

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

ROBERTO CHAVEZ BARRIOS,

Petitioner-Plaintiff,

v.

GARRETT J. RIPA, in his official capacity as
Director of Miami Field Office, U.S. Immigration
and Customs Enforcement; **TODD LYONS**,
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
CUSTOMS ENFORCEMENT,

Respondents-Defendants.

Case No. 1:25-cv-22644-XXXX

**PETITION FOR WRIT OF
HABEAS CORPUS AND
COMPLAINT**

INTRODUCTION

1. 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 Post-Traumatic 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.

3. 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.
5. 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

7. 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).

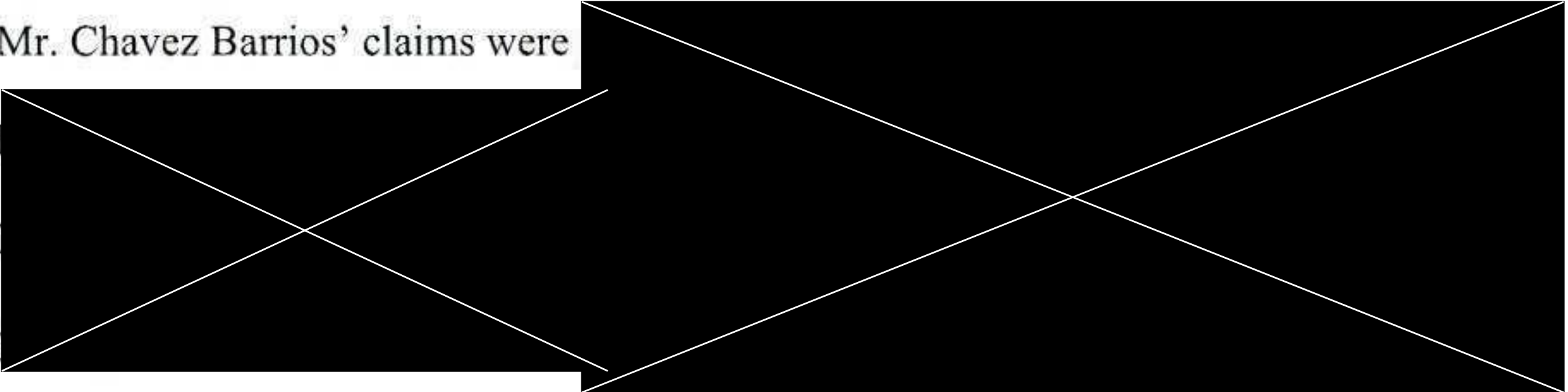
STATEMENT OF FACTS

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.

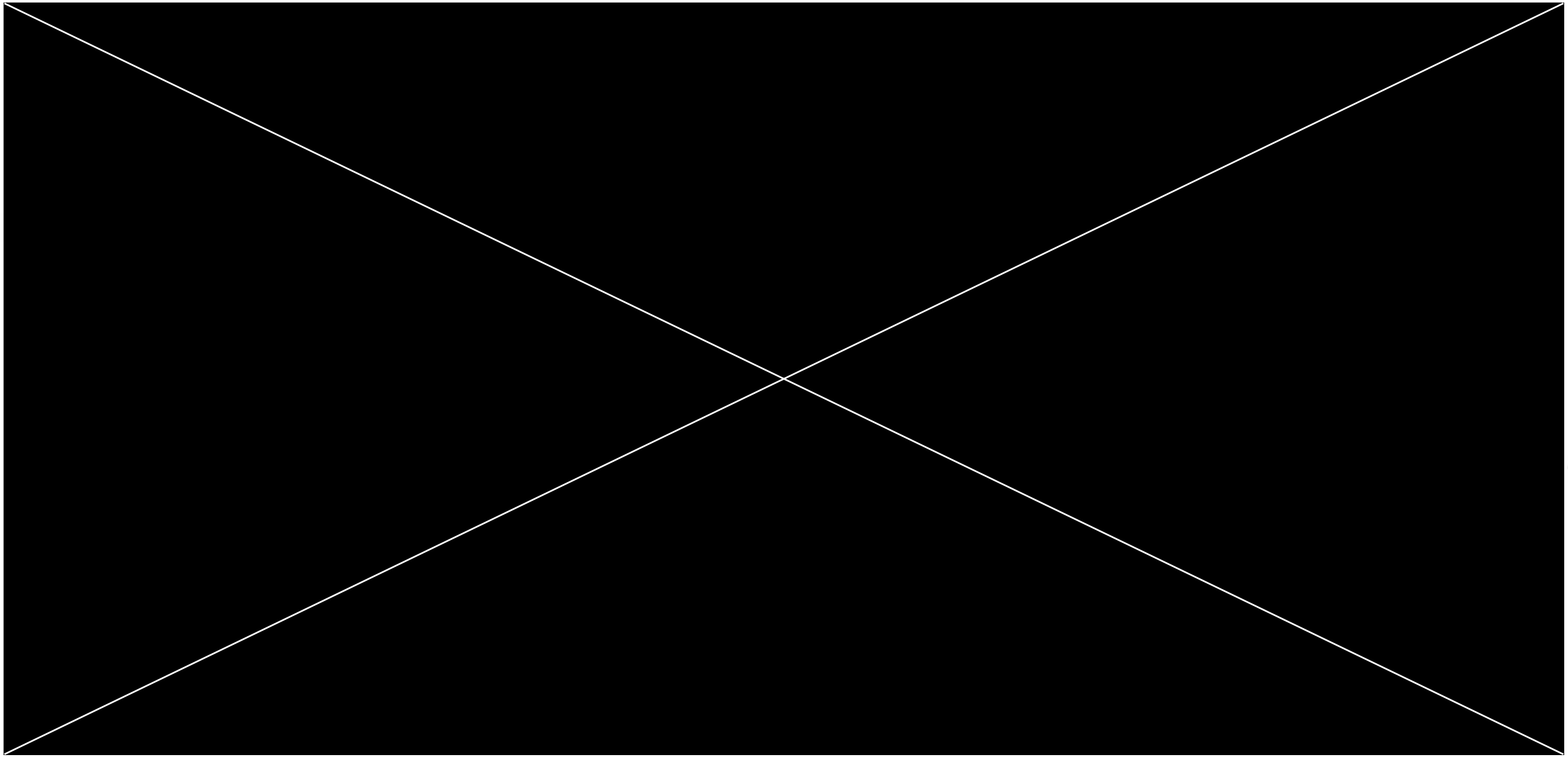
Mr. Chavez Barrios' Immigration Proceedings, CAT Claim, and Diagnosis with PTSD

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).

23. Mr. Chavez Barrios' claims were



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).

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).

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