

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

_____ ALEX MARTINEZ — PETITIONER
(Your Name)

VS.

UNITED STATES OF AMERICA, ET AL. — RESPONDENT(S)

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

United States District Court, District of Columbia

United States Court of Appeals, District of Columbia Circuit

Petitioner has not previously been granted leave to proceed *in forma pauperis* in any other court.

Petitioner's affidavit or declaration in support of this motion is attached hereto.

Petitioner's affidavit or declaration is not attached because the court below appointed counsel in the current proceeding, and:

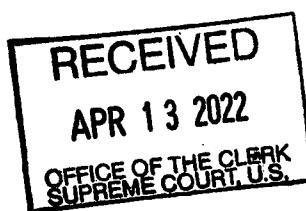
The appointment was made under the following provision of law: _____

, or

a copy of the order of appointment is appended.



(Signature)



**AFFIDAVIT OR DECLARATION
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Alex Martinez, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

Income source	Average monthly amount during the past 12 months		Amount expected next month	
	You	Spouse	You	Spouse
Employment	\$ <u>0.00</u>	\$ _____	\$ _____	\$ _____
Self-employment	\$ <u>0.00</u>	\$ _____	\$ _____	\$ _____
Income from real property (such as rental income)	\$ <u>0.00</u>	\$ _____	\$ _____	\$ _____
Interest and dividends	\$ <u>0.00</u>	\$ _____	\$ _____	\$ _____
Gifts	\$ <u>18, 149.00</u>	\$ _____	\$ <u>N/A</u>	\$ _____
Alimony	\$ <u>0.00</u>	\$ _____	\$ _____	\$ _____
Child Support	\$ <u>0.00</u>	\$ _____	\$ _____	\$ _____
Retirement (such as social security, pensions, annuities, insurance)	\$ <u>0.00</u>	\$ _____	\$ _____	\$ _____
Disability (such as social security, insurance payments)	\$ _____	\$ _____	\$ _____	\$ _____
Unemployment payments	\$ _____	\$ _____	\$ _____	\$ _____
Public-assistance (such as welfare)	\$ <u>343.00</u>	\$ _____	\$ <u>343.00</u>	\$ _____
Other (specify): _____	\$ _____	\$ _____	\$ _____	\$ _____
Total monthly income:	\$ <u>343.00</u>	\$ _____	\$ <u>343.00</u>	\$ _____

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
<u>Self-employed</u>	30054 Brookfield PO, 181 Bay St.	<u>06/01/2008</u>	<u>\$0.00</u>
_____	_____	_____	<u>\$</u> _____
_____	_____	_____	<u>\$</u> _____

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

Employer	Address	Dates of Employment	Gross monthly pay
_____	_____	_____	<u>\$</u> _____
_____	_____	_____	<u>\$</u> _____
_____	_____	_____	<u>\$</u> _____

4. How much cash do you and your spouse have? \$0.85

Below, state any money you or your spouse have in bank accounts or in any other financial institution.

Type of account (e.g., checking or savings)	Amount you have	Amount your spouse has
<u>Chequing</u>	<u>\$0.85</u>	<u>\$</u> _____
_____	<u>\$</u> _____	<u>\$</u> _____
_____	<u>\$</u> _____	<u>\$</u> _____

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

Home
Value _____

Other real estate
Value _____

Motor Vehicle #1
Year, make & model _____
Value _____

Motor Vehicle #2
Year, make & model _____
Value _____

Other assets
Description _____
Value _____

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

Person owing you or your spouse money	Amount owed to you	Amount owed to your spouse
<u>Mauricio Martinez</u>	\$5000.00	\$_____
_____	\$_____	\$_____
_____	\$_____	\$_____

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

Name	Relationship	Age
_____	_____	_____
_____	_____	_____
_____	_____	_____

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

	You	Your spouse
Rent or home-mortgage payment (include lot rented for mobile home)	\$1705	\$_____
Are real estate taxes included? Yes	No	
Is property insurance included? Yes	No	
Utilities (electricity, heating fuel, water, sewer, and telephone)	\$0.00	\$_____
Home maintenance (repairs and upkeep)	\$_____	\$_____
Food	\$620.00	\$_____
Clothing	\$200.00	\$_____
Laundry and dry-cleaning	\$120.00	\$_____
Medical and dental expenses	\$_____	\$_____

	You	Your spouse
Transportation (not including motor vehicle payments)	\$ 201.50	\$ _____
Recreation, entertainment, newspapers, magazines, etc.	\$ 310.00	\$ _____
Insurance (not deducted from wages or included in mortgage payments)		
Homeowner's or renter's	\$ _____	\$ _____
Life	\$ _____	\$ _____
Health	\$ _____	\$ _____
Motor Vehicle	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Taxes (not deducted from wages or included in mortgage payments)		
(specify): _____	\$ _____	\$ _____
Installment payments		
Motor Vehicle	\$ _____	\$ _____
Credit card(s)	\$ _____	\$ _____
Department store(s)	\$ _____	\$ _____
Other: _____	\$ _____	\$ _____
Alimony, maintenance, and support paid to others	\$ _____	\$ _____
Regular expenses for operation of business, profession, or farm (attach detailed statement)	\$ _____	\$ _____
Other (specify): _____	\$ _____	\$ _____
Total monthly expenses:	\$ 3156.50	\$ _____

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

Yes No If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form? Yes No

If yes, how much? _____

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

Yes No

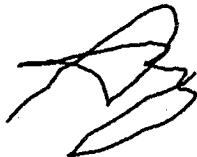
If yes, how much? _____

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: January 28th, 2022



(Signature)

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALEX MARTINEZ — PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA, ET AL. — RESPONDENT(S)

DECLARATION

I Alex Martinez, a living breathing sentient natural sovereign mortal, do hereby declare and verify, under penalty of perjury in accordance with 28 U.S.C.A. § 1746 and 18 U.S.C.A. § 1621 that the above statements contained herein the Motion for Leave to Proceed in Forma Pauperis are true and correct to the best of my knowledge and belief as executed by my hand

on this 28th day of January

Declaration



Alex Martinez,
Self-represented Pro-Se Litigant
Sui Juris In Propria Persona

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

ALEX MARTINEZ — PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals, District of Columbia Circuit

(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Alex Martinez

(Your Name)

P.O. Box 30054, Brookfield P.O., 181 Bay Street
(Address)

Toronto, Ontario, Canada M5J 0A5
(City, State, Zip Code)

case_am_072015@aol.com
(E-mail, Phone Number)

QUESTION(S) PRESENTED

1. The Petitioner Alex Martinez files in the Supreme Court of the United States of America on the basis that Subject Matter Jurisdiction has been established and accepted as Concurrent Jurisdiction as of November 11th, 2021 in *Alex Martinez v. United States Customs and Border Protection*, No. 20-cv-02726 (APM):

2. Therefore an “error in law” occurred as this case meets the test of public importance as United States Citizens and Citizens of the Defendants have committed very sick and heinous crimes that constitute terrorism in the United States of America and internationally. Therefore; all the Defendants participated in an Internal Investigation and Counter Terrorism investigation to stop the ongoing crisis and crimes caused by a group of Police and Military Officers, Public Officials, Doctors and other professionals that have been found to be misusing and abusing their power and authority.

3. Thus a Conflict and Fraud has been found out of the Errors of Rule and Law that has been uncovered that requires the intervention of the Supreme Court of the United States of America to resolve the disagreements that have occurred.

LIST OF PARTIES

[] All parties appear in the caption of the case on the cover page.

[X] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

Solicitor General of the United States,
Room 5616, Department of Justice,
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E-mail : consular@washington.mfa.gov.il
Website : <http://www.israelemb.org/>

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Washington, D.C. 20036, EE.UU
United States of America

Telephone : +1 (202) 530-4104
Facsimile : +1 (202) 887-5579
E-mail : washington@consulado.gob.cl

RELATED CASES

The following proceedings are directly related to this case within the meaning of Rule 14.1(b)(iii):

- *Alex Martinez v. United States of America, et al.*, No. 21-5044 (UNA) United States Court of Appeals for the District of Columbia Circuit. Judgment entered November. 3rd, 2021.
- *Alex Martinez v. United States of America, et al.*, No. 21-5044 (UNA) United States District Court for the District of Columbia. No Judgment; matter forwarded to the United States Court of Appeals for the District of Columbia Circuit for Decision.

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APPENDIX B	<i>Alex Martinez v. United States of America, et al.</i> , No. 21-5044 (UNA) United States Court of Appeals for the District of Columbia Circuit. Judgment entered November. 3 rd , 2021.
APPENDIX C	Evidence; City of Winnipeg Police Occurrence Summary and Report
APPENDIX D	Letter; Communications Security Establishment Documents Proving <i>Inter Alia and Injury in Fact</i> , File Number: P-2016-00022, February 08 th , 2017 and March 10 th , 2017
APPENDIX E	United States Marshal Service – Did Not Serve; Attorney General of the United States and Process Receipt and Return
APPENDIX F	Letter; Ministry of Justice, Government of British Columbia, Documents Proving <i>Inter Alia and Injury in Fact</i>

- APPENDIX G Letter; Alberta Justice and Solicitor General, Government of Alberta, Documents Proving *Inter Alia and Injury in Fact*, File Number: JAG-2017-70504, March 8th, 2017
- APPENDIX H Letter; Winnipeg Police Service, Documents Proving *Inter Alia and Injury in Fact*, File Number: 18 03 298, December 04th, 2018
- APPENDIX I Letter; National Security and Intelligence Review Agency, Documents Proving *Inter Alia and Injury in Fact*, File Number: P-2019-00013, December 3rd, 2019
- APPENDIX J Letter; The Sûreté du Québec, Documents Proving *Inter Alia and Injury in Fact*, File Number: 2008 086, September 18th, 2020
- APPENDIX K *Federal Republic of Germany v. Phillip*, No. 19-351 Supreme Court of the United States of America. Granted and Noted List. Certificate Granted July 02nd, 2020.
- APPENDIX L *Defenders of Wildlife v. Lujan*, 911 F.2d 117 (8th Cir. 1990)
Decided Aug 10, 1990
- APPENDIX M *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)

TABLE OF AUTHORITIES CITED

CASES	PAGE NUMBER
<i>Defenders of Wildlife v. Lujan</i> , 911 F.2d 117 (8th Cir. 1990) Decided Aug 10, 1990.....	77
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STATUTES AND RULES

Rules of the Supreme Court of the United States of America

OTHER

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[X] For cases from federal courts:

The opinion of the United States court of appeals appears at Appendix B to the petition and is

[] reported at _____; or,
[X] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the United States district court appears at Appendix ____ To the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

[] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix ____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

The opinion of the _____ Court appears at Appendix ____ to the petition and is

[] reported at _____; or,
[] has been designated for publication but is not yet reported; or,
[] is unpublished.

JURISDICTION

For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was November 3rd, 2021.

No petition for rehearing was timely filed in my case.

A timely petition for rehearing was denied by the United States Court of Appeals on the following date: November 3rd, 2021, and a copy of the order denying rehearing appears at Appendix B.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

For cases from **state courts**:

The date on which the highest state court decided my case was _____. A copy of that decision appears at Appendix _____.

A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix _____.

An extension of time to file the petition for a writ of certiorari was granted to and including _____ (date) on _____ (date) in Application No. A .

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Constitutional and Subject Matter Jurisdiction has been established as Concurrent Jurisdiction and accepted as of November 11th, 2021 in *Alex Martinez v. United States Customs and Border Protection, No. 20-cv-02726 (APM)*. Therefore, the decision of the Court case in question, *Alex Martinez v. United States of America, et al., No. 1:21-cv-00172-UNA*, No. 21-5044 of November 3rd, 2021, should have had the same results. Thus; the decision is deemed to be an "Error in Law" and a conflict; or, controversy that must be intervened with and heard by the Supreme Court of the United States of America.

An additional reason that the case meets Subject Matter Jurisdiction is that *Inter Alia and Injury in Fact* has been established and evidenced in the Release documents found and attached in Appendix' D, F, G, H, I & J. The severed portions of these documents prove that a false and negligent investigation occurred that involved Organizations and Agencies from the United States of America and others, that caused Terrorism in the United States of America and Internationally. It also has evidence that Mr. Martinez and his brother and children are victims of Pedophilia, Medical Abuse, Child Pornography, Acceleration of Death and other heinous crimes; as images were obtained illegally and from public institutions and doctored and circulated internationally; with a profile that is designed to destroy their lives, careers and business.

For subject Matter Jurisdiction, this is a requirement and that is also why the case before the Court has been accepted as it is a requirement identified by

Justice Scalia in *Defenders of Wildlife v. Lujan* 911 F.2d 117 (8th Cir. 1990) Decided Aug 10, 1990¹ and *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)²; as the aggrieved party must establish *Inter Alia* and that they have suffered an *Injury in Fact*; which was done in this case.

Furthermore; the Supreme Court of the United States of America accepted the case of the Federal Republic of Germany v. Philipp and Granted a Certificate on July 02nd, 2020; which has the same Subject Matter Jurisdiction and Public Opinion issues as this case and therefore; the Court must accept it based on Jurisprudence and this basis.

¹ See Appendix "L," *Defenders of Wildlife v. Lujan* 911 F.2d 117 (8th Cir. 1990) Decided Aug 10, 1990

² See Appendix "M," *Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992)

STATEMENT OF THE CASE

The Plaintiff; Alex Martinez is a Canadian Citizen with no criminal record; or, vulnerable sector file and issues. Mr. Martinez is also not a risk, a threat and a citizen with a National Security file and issue of any sort. On the contrary, he is a victim to abuse for his work as a former government Consultant with clients such as the Royal Canadian Mounted Police Service, Ministry of Transportation and others. As a result of a Government of Canada error that destroyed the life of Mr. Martinez; he has uncovered and resolved crimes and scandal of colossal proportions to the United States of America as part of an 'International Security' case and investigation that has garnered Mr. Martinez international respect and acclaim.

This is the basis for the Petition as the Government of the United States of America and Canada error that was uncovered caused property damage and loss and death in the United States of America. This for a case that is a complete "Fraud" as it is based on a false allegation and clerical error that was conjured up and manufactured. This completely destroyed the life and career of the Petitioner, Alex Martinez who is an innocent bystander to the events that had unfolded as a result of the Negligence and Fraud that was caused by the Police and Military and the Government of the United States of America and Canada.

To date, this error has been corrected and apologized for; as it was uncovered in the Police Report in Appendix C by the City of Winnipeg Police Service in Canada; that the Appellant, Alex Martinez was 35 minutes; or, 11.18 miles away and at his father's residence and did not see; or, witness the incident; where the

offender; an American man from Wisconsin 'masturbated' in public and in front of Mr. Martinez' former girlfriend; Renee Dubois, when she was exiting her vehicle on August 25th, 2005 at 00:29 a.m., at 467 Woodward Ave., in Winnipeg, Manitoba, Canada.

What the attached Police report states is that the Petitioner, Alex Martinez was a 'Witness' to this crime, which is not true for he was at 352 Belmont Avenue at the time; which is evidenced in the report in Appendix C. Under these circumstances; if Mr. Martinez were to plead that he was a "Witness" when he is not, he would be subject to a maximum of 14 years in prison for this Fraud and lie and that is why Mr. Martinez cannot be a "Witness" in this case.

Therefore; a crime was committed when they listed the Petitioner, Mr. Martinez as a "witness" when he was not there and therefore; Mr. Martinez never should have lost his employment; or, business and been pursued, prosecuted, violated, harassed, abused and financially suppressed for the investigation and legal Action that took place; which became a Joint Operation between the Government of the United States of America and Canada.

As a result of this, Mr. Martinez, experienced severe loss and uncovered crimes in the United States of America that are of a colossal proportion and subsequently he set out to resolve them by working directly with the Internal Investigators from the United States of America and the Embassies named as the Defendants in this case.

It was then that it was determined that the monetary damages for negligent; or, wrongful acts and crimes that occurred was done "willfully and Intentionally" and that as a result of their negligence; false imprisonment, intentional infliction of emotional distress ("IIED"), trespass to chattels, conversion, invasion of privacy, malicious prosecution, abuse of process, fraud, inducing breach of contract, intentional interference with business relations, and defamation of character (libel/slander) and other Torts occurred.

Thus, seeing as this was done out of malicious action and that those that are accused and suspected in this case circulated lies internationally on foreign criminal intelligence networks and databases and made false allegations against Mr. Martinez that destroyed his career and newly formed company; Distribucore; legal action is warranted against all the nations that participated.

This had to occur as a result of the unlawful action; Mr. Martinez uncovered that he has been victimized by abuse from foreign nations and governments since he was a child and that was how, Medical Abuse, Pedophilia and Child Pornography and other crimes were uncovered. This is evidenced in the attached Freedom of Information Documents as part of the severed content that they retained. In addition to what has already been filed; foreign intelligence files and records were found that describe in detail the involvement of the United States Government and several other governments and how their Agents and Citizens were lied too, misled and abused by people committing mischief and manufacturing allegations; which caused my exploitation and exposure all over the world; for no reason whatsoever.

REASONS FOR GRANTING THE PETITION

An error in law has been found for a case that has been proven to be a government and Police and Military error and criminal negligence case that has been corrected.

CONCLUSION

In addition; in the Supreme Court of Canada case of Alex Martinez v. Her Majesty the Queen, et al., File Number: 38563, all of the parties listed as Respondents in Alex Martinez v. United States of America, et al. are included there, as the case is deemed to be “all encompassing.” Therefore; any person and organization responsible for the damage that occurred is subject to prosecution and a lawsuit when it is a Her Majesty the Queen case. They do not need to be listed individually. Furthermore; the Supreme Court of Canada stated that it is not all entirely their Jurisdiction and that some; or, most of it is from the United States of America. Therefore, the petition for a writ of certiorari should be granted.

Respectfully submitted,



Date: January 28th, 2022

APPENDIX A

IN THE
SUPREME COURT OF THE UNITED STATES

ALEX MARTINEZ — PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ORDER

Alex Martinez v. United States Customs and Border Protection, No. 20-2726 (APM)
United States District Court for the District of Columbia. Judgment entered
November. 11th, 2021.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

ALEX MARTINEZ,)	
)	
Plaintiff,)	
)	
v.)	Case No. 20-cv-02726 (APM)
)	
UNITED STATES CUSTOMS)	
AND BORDER PROTECTION,)	
)	
Defendant.)	
)	

ORDER

I.

Plaintiff Alex Martinez, proceeding pro se, challenges Defendant U.S. Customs and Border Protection’s (“CBP”) denial of two applications to participate in the NEXUS program—a program that affords expedited processing to qualified travelers at designated ports of entry in the United States and Canada. Construing his complaint liberally, Martinez advances a claim under the Administrative Procedure Act (“APA”), challenging the denial of his NEXUS applications as arbitrary and capricious, and he seeks damages both under the APA and for common law torts of “trespass” and “negligence.” *See* Pl.’s Compl., ECF No. 1, at 5; Pl.’s Reply Mem., ECF No. 17 [hereinafter Pl.’s Reply], at 12; *see also Richardson v. United States*, 193 F.3d 545, 548 (D.C. Cir. 1999) (“Courts must construe *pro se* filings liberally.”). CBP moves to dismiss the Complaint for lack of subject matter jurisdiction and failure to state a claim. *See* Def.’s Mot. to Dismiss, ECF No. 15 [hereinafter Def.’s Mot.]; Def.’s Mem. of P&A in Support of Def.’s Mot., ECF No. 15-1 [hereinafter Def.’s Mem.].

APPENDIX "A"

For the reasons stated below, Defendant's Motion is granted in part and denied in part.

This case will proceed only on Martinez's APA claim for injunctive relief.

II.

A.

CBP contends that the court lacks jurisdiction to hear Plaintiff's APA claim because the decision to grant or deny acceptance into the NEXUS program is committed to agency discretion by law and therefore is not judicially reviewable. *See id.* at 7–8. The court cannot agree.

Judicial review is available if “the agency itself has provided a meaningful standard for the agency to follow in exercising” its discretion. *Block v. SEC*, 50 F.3d 1078, 1082 (D.C. Cir. 1995) (citing *Heckler v. Chaney*, 470 U.S. 821, 833 (1985)). The agency may provide “judicially manageable standards . . . in formal and informal policy statements and regulations.” *Physicians for Soc. Resp. v. Wheeler*, 956 F.3d 634, 643 (D.C. Cir. 2020) (quoting *Steenholdt v. FAA*, 314 F.3d 633, 638 (D.C. Cir. 2003)). Here, CBP promulgated a regulation identifying seven factors that may disqualify an applicant’s eligibility for its Global Entry program. 8 C.F.R. § 235.12(b)(2) (2020) (“Disqualifying factors”). Those same factors apply to eligibility for the NEXUS program. *See Utilization of Global Entry Kiosks by NEXUS and SENTRI Participants*, 75 Fed. Reg. 82202-01 (Dec. 29, 2010); U.S. Customs and Border Prot., NEXUS Eligibility, <https://www.cbp.gov/travel/trusted-traveler-programs/nexus/nexus-eligibility> (May 3, 2017).

CBP’s eligibility factors are “self-imposed constraints” that supply a judicially manageable standard for review. *See Ctr. for Auto Safety v. Dole*, 846 F.2d 1532, 1534 (D.C. Cir. 1988).

CBP relies on *Roberts v. Napolitano*, *see* Def.’s Mem. at 7, in which the court held with respect to the Global Entry Program that the enabling “statute’s silence on [applicable criteria] indicates that Congress committed to the defendants the sole discretion to determine eligibility

guidelines and evaluate applicants” and therefore the plaintiff’s denial was not judicially reviewable. 792 F. Supp. 2d 67, 73–74 (D.D.C. 2011). But *Napolitano* was decided before the Global Entry regulations became final, *see id.* at 71, and since then courts have reviewed Global Entry denials because the “eligibility criteria and disqualifying criteria [] set forth in the regulation” provide a judicially manageable standard, *McLean v. Morgan*, No. 20-2145-JWB, 2020 WL 5094683, at *6 (D. Kan. Aug. 28, 2020). As in *McLean*, the court here “has law to apply . . . as [CBP’s] regulation clearly sets forth factors which the agency will consider in denying participation.” *Id.* Accordingly, CBP’s motion to dismiss Martinez’s APA claim for injunctive relief is denied.

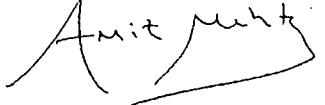
B.

The court dismisses Martinez’s other claims for relief. First, Martinez’s claims for money damages under the APA, *see* Pl.’s Compl. at 5 (seeking “punitive damages”); Pl.’s Reply at 12 (seeking “consequential damages”), are foreclosed by the plain text of the statute. *See* 5 U.S.C. § 702 (authorizing only those actions “seeking relief other than money damages”). Second, to the extent Martinez states a cognizable tort claim, Martinez “does not indicate that he exhausted his administrative remedies.” *Hickman v. Libr. of Cong.*, 74 F. Supp. 3d 329, 331 (D.D.C. 2014) (citing 28 U.S.C. § 2675). The Federal Tort Claims Act’s “requirement of filing an administrative complaint with the appropriate agency prior to instituting an action [is] jurisdictional.” *Simpkins v. D.C. Gov’t*, 108 F.3d 366, 371 (D.C. Cir. 1997). As a jurisdictional provision, Martinez has “the initial burden of pleading administrative exhaustion in [his] complaint.” *T.H. v. District of Columbia*, 255 F. Supp. 3d 55, 58–59 (D.D.C. 2017) (citing Fed. R. Civ. P. 8(a)(1)). Because Martinez failed to plead administrative exhaustion, CBP’s motion to dismiss Martinez’s tort claims is granted.

III.

For the foregoing reasons, Defendant's Motion to Dismiss is granted in part and denied in part.

Dated: November 11, 2021


Amit P. Mehta
United States District Judge

APPENDIX B

IN THE
SUPREME COURT OF THE UNITED STATES

ALEX MARTINEZ — PETITIONER

(Your Name)

vs.

UNITED STATES OF AMERICA, ET AL. — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

ORDER

Alex Martinez v. United States of America, et al., No. 21-5044 (UNA) United States Court of Appeals for the District of Columbia Circuit. Judgment entered November 3rd, 2021.

Alex Martinez
181 Bay Street
PO Box 30054 Brookfield
Toronto, M5J 0A5
CANADA

APPENDIX "B"

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5044

September Term, 2021

1:21-cv-00172-UNA

Filed On: November 3, 2021

Alex Martinez,

Appellant

v

United States of America, et al.,

Appellees

BEFORE: Millett and Wilkins, Circuit Judges, and Sentelle, Senior Circuit Judge

ORDER

Upon consideration of the motion for reconsideration of the court's August 27, 2021 order denying appellant's petition for rehearing, it is

ORDERED that the motion for reconsideration be denied. Appellant has not demonstrated that reconsideration is warranted.

The Clerk is directed to issue the mandate forthwith to the district court and to accept no further filings from appellant in this closed case.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5044

September Term, 2021

1:21-cv-00172-UNA

Filed On: November 3, 2021 [1920802]

Alex Martinez,

Appellant

v.

United States of America, et al.,

Appellees

MANDATE

In accordance with the judgment of June 11, 2021, and pursuant to Federal Rule of Appellate Procedure 41, this constitutes the formal mandate of this court.

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

Link to the judgment filed June 11, 2021

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5044

September Term, 2020

1:21-cv-00172-UNA

Filed On: August 27, 2021

Alex Martinez,

Appellant

v.

United States of America, et al.,

Appellees

BEFORE: Millett and Wilkins, Circuit Judges, and Sentelle, Senior Circuit Judge

ORDER

Upon consideration of the petition for rehearing, and the supplements thereto, it is

ORDERED that the petition be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 21-5044

September Term, 2020

1:21-cv-00172-UNA

Filed On: June 11, 2021

Alex Martinez,

Appellant

v.

United States of America, et al.,

Appellees

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

BEFORE: Millett and Wilkins, Circuit Judges, and Sentelle, Senior Circuit Judge

JUDGMENT

This appeal was considered on the record from the United States District Court for the District of Columbia and on the brief and supplement filed by appellant. See Fed. R. App. P. 34(a)(2); D.C. Cir. Rule 34(j). It is

ORDERED AND ADJUDGED that the district court's January 26, 2021 order dismissing appellant's complaint for lack of jurisdiction be affirmed. Appellant has raised no argument to rebut the district court's conclusion that it lacked jurisdiction over his claims. See United States ex rel. Totten v. Bombardier Corp., 380 F.3d 488, 497 (D.C. Cir. 2004) (arguments not raised on appeal are forfeited).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk

**Additional material
from this filing is
available in the
Clerk's Office.**