

**UNITED STATES DISTRICT COURT  
for the  
DISTRICT OF MASSACHUSETTS**

**VICTOR MANUEL GONZALEZ-TRIANA**

**Petitioner,**

**v.**

**JOSEPH D. MCDONALD, JR., Plymouth  
County Sheriff;**

**ANTONE MONIZ, Superintendent of the  
Plymouth County Correctional Facility;**

**TODD LYONS, Immigration and Customs  
Enforcement, Enforcement and Removal  
Operations, Acting Field Office Director;**

**Defendants.**

**Case No.:** \_\_\_\_\_

**EMERGENCY PETITION FOR WRIT  
OF HABEAS CORPUS (IMMEDIATE  
HEARING REQUESTED)**

**INTRODUCTION**

This is a civil rights action on behalf of Petitioner Victor Manuel Gonzalez-Triana (“Petitioner” or “Mr. Gonzalez-Triana”) seeking immediate release from the custody of Immigration and Customs Enforcement (“ICE”). Despite the termination of Petitioner’s removal proceedings by an immigration judge on January 10, 2019 based on the approval of his adjustment of status application by U.S. Citizenship and Immigration Services (“USCIS”) under the Cuban Adjustment Act, ICE has not released Petitioner. His continued detention since January 10, 2019 is without any legal basis and unconscionable. Mr. Gonzalez-Triana is a lawful permanent resident who received his “green card” in the mail today, on January 14, 2019. The undersigned counsel learned of this unlawful detention today, thereby necessitating this request for immediate and

urgent relief from this Court.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction under 28 U.S.C. § 2241 (habeas corpus) and Article I, Section 9, Clause 2, of the United States Constitution.

2. The venue is proper in the District of Massachusetts because Petitioner is currently detained at the Plymouth County Correctional Facility in Plymouth, Massachusetts, under color of the authority of the United States, in violation of the Constitution, laws or treaties thereof. 28 U.S.C. §§ 1391, 2241.

### **PARTIES**

3. Petitioner Victor Manuel Gonzalez-Triana was detained by ICE on September 22, 2018, in Dover, New Hampshire. He remains in immigration custody at the Plymouth County Correctional Facility in Plymouth, Massachusetts.

4. Respondent Joseph D. McDonald, Jr. is Sheriff of Plymouth County and is Petitioner's immediate custodian.

5. Respondent Antone Moniz is the Superintendent of the Plymouth County Correctional Facility and is also Petitioner's immediate custodian.

6. Respondent Todd Lyons is the Acting Field Office Director of Immigration and Customs Enforcement (ICE), Enforcement and Removal Operation's Boston Field Office. He is Petitioner's immediate legal custodian.

### **FACTS**

7. Petitioner Victor Manuel Gonzalez-Triana was born in 1977, in Camaguey, Cuba. He is a citizen of Cuba. *Gonzalez-Triana Decl.* ¶ 1.

8. He left Cuba in 1994 by boat. He entered through Guantanamo Bay, then the U.S.

military base in Panama, and finally he was paroled into the United States in Miami, Florida on December 30, 1994. *Id.* at ¶ 2.

9. He has lived in the United States ever since December 30, 1994, and has never left. *Id.* at ¶ 4.

10. On or about September 22, 2018, ICE arrested and detained him in New Hampshire. ICE placed in removal proceedings.

11. While being detained, Petitioner filed his I-485, adjustment of status application under the Cuban Adjustment Act, with United States Citizenship and Immigration Services (USCIS) on October 17, 2018. Exhibit 3.

12. On January 2, 2019, USCIS approved his I-485 application, and thus he became a permanent resident. *Id.*

13. Subsequently, his immigration lawyer filed a motion to terminate his removal proceedings on January 9, 2019. Marzouk Decl. ¶ 4.

14. On January 10, 2019, Petitioner's immigration lawyer called the ICE Office of Chief Counsel to discuss Petitioner's case, but nobody answered the phone. *Id.* at ¶ 5.

15. On the same date, the clerk's office at the Boston Immigration Court informed his immigration lawyer that Victor's removal proceedings were terminated without prejudice because of the approval of his adjustment of status. *Id.* at ¶ 6.

16. On January 4, 2019, USCIS mailed Petitioner's green card to his immigration lawyer. Exhibit 4.

17. On January 14, 2019, Petitioner's immigration lawyer received Petitioner's permanent resident card in the mail. Marzouk Decl. ¶ 7.

18. On the same date, Petitioner's immigration lawyer left a voicemail for Petitioner's

ICE officer and faxed a written request to release him including a copy of the USCIS approval document. *Id.* at ¶ 8.

19. Despite the approval of his adjustment of status and termination of his removal proceedings, ICE has not released him.

20. Without the intervention of this Court, Petitioner will continue to be unlawfully detained.

## **CLAIMS FOR RELIEF**

### **COUNT I**

#### **IMMIGRATION AND NATIONALITY ACT AND APPLICABLE REGULATIONS**

21. All prior paragraphs are incorporated.

22. The Immigration and Nationality Act (“INA”) and its applicable regulations do not permit Petitioner’s detention when he is no longer removable because of the approval of his I-485, Application to Adjustment of Status, and the immigration court terminated his removal proceedings.

23. 8 U.S.C. § 1225(b) provides for the detention of arriving aliens, such as Petitioner, for removal proceedings under 8 U.S.C. § 1229a.

24. However, Petitioner is no longer in removal proceedings under 8 U.S.C. § 1229a because the immigration judge terminated his removal case on January 10, 2019.

25. Despite this termination, Petitioner is still being detained at Plymouth Correctional Facility.

26. Petitioner has suffered and continues to suffer injury.

**COUNT II**  
**DUE PROCESS CLAUSE OF THE FIFTH AMENDMENT**

27. All prior paragraphs are incorporated.
28. The Due Process Clause of the Fifth Amendment forbids the government from depriving any “person” of liberty “without due process of law.” U.S. Const. amend. V.
29. ICE violated Petitioner’s Due Process rights under the Fifth Amendment to the Constitution by depriving him of liberty without any justification or legal basis, even when his removal proceedings are terminated on January 10, 2019 because he is no longer removable as charged.
30. Petitioner has suffered and continues to suffer injury.

**RELIEF REQUESTED**

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Assume jurisdiction over this matter;
- B. Immediately release Petitioner from ICE custody;
- C. Declare that ICE’s further detention of Petitioner beyond January 10, 2019 is unlawful and unconstitutional;
- D. Award reasonable costs and attorney’s fees; and
- E. Grant such further relief as the Court deems just and proper.

Respectfully submitted,

VICTOR MANUEL GONZALEZ-TRIANA,

By and through his attorneys affiliated with the  
American Civil Liberties Union Foundation of New  
Hampshire,

*/s/ Gille R. Bissonnette*

Gilles R. Bissonnette (BBO # 669225)

Henry R. Klementowicz ( BBO # 685512)

SangYeob Kim (N.H. Bar No. 266657)\*

AMERICAN CIVIL LIBERTIES UNION FOUNDATION OF  
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Dated: January 14, 2019

\* *Applications for admission pro hac vice forthcoming.*

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**THIS NOTICE DOES NOT GRANT ANY IMMIGRATION STATUS OR BENEFIT.**

Receipt Number MSC1990088420		Case Type I485 - APPLICATION TO REGISTER PERMANENT RESIDENCE OR ADJUST STATUS
Received Date 10/17/2018	Priority Date	Applicant GONZALEZ TRIANA, VICTOR MANUEL
Notice Date 01/02/2019	Page 1 of 1	Beneficiary GONZALEZ TRIANA, VICTOR MANUEL

VICTOR MANUEL GONZALEZ TRIANA  
c/o STEPHANIE ELONA YOUNG MARZOUK  
MARZOUK LAW LLC  
PO BOX 608  
SOMERVILLE MA 02143

**Notice Type:** Approval Notice  
**Section:** Cuban Adjustment Act  
**COA:** CU6

We have mailed an official notice about this case (and any relevant documentation) according to the mailing preferences you chose on Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative. **This is a courtesy copy, not the official notice.**

**What the Official Notice Said**

The above application has been approved. Prior to receiving your permanent resident card you may be required to report for biometrics processing (photo/fingerprint/signature). Please do not take any action at this time. If you are required to report for this processing, you will receive another notice advising you of the date, time and location to appear.

If you have not received your permanent resident card or the above mentioned notice to appear for biometrics processing within 90 days, please call this office at the number listed below.

**NOTICE:** Although this application or petition has been approved, USCIS and the U.S. Department of Homeland Security reserve the right to verify this information before and/or after making a decision on your case so we can ensure that you have complied with applicable laws, rules, regulations, and other legal authorities. We may review public information and records, contact others by mail, the internet or phone, conduct site inspections of businesses and residences, or use other methods of verification. We will use the information obtained to determine whether you are eligible for the benefit you seek. If we find any derogatory information, we will follow the law in determining whether to provide you (and the legal representative listed on your Form G-28, if you submitted one) an opportunity to address that information before we make a formal decision on your case or start proceedings.

Please see the additional information on the back. You will be notified separately about any other cases you filed.

National Benefits Center  
U. S. CITIZENSHIP & IMMIGRATION SVC  
P.O. Box 648004  
Lee's Summit MO 64064

USCIS Contact Center: [www.uscis.gov/contactcenter](http://www.uscis.gov/contactcenter)

