UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

ROBERTO CHAVEZ BARRIOS,)
Petitioner-Plaintiff,) Case No. 1:25-cv-22644-XXXX
v.	
GARRETT J. RIPA, in his official capacity as Director of Miami Field Office, U.S. Immigration	PETITION FOR WRIT OF HABEAS CORPUS AND
and Customs Enforcement; TODD LYONS,	COMPLAINT
in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement;)
KRISTI NOEM, in her official capacity as Secretary of the U.S. Department of Homeland)
Security; U.S. DEPARTMENT OF HOMELAND SECURITY; and U.S.)
IMMIGRATION AND	j
CUSTOMS ENFORCEMENT,)
Respondents-Defendants.) _) _)

INTRODUCTION

- Petitioner-Plaintiff Roberto Chavez Barrios is a 46-year-old survivor of torture who has
 lived in the United States for more than two decades. He suffers from severe PostTraumatic Stress Disorder ("PTSD") and has been granted deferral of removal from
 Mexico under the Convention Against Torture ("CAT") by an immigration judge on three
 separate occasions, most recently in March 2025.
- 2. While Mr. Chavez Barrios was previously in the custody of Respondent-Defendant U.S. Immigration and Customs Enforcement ("ICE"), in April 2023, he was released on an Order of Supervision ("OSUP") during the pendency of his immigration proceedings.
 Since then, Mr. Chavez Barrios has fully complied with the conditions of his OSUP. He has been gainfully employed and working hard to support himself. He has had no contact

- with law enforcement (other than with ICE, when complying with all required check-ins).

 He has been granted CAT protection for a third time, and he continues to fully participate in his immigration proceedings, which remain pending.
- Despite this, on June 11, 2025, during a routine check-in, ICE abruptly revoked Mr.
 Chavez Barrios's OSUP and re-detained him.
- 4. This was unlawful for multiple reasons. Not only did ICE fail to give Mr. Chavez Barrios any notice whatsoever of its intent to revoke his OSUP or re-detain him—much less any opportunity to respond or any consideration of his severe mental health issues—but even if it had, it simply could not justify the sudden reversal of its prior decision to release him. Indeed, Mr. Chavez Barrios' detention bears no reasonable relationship to any government purpose: he has fully complied with the conditions of his release, there is no new indication that he presents a risk of flight or a danger to the community, and there is no indication that his removal can be effectuated. On the contrary, given Mr. Chavez Barrios' two-year record of compliance and his recent grant of CAT deferral, the reasons supporting his release have only grown stronger.
- ICE's arbitrary and unfounded actions violate its own regulations, the Immigration and Nationality Act, the Administrative Procedure Act, the Rehabilitation Act, and the Fifth Amendment of the U.S. Constitution.
- 6. Mr. Chavez Barrios seeks injunctive, habeas, and declaratory relief and asks the Court to order his immediate release from ICE custody, enjoin his transfer from this district, and enjoin his removal from the country to pending the adjudication of this petition/complaint to avoid irreparable harm.

PARTIES

- Upon information and belief, Petitioner-Plaintiff Roberto Chavez Barrios is currently in the custody, and under the direct control, of Respondents-Defendants and their agents, within this judicial district.
- 8. Respondent-Defendant Garrett J. Ripa is sued in his official capacity as the Field Office Director for the ICE Miami Field Office. In this capacity, he has jurisdiction over the detention facility in which Mr. Chavez Barrios is being held. As such, he is a legal custodian of Mr. Chavez Barrios and is authorized to release him. *See Masingene v. Martin*, 424 F.Supp.3d 1298 (S.D. Fla. 2020).
- 9. Respondent-Defendant Caleb Vitello is sued in his official capacity as the Acting Director of ICE. In this capacity, he is responsible for the enforcement of U.S. immigration laws, including detention decisions, and oversees Respondent-Defendant Ripa. As such, he is a legal custodian of Mr. Chavez Barrios and has authority to release him.
- 10. Respondent-Defendant Kristi Noem is sued in her official capacity as the Secretary of the U.S. Department of Homeland Security ("DHS"). In this capacity, she is responsible for the enforcement of U.S. immigration laws and oversees ICE, the component agency responsible for Mr. Chavez Barrios's detention, including Respondent-Defendants Vitello and Ripa. As such, Respondent-Defendant Noem is a legal custodian of Mr. Chavez Barrios and is authorized to release him.
- 11. Respondent-Defendant DHS is a federal agency charged with the enforcement of U.S. immigration laws. It is the parent agency of ICE, which is responsible for the revocation of Mr. Chavez Barrios' OSUP and his subsequent re-detention.

12. Respondent-Defendant ICE is the component agency of DHS responsible for the revocation of Mr. Chavez Barrios' OSUP and his subsequent re-detention.

JURISDICTION

- 13. This action arises under the U.S. Constitution; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq.; the Administrative Procedure Act ("APA"), 5 U.S.C. § 551 et seq.; and the Rehabilitation Act, 29 U.S.C. § 794.
- 14. This Court has subject matter jurisdiction under 28 U.S.C. § 1331 (federal question). The Court may grant relief pursuant to the U.S. Constitution, art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 1651 (All Writs Act); 28 U.S.C. §§ 2201-02 (Declaratory Judgment Act); 28 U.S.C. § 2241 (habeas corpus); and 5 U.S.C. §§ 702, 706 (judicial review of agency actions).

VENUE

15. Venue is proper because Petitioner-Plaintiff Mr. Chavez Barrios is, upon information and belief, detained within the jurisdiction of this District. Venue is also proper because Respondent-Defendants are officers, employees, or agencies of the United States and Respondent-Defendant Ripa resides in this District, a substantial part of the events giving rise to Mr. Chavez Barrios' claims occurred in this District, and Mr. Chavez Barrios resides in this district and no real property is involved in this action. 28 U.S.C. § 1391(e).

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. As an initial matter, Mr. Chavez Barrios has no administrative remedies to exhaust as, upon information and belief, he has been provided no process to challenge the revocation of his OSUP or his re-detention.

- 17. In any event, exhaustion of administrative remedies is not required in this context.

 Exhaustion is only required where Congress specifically mandates it. *McCarthy v. Madigan*, 503 U.S. 140, 144 (1992); *Santiago-Lugo v. Warden*, 785 F.3d 467, 473-74 (11th Cir. 2015). The statute under which Mr. Chavez Barrios is detained, 8 U.S.C. § 1231(a), includes no express exhaustion requirement.
- 18. In the absence of a statutorily mandated exhaustion requirement, whether to apply a common law exhaustion requirement is a decision that rests soundly within the discretion of district courts. *See J.N.C.G. v. Warden, Stewart Detention Ctr.*, No. 4:20-CV-62-MSH, 2020 WL 5046870, at *3 (M.D. Ga. Aug. 26, 2020) (citing *McCarthy*, 503 U.S. at 144); *see also Richardson v. Reno*, 162 F.3d 1338, 1374 (11th Cir. 1998); *Yahweh v. U.S. Parole Comm'n*, 158 F. Supp. 2d 1332, 1341 (S.D. Fla. 2001). Here, this Court should not require Mr. Chavez Barrios to exhaust his administrative remedies.
- 19. First, the Supreme Court has recognized that where there is an "unreasonable ... timeframe" for administrative action such that a petitioner/plaintiff would suffer "irreparable harm" absent immediate judicial action, requiring exhaustion is inappropriate. *McCarthy*, 503 U.S. at 147. That is precisely the case here, where every minute that passes is one in which Mr. Chavez Barrios is being deprived of his constitutionally protected liberty interest to be free from government custody, *see Zadvydas v. Davis*, 533 U.S. 678, 690 (2001), and faces real medical and physical harm. Moreover, although Mr. Chavez Barrios cannot lawfully be removed at this juncture, the government's recent history of quickly deporting people in error and in violation of court orders and refusing to return them creates a risk of irreparable harm unless his removal is swiftly enjoined.

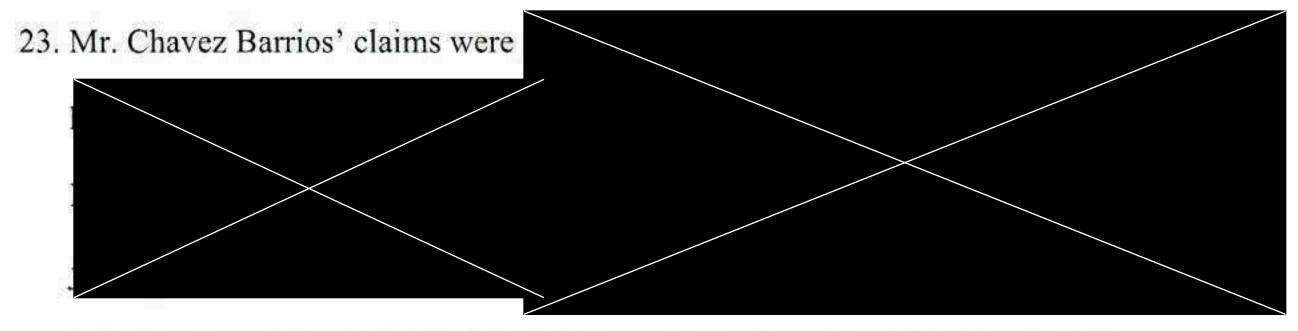
20. Second, requiring exhaustion is equally inappropriate where administrative action would not provide an adequate remedy. *Boz v. United States*, 248 F.3d 1299, 1300 (11th Cir. 2001). This includes where, as here, the petitioner/plaintiff challenges the constitutionality of the agency's procedures themselves. *McCarthy*, 503 U.S. at 148; *Warsame v. U.S. Att'y Gen.*, 796 F. App'x. 993, 1006 (11th Cir. 2020); *see also Haitian Refugee Ctr., Inc. v. Nelson*, 872 F.2d 1555, 1561 (11th Cir. 1989), *aff'd sub nom. McNary v. Haitian Refugee Ctr., Inc.*, 498 U.S. 479 (1991) (exhaustion had "no bearing" where petitioner sought to make a constitutional challenge to procedures adopted by the Immigration and Nationality Service).

STATEMENT OF FACTS

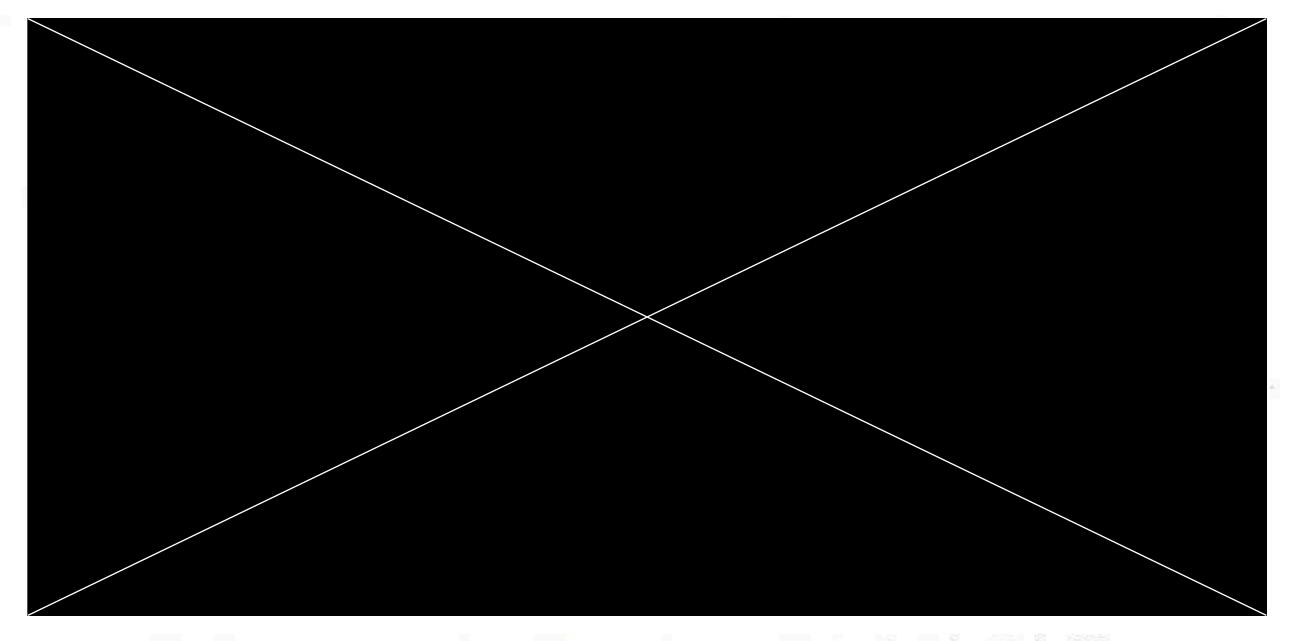
21. Mr. Chavez Barrios is a 46-year-old citizen of Mexico who has lived in the United States for nearly 25 years. See Declaration of Stephanie E. Norton, dated May 27, 2025 (hereinafter "Norton Decl."), Ex. A at 3 (2021 CAT Decision). A survivor of brutal torture in Mexico who suffers from severe PTSD, he has been granted deferral of removal under CAT by an immigration judge three times. Norton Decl., Exs. A-C (2021, 2023, 2025 CAT Decisions). He has already spent more than two-and-a-half years in immigration detention fighting his case, and he was released by ICE on an OSUP in early 2023. Since then, Mr. Chavez Barrios has complied with all conditions of his release. But today, without notice, without consideration of Mr. Chavez Barrios' debilitating PTSD, and without any process whatsoever, ICE decided to revoke Mr. Chavez Barrios' OSUP and re-detain him.

Mr. Chavez Barrios' Immigration Proceedings, CAT Claim, and Diagnosis with PTSD

22. Mr. Chavez Barrios has a removal order from October 2, 2003, which ICE reinstated before taking him into custody under 8 U.S.C § 1231(a) on August 21, 2020. However, Mr. Chavez Barrios, is currently in withholding-only proceedings before the Executive Office for Immigration Review because expressed a reasonable fear of returning to Mexico. Given this, he was placed in withholding-only proceedings before Elizabeth Immigration Court, pursuant to 8 C.F.R. § 1208.2(c)(2), where he applied for and was granted CAT protection. Norton Decl., Ex. A at 1-2 (2021 CAT Decision).



identification. Id. at 3. When he was subsequently deported to Mexico, he was



24. Mr. Chavez Barrios eventually managed to escape and flee back to the United States, where he was arrested and convicted of illegal reentry. Norton Decl., Ex. J (Judgment of

Conviction). At his sentencing before the U.S. District Court for the Southern District of Texas, Mr. Chavez Barrios publicly identified himself as an ex-gang member and pled with the Honorable Fernando Rodriguez, Jr. to allow him to serve his prison sentence outside the state of Texas, away from members of his former gang. Norton Decl., Ex. I (Sentencing Transcript). The judge honored that request, ordering that Mr. Chavez Barrios serve his prison sentence outside of Texas due to fear for his life. Norton Decl., Ex. J (Judgment of Conviction & U.S. Marshals Records).

- 25. On March 8, 2021, the immigration judge concluded that Mr. Chavez Barrios would more likely than not be subject to torture with the acquiescence of a public official if removed to Mexico and therefore granted his application for deferral of removal under CAT. Norton Decl., Ex. A (2021 CAT Decision). Respondents-Defendants, however, appealed that decision to the Board of Immigration Appeals ("BIA"). Norton Decl., Ex. B (2023 CAT Decision).
- 26. On November 19, 2021, the BIA remanded Mr. Chavez Barrios' case to Elizabeth Immigration Court for further findings. *Id.* After additional proceedings, the immigration judge again granted Mr. Chavez Barrios deferral of removal under CAT. *Id.* Nonetheless, Respondents-Defendants appealed the immigration judge's CAT decision to the BIA for a second time, and on February 1, 2023, the BIA remanded the case to the immigration judge once more for additional findings. Norton Decl., Ex. C (2025 CAT Decision).
- 27. Throughout this entire period, Mr. Chavez Barrios remained in ICE custody, first in New Jersey, then at various facilities in Florida. *See* Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, *Chavez Barrios v. Ripa et al.*, Case No. 23-cv-20803-KMM, ECF No. 1 (S.D. Fla. Feb. 8, 2023).

- 28. In December 2021, while detained at Krome North Service Processing Center ("Krome"), ICE medical staff diagnosed Mr. Chavez Barrios with PTSD stemming from his 2018 torture. Norton Decl., Ex. G (ICE Medical Records). According to ICE, Mr. Chavez Barrios "reported sadness, lack of interest in activities, fatigue, irritability, crying, restlessness, insomnia. ... He was observed to zone out as if dissociating [when discussing his 2018 torture] and admitted to experiencing intrusive memories that are distressing. He reported hypervigilance and difficulty distrusting others." *Id.* As a result of his diagnosis, Mr. Chavez Barrios was prescribed various medications to manage his symptoms. *Id.*
- 29. ICE's PTSD diagnosis was later confirmed by an independent psychological evaluation conducted in 2022 and updated in 2023, which concluded that Mr. Chavez Barrios suffers from severe PTSD, as well as Major Depression and Generalized Anxiety Disorder, as a result of his past torture. Norton Decl., Ex. E (Psychological Evaluation). In March 2023, the evaluator noted that Mr. Chavez Barrios was in "severe psychological distress, which has persisted since his return from Mexico and has been exacerbated since he has been detained and in deportation proceedings...." *Id.* at 1. His symptoms included suffering from nightmares, frequent nosebleeds, severe headaches, and trouble sleeping, which "significantly impair his day-to-day functioning...." *Id.* at 9. Indeed, on an assessment test developed by the National Center for PTSD, Mr. Chavez Barrios scored a 71, where any score above 33 is sufficient for a PTSD diagnosis. *Id.* at 6.

Mr. Chavez Barrios' 2023 Release from ICE Custody on an OSUP

30. On March 1, 2023, after more than two and a half years in ICE custody, Mr. Chavez Barrios filed a petition for a writ of habeas corpus with this Court, challenging the

- lawfulness of his prolonged civil confinement under 8 U.S.C § 1231(a). Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, *Chavez Barrios v. Ripa et al.*, Case No. 23-cv-20803-KMM, ECF No. 1 (S.D. Fla. Mar. 1, 2023).
- 31. On April 21, 2023, ICE released Mr. Chavez Barrios from detention on an OSUP.

 Opposition to Petition for Writ of Habeas Corpus under 28 U.S.C. § 2241, Ex. A, *Chavez Barrios v. Ripa et al.*, Case No. 23-cv-20803-KMM, ECF No. 14-1 (S.D. Fla. April 21, 2023). The OSUP set forth various conditions of Mr. Chavez Barrios' release, including regular supervision by ICE, participation in ICE's Alternatives to Detention program, and refraining from associating with any gang members or committing any crimes. *Id.* Mr. Chavez Barrios' Release Notice indicated that he could be taken back into custody upon "violation of one of these conditions, or of any local, state or federal law" or in the event his "removal [should] become practicable." *Id.* at 1.
- 32. Upon his release from ICE custody, Mr. Chavez Barrios was fitted with a GPS ankle monitor and scheduled for ongoing in-person check-ins with ICE, as well as regular video, telephonic, and in-person check-ins with ICE contractors under the agency's Intensive Supervision Appearance Program ("ISAP"). Norton Decl., ¶ 11; Exs. K-L (Screenshot of ISAP Appointments).
- 33. In reliance on ICE's representations, as well as regulations indicating that he would not be re-detained absent a violation of the OSUP or changed circumstances, discussed *infra*, Mr. Chavez Barrios voluntarily dismissed his habeas petition without prejudice. *See*Notice of Voluntary Dismissal Without Prejudice, *Chavez Barrios v. Ripa et al.*, Case
 No. 23-cv-20803-KMM, ECF No. 17 (S.D. Fla. April 25, 2023).

- 34. Since April 21, 2023, Mr. Chavez Barrios has remained fully compliant with the conditions set forth in his OSUP. Norton Decl. ¶ 15. To avoid any risk of contact with his prior gang, he has lived in South Florida since December 2023, where he has continued to be subject to GPS ankle monitoring, attended regular ISAP and ICE check-ins, and been gainfully employed as a welder. Norton Decl., ¶¶ 12, 15.
- 35. On March 24, 2025, after a third round of proceedings before another immigration judge, Mr. Chavez Barrios was granted deferral of removal under CAT for a third time. Norton Decl., Ex. C (2025 CAT Decision). Respondents-Defendants have appealed that decision to the BIA once again, however, and Mr. Chavez Barrios' withholding-only proceedings remain pending. Norton Decl., Ex. D (EOIR Case Status).

Mr. Chavez Barrios' OSUP Revocation and Re-Detention Without Notice

- 36. On May 27, 2025, Mr. Chavez Barrios attended an in-person check-in with ICE Enforcement and Removal Operations at its Stuart Sub-Field Office. Norton Decl., ¶ 16; Ex. K (Screenshot of Supervision Calendar as of May 27, 2025). At that check-in, he was told that he was free to go because ICE had confirmed that he was still wearing his ankle monitor and participating in ISAP supervisions. Norton Decl., ¶ 16.
- 37. On June 6, 2025, Mr. Chavez Barrios received a phone call from an ISAP representative, who informed him that he would need to report to the Stuart Sub-Field Office for another check-in with ICE on June 11, 2025, at 8:00am. Norton Decl., ¶ 17; Ex. L (Screenshot of Supervision Calendar as of June 6, 2025). The ISAP representative did not provide any explanation or any additional details to Mr. Chavez Barrios during this call. Norton Decl., ¶ 17. He was not given any notice that, at this appointment, his OSUP might be revoked or that he might be re-detained.

38. On June 11, 2025, Mr. Chavez Barrios arrived at ICE's Stuart Sub-Field Office at approximately 8:06am. Norton Decl., ¶ 18. He sent a message to his immigration attorney, Stephanie E. Norton, upon his arrival and then again at 8:30am, indicating that he was still waiting to be called. *Id.* At 9:18am, Mr. Chavez Barrios had not communicated with his attorney again, so she called him, but got no answer. *Id.* Ms. Norton then called ICE Supervisory Detention and Deportation Officer (SDDO) Jordan T. Flanagan, indicating that she had not heard from Mr. Chavez Barrios and expressing her concern. *Id.* ¶ 19. SDDO Flanagan asserted that Mr. Chavez Barrios had been taken into custody pursuant to 8 C.F.R. § 241.4 and would be sent to Krome North Service Processing Center. *Id.* Per SDDO Flanagan, ICE plans to attempt to remove Mr. Chavez Barrios to a third country, although he did not say which country/countries or indicate that any country and been identified. *Id.* SDDO Flanagan also indicated that Krome was "decompressing rapidly," explaining that a swift transfer out of state was likely. *Id.*

CLAIMS FOR RELIEF

COUNT ONE

Respondents-Defendants' Failure to Comply with Their Own OSUP Revocation and Re-detention Procedures Violates the Administrative Procedure Act

- 39. The allegations in the above paragraphs are realleged and incorporated herein.
- 40. The fundamental aim of the Administrative Procedure Act ("APA") is to ensure that federal agencies engage in "reasoned decisionmaking" bounded by the law. *Baltimore Gas & Elec. Co. v. Nat. Res. Def. Council, Inc.*, 462 U.S. 87, 104 (1983). Under the APA, "final agency action for which there is no other adequate remedy in a court [is] subject to judicial review." 5 U.S.C. § 704. In turn, reviewing courts must "hold unlawful and set

- aside agency action" that is, *inter alia*, "without observance of procedure required by law." 5 U.S.C. § 706(2)(D).
- 41. At minimum, the APA requires that agencies comply with the procedures that they themselves establish for decisionmaking, including their own internal policies. 5 U.S.C. § 706(2)(D); *Morton v. Ruiz*, 415 U.S. 199, 235 (1974) (remanding where agency failed to follow its own regulations and internal manual, stressing that "[w]here the rights of individuals are affected, it is incumbent upon agencies to follow their own procedures..."); *Gonzalez v. Reno*, 212 F.3d 1338, 1349 (11th Cir. 2000) ("Agencies must respect their own procedural rules and regulations.").
- 42. In this case, the relevant statutory and regulatory scheme operates as follows. Under 8 U.S.C. § 1231(a)(1)(A), ICE must detain noncitizens with removal orders during an initial 90-day "removal period." After that removal period, ICE may only continue to detain individuals who are (i) inadmissible, (ii) removable due to certain enumerated violations, or (iii) "ha[ve] been determined by the Attorney General to be a risk to the community or unlikely to comply with the order of removal." 8 U.S.C. § 1231(a)(6).
- 43. Alternatively, ICE may release these individuals, "subject to terms of supervision" set out in 8 U.S.C. § 1231(a)(3). *Id.* The implementing regulations provide for release under two circumstances. First, under 8 C.F.R. § 241.4, if the release "will not pose a danger to the community or to the safety of other persons or to property or a significant risk of flight," or, second, under 8 C.F.R. § 241.13, if there is "no significant likelihood" that the individual can be removed "in the reasonably foreseeable future." Individuals released under either provision may be subject to OSUPs. 8 C.F.R. § 241.5; 8 C.F.R. § 241.13(j)(1).

- 44. Regardless of whether an individual was released under 8 C.F.R. § 241.4 or § 241.13, ICE may only subsequently revoke their OSUP and re-detain them if they have violated a condition of their release or relevant circumstances have changed. 8 C.F.R. § 241.4(I)(2); 8 C.F.R. § 241.13(h)(4)(i); see also DETENTION AND DEPORTATION OFFICER'S FIELD MANUAL, Chp. 17.12(b), (c); Sis v. Sessions, No. 17-CV-24424, 2018 WL 1055695 (S.D. Fla. Jan. 29, 2018), report and recommendation adopted, No. 17-24424-CIV, 2018 WL 1054561 (S.D. Fla. Feb. 23, 2018) (noting that OSUP revocation was justified where "changed circumstances exist").
- 45. In addition, these individuals must be "notified of the reasons for revocation" and afforded "an initial informal interview promptly after [re-detention] to have an opportunity to respond to the reasons for revocation stated in the notification." 8 C.F.R. § 241.4(1)(1); 8 C.F.R. § 241.13(h)(4)(i)(3).
- 46. Respondents-Defendants failed to comply with these procedures. First, Mr. Chavez

 Barrios has not violated any terms of his OSUP and circumstances have not changed in
 any way suggesting that he would now present a flight risk or danger to the community,
 or that his removal order could be effectuated. Mr. Chavez Barrios cannot lawfully be
 removed while his proceedings are pending before the agency. And despite ICE's
 indication that a third-country removal will be attempted, there is no reason to believe
 this is any more likely to be feasible now than before, and no such country has been
 identified. Conversely, his two-year compliance with all the conditions of his release and

Available at https://www.ice.gov/doclib/foia/dro_policy_memos/09684drofieldpolicymanual.pdf.

- the immigration judge's decision to grant him CAT deferral make the factors favoring his release even stronger.²
- 47. Second, Mr. Chavez Barrios was never given any notice whatsoever that his OSUP would be revoked or that he would be re-detained, despite numerous communications with ICE's contractor, ISAP, prior to his check-in on June 11, 2025.
- 48. Respondents-Defendants' revocation of Mr. Chavez Barrios' OSUP and decision to redetain him are thus directly contrary to their own procedures and, in turn, the APA.

COUNT TWO

Respondents-Defendants' Unexplained Departure from Their Prior Decision to Release Mr. Chavez Barrios Is Arbitrary and Capricious in Violation of the Administrative Procedure Act

- 49. The allegations in the above paragraphs are realleged and incorporated herein.
- 50. Under the APA, reviewing courts must also "hold unlawful and set aside agency action" that is "arbitrary, capricious, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).
- 51. "The 'arbitrary-and-capricious standard' requires that agency action be reasonable and reasonably explained." Bidi Vapor LLC v. FDA, 47 F.4th 1191, 1202 (11th Cir. 2022) (quoting Fed. Commc'ns Comm'n v. Prometheus Radio Project, 592 U.S. 414, 423 (2021)). An agency's "unexplained departure from prior agency determinations is [thus]

² ICE also has a longstanding internal policy of releasing individuals from detention who have been granted fear-based relief even if DHS appeals, absent exceptional circumstances. Norton Decl., Ex. H (Fear-Based Grant Release Policy) ("In general, it is ICE policy to favor the release of [noncitizens] when have been granted protection by an immigration judge, absent exceptional concerns…" and "[p]ursuant to longstanding policy, absent exceptional circumstances… noncitizens granted asylum, withholding of removal, or CAT protection by an immigration judge should be released…."); see also Settlement Agreement, Rodriguez Guerra v. Perry, 1:23-cv-1151 (E.D. Va. July 26, 2024), https://www.acluva.org/sites/default/files/field_documents/redacted_settlement_agreement _signed_v.1_final_07282024_redacted_002.pdf (agreeing to apply the Fear-Based Grant Release Policy to all plaintiffs without admitting liability for past violations). Although Mr. Chavez Barrios was not in detention at the time he was granted CAT deferral or when DHS appealed, Respondents-Defendants' decision to detain him now—despite his CAT grant and despite any changed circumstances indicating "exceptional concerns"—is at odds with this ICE directive.

inherently arbitrary and capricious...." National Treasury Employees Union v. Federal Labor Relations Auth., 404 F.3d 454, 457 (D.C. Cir. 2005); see also National Cable & Telecomms. Ass'n v. Brand X Internet Servs., 545 U.S. 967, 981 (2005) ("Unexplained inconsistency is ... a reason for holding an interpretation to be an arbitrary and capricious change from agency practice under the [APA]."); Atchison, Topeka & Santa Fe Ry. Co. v. Wichita Bd. of Trade, 412 U.S. 800, 808 (1973) (noting an "agency's duty to explain its departure from prior norms").

52. Respondents-Defendants' unexplained—and inexplicable—decision to revoke Mr.

Chavez Barrios' OSUP and re-detain him is wholly inconsistent with its prior decision to release him. Nothing has changed that could warrant a departure from that decision. For the past two years, Mr. Chavez Barrios has complied with all the conditions of his OSUP, has engaged in no conduct indicating that he is a flight risk or danger to the community, and is even less likely to be able to be removed now than before, given the immigration judge's recent grant of CAT deferral. Again, Mr. Chavez Barrios cannot lawfully be removed while his proceedings before the agency are pending, and there is also no reason to believe that third-country removal is any more realistic than before. Respondents-Defendants' decision to revoke Mr. Chavez Barrios' OSUP and re-detain him is thus unreasoned and inexplicably inconsistent with their prior decision. For both reasons, it is arbitrary and capricious in violation of the APA.

COUNT TWO

Respondents-Defendants' Failure to Follow Their Own Procedures Violates Mr. Chavez Barrios' Fifth Amendment Right to Procedural Due Process

53. The allegations in the above paragraphs are realleged and incorporated herein.

- 54. As the Supreme Court has made clear, the Fifth Amendment's Due Process Clause "applies to all 'persons' within the United States, including [noncitizens], whether their presence here is lawful, unlawful, temporary, or permanent." *Zadvydas*, 533 U.S. at 693. This includes noncitizens with final orders of removal. *Id.* at 693-94. Procedural due process constrains government decisions that deprive individuals of property or liberty interests within the meaning of the Due Process Clause. *See Mathews v. Eldridge*, 424 U.S. 319, 332 (1976).
- 55. Immigration agencies must follow regulations designed to protect individuals' liberty and property interests, and when they fail to do so, this constitutes a per se violation of procedural due process. See United States ex rel. Accardi v. Shaughnessy, 347 U.S. 260, 266-68 (1954) (reversing dismissal of habeas petition in which the petitioner alleged that BIA had failed to follow its own regulations); Leslie v. Att'y Gen., 611 F.3d 171, 178 (3d Cir. 2010) (finding that immigration judge's regulatory violation violated petitioner's due process rights, as "rules promulgated by a federal agency that regulate the rights and interests of others are controlling upon the agency"); Nelson v. I.N.S., 232 F.3d 258, 262 (1st Cir. 2000) ("An agency has the duty to follow its own federal regulations.... Failure to follow applicable regulations can lead to reversal of an agency order [on due process grounds]...."); Waldron v. I.N.S., 17 F.3d 511, 518 (2d Cir. 1993) (where a "regulation is promulgated to protect a fundamental right derived from the Constitution or a federal statute, and [the agency] fails to adhere to it, the challenged [action] is invalid...."); see also Sameena Inc. v. United States Air Force, 147 F.3d 1148, 1153 (9th Cir. 1998) ("An agency's failure to follow its own regulations tends to cause unjust discrimination and

- deny adequate notice and consequently may result in a violation of an individual's constitutional right to due process.") (internal quotations omitted).
- 56. The regulations governing the revocation of OSUPs and re-detention of individuals subject to 8 U.S.C. § 1231(a) are designed to protect the liberty and property interests that OSUPs help to secure. See Zadvydas, 533 U.S. at 690; Board of Regents of State Colleges, 408 U.S. 564, 577 (1972). Accordingly, when ICE fails to follow these regulations, courts have repeatedly found that this amounts to a due process violation. See Ceesay v. Kurzdorfer, No. 25-cv-267-LJV, 2025 WL 1284720 at *13-14, 21 (W.D.N.Y. May 2, 2025) (ordering release of petitioner whose OSUP ICE revoked in violation of the procedures at 8 C.F.R. § 241.4); Rombot v. Souza, 296 F. Supp. 3d 383, 388-89 (D. Mass. November 8, 2017) (same); see also Bonitto v. Bureau of Imm. & Cust. Enf., 547 F. Supp. 2d 747, 756 (S.D. Tex. 2008) (concluding that ICE could not "constitutionally continue to detain [petitioner] without complying with the procedures laid out in the regulations"); Ying Fong v. Ashcroft, 317 F. Supp. 2d 398, 403-04 (S.D.N.Y. 2004) (granting habeas petition in light of due process violation where petitioner was deported fewer than seventy-two hours after her arrest and regulation mandated a seventy-two-hour rule).
- 57. In this case, as detailed in paragraphs 42-52, Respondents-Defendants clearly failed to follow the procedures set out in 8 C.F.R. § 241.4 or § 241.13 when revoking Mr. Chavez Barrios' OSUP and re-detaining him without any notice and without any justification, given his compliance with the conditions of his release and the lack of any relevant changed circumstances. This failure violates Mr. Chavez Barrios' Fifth Amendment right to procedural due process.

COUNT THREE

Respondents-Defendants' Failure to Provide Any Pre-Deprivation Notice or Opportunity to Be Heard Violates Mr. Chavez Barrios' Fifth Amendment Right to Procedural Due Process

- 58. The allegations in the above paragraphs are realleged and incorporated herein.
- 59. Separate and apart from Respondents-Defendants' violation of their own procedures, their revocation of Mr. Chavez Barrios' OSUP without any notice or pre-deprivation opportunity to be heard independently violates his procedural due process rights.
- 60. "[A]t a minimum, the Due Process Clause requires notice and the opportunity to be heard incident to the deprivation of life, liberty or property at the hands of the government." Grayden v. Rhodes, 345 F.3d 1225, 1232 (11th Cir. 2003) (citing Mullane v. Cent. Hanover Bank & Tr. Co., 339 U.S. 306, 313 (1950)). As OSUP revocation and re-detention implicate fundamental liberty interests, they must be accompanied by, at the very least, notice of the reasons for revocation and a predeprivation opportunity to be heard. See Villiers v. Decker, 31 F.4th 825, 833 (2d Cir. 2022) ("[A]n individual whose release is sought to be revoked [by ICE] is entitled to due process such as notice of the alleged grounds for revocation, a hearing, and the right to testify at such a hearing"); see also Saravia for A.H. v. Sessions, 905 F .3d 1137, 1145 (9th Cir. 2018) (upholding preliminary injunction requiring hearings for class of minors re-detained by ICE after initial release from immigration detention); Torres-Jurado v. Biden, 19 Civ. 3595, 2023 WL 7130898 at *3 (S.D.N.Y. Oct. 29, 2023) (enjoining ICE from revoking petitioner's stay of removal without adequate notice and opportunity to be heard); Ortega v. Bonnar, 415 F. Supp.3d 963, 970 (N.D. Cal. 2019) (enjoining ICE from re-detaining the petitioner without adequate notice and a hearing); Rombot, 296 F. Supp.

- 3d at 389 (emphasizing that ICE does not have "a carte blanche to reincarcerate someone [with a removal order] without basic due process protection").
- 61. Here, Respondents-Defendants provided Mr. Chavez Barrios no notice whatsoever that his OSUP would be revoked and he would be re-detained, much less a meaningful predeprivation opportunity to respond. This violates his Fifth Amendment Right to procedural due process.

COUNT FOUR

- Mr. Chavez Barrios' Prolonged Detention with No Significant Likelihood of Removal in the Reasonably Foreseeable Future Violates 8 U.S.C. § 1231
 - 62. The allegations in the above paragraphs are realleged and incorporated herein.
 - 63. Mr. Chavez Barrios' detention is also contrary to the Immigration and Nationality Act. As explained in paragraph 42, 8 U.S.C. § 1231(a)(1)(A) provides that noncitizens with removal orders must be detained during an initial 90-day "removal period." After that removal period, they may only continue to be detained for certain reasons, including if they are removable on certain grounds or have been determined to be a flight risk or danger to the community. 8 U.S.C. § 1231(a)(6). However, they cannot continue to be detained indefinitely. In *Zadvydas v. Davis*, the Supreme Court interpreted 8 U.S.C. § 1231(a)(6) as containing an "implicit 'reasonable time' limitation" of six months of detention. 533 U.S. at 682, 700-701. "[T]he six month period ... include[s] the 90-day removal period plus 90 days thereafter." *Akinwale v. Ashcroft*, 287 F.3d 1050, 1052 (11th Cir. 2002); *id.* at 1052 n.3 (same).
 - 64. If, after six months, a noncitizen detained under this provision shows "good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future," the burden then shifts to the government to rebut that showing. Zadvydas, 533

- U.S. at 701. If unrebutted, continued detention is "unreasonable and no longer authorized by statute." *Id.* at 699-700.
- 65. Here, even if Mr. Chavez Barrios's re-detention were lawful (which it is not), his continued detention would still violate 8 U.S.C. § 1231(a). In total, Mr. Chavez Barrios has been detained for more than thirty months, well beyond the six-month presumptively reasonable period. While Mr. Chavez Barrios has been detained on two separate occasions, his total period of detention should be considered in the aggregate for purposes of the six-month threshold under 8 U.S.C. § 1231(a)(6). First, the statute refers to a "post-removal period" (not periods), suggesting a single period of detention. Second, if an individual is repeatedly detained post-removal, the harm addressed in Zadvydas—prolonged deprivation of liberty—accumulates regardless of breaks in custody. See 533 U.S. at 690. Third, if only continuous detention counts toward the six-month threshold, the government could simply reset the clock by briefly releasing and then re-detaining someone, undermining the protections of Zadvydas. This would be an absurd reading of the statute.
- 66. Furthermore, Respondents-Defendants cannot show that there is a significant likelihood of Mr. Chavez Barrios' removal in the reasonably foreseeable future. As a threshold matter, Mr. Chavez has been granted protection from removal. Moreover, although DHS is appealing this grant, that process may be lengthy and individuals seeking relief in withholding-only proceedings cannot be removed while their claims are pending before an immigration judge or the BIA. See 8 C.F.R. §§ 208.31(e), (g)(2); 8 C.F.R. § 1003.6; see also Nken v. Holder, 556 U.S. 418, 425 (2009) (making clear that federal courts of appeal also have discretion to stay removal pending review of a BIA decision). ICE

cannot lawfully remove Mr. Chavez Barrios while his proceedings are pending. Mr. Chavez Barrios' case has already been pending for nearly five years, and, given ICE's recent decision to appeal to the BIA yet again, there is no end in sight. An ultimate determination of relief, let alone actual removal, is thus far from being "significantly likely" in a "reasonably foreseeable" timeframe.

67. Therefore, Mr. Chavez Barrios' present detention violates 8 U.S.C. § 1231(a).

COUNT FIVE

Respondents-Defendants' Re-Detention of Mr. Chavez Barrios Violates His Fifth Amendment Right to Substantive Due Process

- 68. The allegations in the above paragraphs are realleged and incorporated herein.
- 69. "'[S]ubstantive due process' prevents the government from engaging in conduct that 'shocks the conscience,' ... or interferes with rights 'implicit in the concept of ordered liberty." *United States v. Salerno*, 481 U.S. 739, 746 (1987) (internal citations omitted). It is beyond dispute that constitutional substantive due process protections extend to noncitizens. *See Reno v. Flores*, 507 U.S. 292, 306 (1993). The purposeless re-detention of Mr. Chavez Barrios despite his severe PTSD and depression violates substantive due process for two independent reasons.
- 70. First, because "[f]reedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process]

 Clause protects," Zadvydas, 533 U.S. at 690, the Constitution only permits civil detention when it serves a "legitimate nonpunitive objective," Kansas v. Hendricks, 521 U.S. 346,

³ To the extent Mr. Chavez Barrios ultimately obtains a final grant of CAT deferral from Mexico and Respondents-Defendants seek to remove him to a third country, he is also entitled to a meaningful opportunity to seek fear-based protection from removal from any such country. See Memorandum and Order on Plaintiffs' Motions for Class Certification and Preliminary Injunction, D.V.D. v. DHS, No. 25-10676-BEM, 2025 WL 1142968, at *24 (D. Mass. Apr. 18, 2025).

- 363 (1997). Detention must always be reasonably related to that objective, and "where detention's goal is no longer practically attainable, detention no longer bears reasonable relation to the purpose for which the individual was committed." *Zadvydas*, 533 U.S. at 690 (internal citations and quotations omitted). At that point, it simply becomes "the exercise of power without any reasonable justification," violating the Fifth Amendment's due process guarantee. *County of Sacramento v. Lewis*, 523 U.S. 833, 845 (1998).
- 71. The Supreme Court has made clear that detention beyond six months pursuant to 8 U.S.C. § 1231(a)(6) is presumptively unconstitutional. Zadvydas, 553 U.S. at 699-700. As explained in paragraph 65, Mr. Chavez Barrios has been detained well past this sixmonth threshold. Moreover, even without a presumption, Mr. Chavez Barrios' detention is not reasonably related to any legitimate government purpose, as there is no significant likelihood of his removal and he has been fully compliant with the conditions of his OSUP for more than two years. Accordingly, he has been deprived of his "strong interest in liberty," Salerno, 481 U.S. at 750, with no government interest whatsoever. This deprivation violates Mr. Chavez Barrios' right to substantive due process.
- 72. Even if there were some legitimate government purpose behind Mr. Chavez Barrios' redetention, detaining him despite his severe PTSD and depression would be excessive in relationship to that purpose, as detention is likely to exacerbate his severe PSTD and depression, *see* Norton Decl., Ex. E at 1 (Psychological Evaluation), and less harsh alternatives (supervision on an OSUP/ankle monitor) are readily available. "[I]f conditions [of confinement] are so extreme that less harsh alternatives are easily available, those conditions constitute 'punishment.'" *Telfair v. Gilberg*, 868 F.Supp. 1396, 1412 (S.D. Ga. 1994) (citing *Bell v. Wolfish*, 441 U.S. 520, 538 (1979)); *see also*

- Jacoby v. Baldwin Cty., 835 F.3d 1338, 1345 (11th Cir. 2016). This would therefore equally violate Mr. Chavez Barrios' substantive due process rights.
- 73. Furthermore, "when the State takes a person into its custody and holds him there against his will, the Constitution imposes upon it a corresponding duty to assume some responsibility for his safety and general well-being." *DeShaney v. Winnebago Cty. Dep't. of Soc. Servs.*, 489 U.S. 189, 199-200 (1989). Accordingly, "deliberately indifferent conduct" directed towards civil detainees, such as federal immigration detainees, is "egregious enough to state a substantive due process claim." *Cty. of Sacramento v. Lewis*, 523 U.S. 833, 849-50 (1998); *see also Hale v. Tallapoosa Cty.*, 50 F. 3d 1579, 1582 n.4 (11th Cir. 1995). Deliberately indifferent conduct entails being aware of exposure to a substantial risk of serious harm and disregarding that risk. *Farmer v. Brennan*, 511 U.S. 825, 834, 837-38 (1994); *Marbury v. Warden*, 936 F.3d 1227, 1233 (11th Cir. 2019); *Hale*, 50 F.3d at 1582.
- 74. Under these principles, this Court has held that when ICE is deliberately indifferent to a detainee's serious medical needs, this violates substantive due process. *See Gayle v. Meade*, 614 F. Supp. 3d 1175, 1200-1205 (S.D. Fla. 2020) (finding that ICE failed to protect vulnerable detainees who faced serious health risk to during the COVID-19 pandemic). As the Court recognized, "[t]he Constitution protects those in detention against 'a condition of confinement that is sure or very likely to cause serious illness and needless suffering the next week or month or year." *Id.* at 1205 (citing *Helling v. McKinney*, 509 U.S. 25, 33 (1993)).
- 75. Mr. Chavez Barrios' detention undoubtedly presents a serious risk to his health in light of its exacerbating effect on his severe PTSD and depression. These conditions constitute

serious medical needs, and ICE was certainly aware of them, given its own diagnosis of Mr. Chavez Barrios and the fact that his independent psychological examination was featured in both his immigration proceedings and his prior habeas petition, *see Chavez Barrios v. Ripa et al.*, Case No. 23-cv-20803-KMM, ECF No. 1-2, Ex. 15, Tab M (S.D. Fla. Feb. 8, 2023). Respondents-Defendants are therefore knowingly subjecting Mr. Chavez Barrios to an unreasonable risk of serious harm, in violation of substantive due process.

COUNT SIX Violation of Rehabilitation Act

76. Under Section 504 of the Rehabilitation Act, federally funded agencies must affirmatively accommodate qualified individuals with disabilities to ensure meaningful access to agency benefits, programs, and services. 29 U.S.C. § 794(a). To show a violation of Section 504, individuals must demonstrate that (1) they have a "physical or mental impairment that substantially limits one or more major life activities," 42 U.S.C. § 12102(1); (2) they were deprived of meaningful access to the defendant agency's benefits, programs, and/or services, or were otherwise discriminated against because of their disability; and (3) the defendant agency is subject to the Rehabilitation Act and receives federal funding. 29 U.S.C. § 794(a); *Alexander v. Choate*, 469 U.S. 287, 301 (1985); *L.E. by & Through Cavorley v. Superintendent of Cobb Cnty. Sch. Dist.*, 55 F.4th 1296, 1301 n.2, 1301-1302 (11th Cir. 2022). Where these showings have been made, the agency may be required to make "reasonable adjustments" to ensure meaningful participation in its programs. *Choate*, 469 U.S. at 301; *see also L.E.*, 55 F.4th at 1302; *Henrietta D. v. Giuliani*, 119 F. Supp. 2d 181, 212 (E.D.N.Y. 2000), *aff'd sub nom. Henrietta D. v. Bloomberg*, 331 F.3d 261 (2d Cir. 2003) (collecting cases).

77. Here, all three requirements are satisfied. First, Mr. Chavez Barrios has been diagnosed with severe PTSD and depression that, particularly when exacerbated by detention, lead to symptoms including nightmares, frequent nosebleeds, severe headaches, and trouble sleeping, all of which "significantly impair his day-to-day functioning." Norton Decl., Ex. E at 9 (Psychological Evaluation). Second, by subjecting Mr. Chavez Barrios to redetention rather than making reasonable modifications to its detention policy to accommodate individuals with severe medical issues, like Mr. Chavez Barrios, Respondents-Defendants deprived him of the benefit of the OSUP program, which allowed him, among other things, to live in the community at liberty and seek employment authorization, see 8 C.F.R. § 241.5. Third, DHS and its subcomponent ICE are subject to the Rehabilitation Act because they are "executive agenc[ies]" within the meaning of 29 U.S.C. § 794(a), see 5 U.S.C. § 551(a), and receive federal funding. Accordingly, Respondents-Defendants have violated Section 504 of the Rehabilitation

PRAYER FOR RELIEF

Wherefore, Petitioner respectfully requests this Court to grant the following:

- (1) Assume jurisdiction over this matter;
- (2) Enjoin Mr. Chavez Barrios' transfer outside the Southern District of Florida;
- (3) Enjoin Mr. Chavez Barrios' removal from the United States pending the Court's adjudication of this Petition;
- (4) Issue an Order to Show Cause ordering Respondents-Defendants to show cause why this Petition should not be granted within three days;

- (5) Declare that Respondents-Defendants' revocation of Mr. Chavez Barrios' OSUP and his re-detention violate the Due Process Clause of the Fifth Amendment, the Administrative Procedures Act, 8 U.S.C. § 1231(a), and 8 C.F.R. § 241.4 or § 241.13;
- (6) Declare that Respondents-Defendants' re-detention of Mr. Chavez Barrios violates Section 504 of the Rehabilitation Act, as it deprives him of a reasonable accommodation for his disabilities and is contrary to law and regulations;
- (7) Issue a Writ of Habeas Corpus ordering Respondents-Defendants to release Mr. Chavez Barrios immediately;
- (8) Award Mr. Chavez Barrios attorney's fees and costs under the Equal Access to Justice Act, and on any other basis justified under law; and
- (9) Grant any further relief this Court deems just and proper.

Dated: June 11, 2025

Respectfully submitted,

s/ Andrea Jacoski

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*Application for Admission Pro Hac Vice forthcoming

Counsel for Petitioner-Plaintiff

VERIFICATION PURSUANT TO 28 U.S.C. § 2242

I represent Petitioner-Plaintiff, Roberto Chavez Barrios, and submit this verification on his behalf. I hereby verify that the factual statements made in the foregoing Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated this 11th day of June, 2025.

s/ Andrea Jacoski Andrea Jacoski