).

52. Moreover, in removal proceedings, the immigration judge will designate the country where the person "is a subject, national or citizen," if either the noncitizen does not select a country or as an alternative in the even the noncitizen's designated country does not accept the individual. 8 U.S.C. § 1231(b)(2)(D).

53. An immigration judge must provide sufficient notice and opportunity to apply for protection from a designated country of removal. 8 CFR § 1240.10(f) ("[The] immigration judge shall notify the respondent").

54. Individuals in removal proceedings are entitled to receive protection under the Convention Against Torture [CAT], in the form of withholding or deferral of removal, upon demonstrating a likelihood of torture if removed to the designated country of removal. *See* FARRA [8

U.S.C. § 1231]; 8 C.F.R. §§ 208.16(c), 208.17(a), 1208.16(c), 1208.17(a); 28 CFR § 2001.1. CAT protection is mandatory. *Id.*

55. Pursuant to 8 § 1231(b)(3)(A), courts repeatedly have held that individuals cannot be removed to a country that was not properly designated by an IJ if they have a fear of persecution or torture in that country. *See Andriasian v. INS*, 180 F.3d 1033, 1041 (9th Cir. 1999); *Kossov v. INS*, 132 F.3d 405, 408–09 (7th Cir. 1998); *El Himri v. Ashcroft*, 378 F.3d 932, 938 (9th Cir. 2004); *cf. Protsenko v. U.S. Att'y Gen.*, 149 F. App'x 947, 953 (11th Cir. 2005) (permitting designation of third country where individuals received "ample notice and an opportunity to be heard").

56. Providing such notice and opportunity to present a fear-based claim prior to removal also implements the United States' obligations under international law. *See* United Nations Convention Relating to the Status of Refugees, July 28, 1951, 189 U.N.T.S. 150; United Nations Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267; Refugee Act of 1980, Pub. L. 96-212, § 203(e), 94 Stat. 102, 107 (codified as amended at 8 U.S.C. § 1231(b)(3)); *INS v. Stevic*, 467 U.S. 407, 421 (1984) (noting that the Refugee Act of 1980 "amended the language of [the predecessor statute to § 1231(b)(3)], basically conforming it to the language of Article 33 of the United

Nations Protocol"); *see also* United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, art. III, S. Treaty Doc. No. 100-20 (1988), 1465 U.N.T.S. 85, 114; FARRA at 2681–822 (codified at Note to 8 U.S.C. § 1231) ("It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States."); United Nations Committee Against Torture, General Comment No. 4 ¶ 12, 2017, Implementation of Article 3 of the Convention in the Context of Article 22, CAT/C/GC/4 ("Furthermore, the person at risk [of torture] should never be deported to another State where he/she may subsequently face deportation to a third State in which there are substantial grounds for believing that he/she would be in danger of being subjected to torture.").

57. Meaningful notice and opportunity to present a fear-based claim prior to removal to a country where a person fears persecution or torture are also fundamental due process protections under the Fifth Amendment. *See Andriasian*, 180 F.3d at 1041; *Protsenko*, 149 F. App'x at 953; *Kossov*, 132 F.3d at 408; *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Similarly, a "last minute" immigration judge

designation of a country during removal proceedings that affords no meaningful opportunity to apply for protection "violate[s] a basic tenet of constitutional due process." *Andriasian*, 180 F.3d at 1041.

58. Notice is only meaningful if it is presented sufficiently in advance of the removal to stop the removal, is in a language the person understands, and provides for an automatic stay of removal for a time period sufficient to permit the filing of a motion to reopen removal proceedings so that a third country for removal may be designated as required under the regulations and the noncitizen may present a fear-based claim. *Andriasian*, 180 F.3d at 1041; *Aden*, 409 F. Supp. 3d at 1009 ("A noncitizen must be given sufficient notice of a country of deportation [such] that, given his capacities and circumstances, he would have a reasonable opportunity to raise and pursue his claim for withholding of deportation.").

Causes of Action

I. Count 1: Violation of the CAA and Federal Regulations

59. Petitioner's recent detention is arbitrary and capricious. It deprives Petitioner of the opportunity to have his application for adjustment of status fairly adjudicated under the CAA.

60. Petitioner's detention works to circumvent his lawful opportunity to apply for adjustment of status as contemplated by the regulations for

arriving aliens. In other words, DHS is withholding Petitioner's ability to present his application under the CAA. Plaintiff has "suffered legal wrong" and have been "adversely affected" and "aggrieved" by the agency's action. 5 U.S.C. § 702.

61. Petitioner is entitled to declaratory and injunctive relief for the purpose of "compel[ling] agency action unlawfully withheld [and] unreasonably delayed" as it pertains to the adjudication of the application. 5 U.S.C. §§ 703, 706(1).

62. Respondents' policy or practice is arbitrary and capricious as it serves to invalid individuals' eligibility for adjustment of status.

II. Count 2: Third Country Removal, Agency Action is Arbitrary and Capricious and not in Accordance with the Law

63. Respondents have failed to provide Petitioner with meaningful notice and opportunity to present a fear-based claim prior to removal to a third country.

64. Respondents' policy or practice is arbitrary and capricious. It deprives Petitioner a meaningful notice of DHS' intent to deport him to a third country and deprives him of an opportunity to present a fear-based claim to an immigration judge prior to removal to a third country. It endangers Petitioner's life and safety by subjecting him to the very persecution and torture he fears in the third country.

III. Count 3: Violation of Due Process

65. The government may not deprive a person of life, liberty, or property without due process of law. U.S. Const. amend. V. "Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that the Clause protects." *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001).

66. Petitioner has a due process right to meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS removes him to a third country. *See, e.g.*, *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1004 (W.D. Wash. 2019). Plaintiff also has a due process right to implementation of a process or procedure to afford these protections. *See, e.g.*, *McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479, 491 (1991).

67. The APA also compels a reviewing court to "hold unlawful and set aside agency action, findings, and conclusions found to be . . . without observance of procedure required by law." 5 U.S.C. § 706(2)(D).

68. Petitioner has a fundamental interest in liberty and being free from official restraint.

69. By failing to implement a process or procedure to afford Petitioner meaningful notice and opportunity to present a fear-based claim to an immigration judge before DHS removes him to a third country,

Respondents have violated Petitioner's substantive and procedural due process rights and are not implementing procedures required by the INA, FARRA, and the implementing regulations.

Request for Relief

Petitioner respectfully request this Honorable Court to:

a) Accept jurisdiction of the matter;

b) Order that Petitioner shall not be transferred outside the Southern District of Florida while this habeas petition is pending;

c) Issue an Order to Show Cause ordering Respondents to show cause why this Petition should not be granted within three days;

d) Issue a Writ of Habeas Corpus requiring that Respondents release Petitioner or, in the alternative, provide Petitioner with a bond hearing pursuant to 8 U.S.C. § 1226(a) within seven days;

e) Declare that Petitioner's detention is unlawful;

f) Declare that the DHS has unlawfully withheld a fair opportunity for Petitioner to complete his application for adjustment of status under the CAA;

g) Compel DHS to permit Petitioner to complete his adjustment of status application process in the United States, and before removal to a third country;

h) Declare that Respondents have a mandatory duty to provide Petitioner with meaningful notice and opportunity to present a fear-based claim to an immigration judge prior to removal to a third country;

i) Compel Respondents to provide Petitioner, and Petitioner's counsel of record, with written notice and a meaningful opportunity to present a fear-based claim under 8 U.S.C. § 1231(b)(3) and/or under the Convention Against Torture to an immigration judge prior to removal to a third country;

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

k) Grant any other and further relief that this Court deems just and proper; and

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

Dated: November 18, 2025

Respectfully submitted,

Mario R. Urizar
Florida Bar No. 0096542
Urizar Molina PA
9130 S. Dadeland Blvd., Ste 1623
Miami, Florida 33156

Ofc.: 305.849.4966
murizar@urizarlaw.com