

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

**Mr. Tomas Eduardo NEVAREZ
JURADO,**

Petitioner,

v.

JOSEPH FREDEN,
in his official capacity as Field
Office Director, Buffalo Field
Office, U.S. Immigration &
Customs Enforcement;

STEVEN KURZDORFER,
In his official capacity as Acting
Field Office Director, Buffalo Field
Office, U.S. Immigration & Customs
Enforcement;

TODD LYONS,
In his official capacity as Acting
Director, U.S. Immigration and
Customs Enforcement,

KRISTI NOEM,
In her official capacity as Secretary
of Homeland Security,

Respondent.

Civil Action No. 25-cv-943

Immigration No. A



**VERIFIED PETITION FOR
WRIT OF HABEAS CORPUS
AND INCORPORATED
MEMORANDUM OF LAW**

Oral Argument Requested

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PRELIMINARY STATEMENT

1. Mr. Tomas Eduardo Nevarez Jurado (“Mr. Nevarez”) is a Mexican Citizen who was a victim of a violent crime and was granted a *bona fide* determination and deferred action under the U Nonimmigrant Status program by United States Citizenship and Immigration Services (“USCIS”) on October 27, 2022. Nevertheless, he was detained by Immigration and Customs Enforcement (“ICE”) and held at the Buffalo Federal Detention Facility (“BFDF”) in Batavia, New York after delivering freight to Fort Drum.

2. Despite having a grant of deferred action, which is valid for a period of four (4) years from October 27, 2022, Mr. Nevarez is facing imminent deportation to Mexico by ICE.

3. Congress created the U Visa program to encourage victims of serious and violent crimes to speak out, cooperate with law enforcement, and assist with the investigation and prosecution of offenses. As part of the U Visa program, DHS grants deferred action, specifically to shelter U Visa recipients from enforcement actions while they await final issuance of the visa. This deferred action is only granted once USCIS has determined, after thorough review, that the non-citizen is indeed a victim of crime and merits a favorable discretionary grant of relief.

4. This petition is being filed urgently and in haste because there is credible information leading to the belief that ICE intends to either relocate outside of this jurisdiction, or remove to Mexico, the Petitioner imminently.

5. The government’s specific actions moving forward are unknown; Petitioner urgently invokes his ancient right for a writ of habeas corpus: to be brought before the Court and have this Court determine whether he is rightfully in confinement or not.

6. Additionally, should Mr. Nevarez be either moved out of the district or worse, out of the country pursuant to what he properly alleges is an *ultra vires* act (i.e. not based on any facially valid order of removal) he will not be able to vindicate his rights retroactively. For that

reason, he implores the court to temporarily restrain his movement out of the Western District of New York until the Court has an opportunity for full briefing.

THE PARTIES

7. Petitioner Mr. Tomas Eduardo Nevarez Jurado, is detained in the custody of ICE. As of 12:56 am on September 27, 2025, he is being held at the Buffalo Federal Detention Facility in Batavia, New York. His custody and governmental actions related to his removal are likewise controlled by the Buffalo Field office, which is located within this judicial district.

8. Respondent Joseph Freden is the Buffalo, NY Field Office Director for Enforcement and Removal Operations, U.S. Immigration and Customs Enforcement. He is the local ICE official who has authority over the Petitioner. *See Vasquez v. Reno*, 233 F.3d 688, 690 (1st Cir. 2000), cert. denied, 122 S. Ct. 43 (2001). Respondent Freden's office is at 250 Delaware Avenue, Floor 7, Buffalo, NY 14202 and/or at the Buffalo Federal Detention Facility, 4250 Federal Drive, Batavia, NY 14020.

9. Petitioner's custody within this judicial district and the governmental actions related to his potential removal from the district are likewise controlled by Respondents Kurzdorfer, Lyons and Noem.

CUSTODY

10. Petitioner is in the physical custody of Respondents and U.S. Immigration and Customs Enforcement ("ICE") at the BFDF. The Deportation Officer responsible for his case is stationed at the Buffalo Federal Detention Facility ("BFDF"). The Petitioner is under the direct care, custody and control of Respondents and their agents.

JURISDICTION & VENUE

I. SUBJECT MATTER JURISDICTION

11. This action arises under the Constitution of the United States, and the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101 et seq., as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 ("IIRIRA"), Pub. L. No. 104 - 208, 110 Stat. 1570, and the Administrative Procedure Act ("APA"), 5 U.S.C. § 701 et seq.

12. This Court has jurisdiction under 28 U.S.C. § 2241, Art. I, § 9, cl. 2 of the Constitution of the United States (the Suspension Clause) and 28 U.S.C. § 1331, as Petitioner is presently in custody under color of the authority of the United States, and such custody is in violation of the Constitution, laws, or treaties of the United States. This Court may grant relief pursuant to 28 U.S.C. § 2241, 5 U.S.C. § 702, the All Writs Act, 28 U.S.C. § 1651 and the Court's equitable habeas authority.

II. PERSONAL JURISDICTION

13. This Court has personal jurisdiction over Mr. Nevarez's immediate custodian (who is physically within the district).¹

III. VENUE

14. Pursuant to *Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S.484, 493-500 (1973), venue lies in the United States District Court for the Western District of New York, the judicial district in which Petitioner is being detained. Petitioner is being detained at the BFDf and his detention falls under the jurisdiction of the ICE Field Office of Buffalo, New York, which encompasses the area where Petitioner is being detained, pursuant to 28 U.S.C. § 1391.

ARGUMENT

I. THE PETITIONER MUST BE RELEASED UNLESS THE GOVERNMENT PROVES IT HAS THE LAWFUL AUTHORITY TO DETAIN HIM

¹ Petitioner asserts this Court has personal jurisdiction over the additional Respondents, however, in the interests of brevity, the Petitioner will brief this if (1) any governmental acts challenged herein are found to relate to those Respondents (instead of the immediate custodian) and (2) the Government seeks to argue against personal jurisdiction.

15. The information available thus far *suggests* that the DHS arrest and detention of Mr. Nevarez violate its own directives, namely, that he be granted deferred action under the U Visa nonimmigrant status as a crime victim. As such, Mr. Nevarez anticipates being able to state with particularity why his current detention is unlawful - and correspondingly a violation of procedural and substantive due process.

16. But because the rationale underpinning the government's actions is exclusively within the control of the respondents - Petitioner must, for now, rely upon the ancient form of the writ; to have this Court (1) ascertain the legal justification for his detention and (2) determine whether it is lawful. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020) ("Habeas, [...] is the appropriate remedy to ascertain ... whether any person is rightfully in confinement or not.") (internal citations omitted).

17. This is true whether under this Court's statutory jurisdiction under 28 U.S.C. § 2241, *or* the Suspension Clause of the Constitution (should any statutory provision purport to strip jurisdiction). U.S. CONST. Art. I, § 9, cl. 2.

18. DHS must be forced to describe with particularity why it believes it has the legal right to detain the Petitioner. If it does not, this Court must issue the writ to release him forthwith.

II. THE PETITIONER MAY NOT BE REMOVED FROM THE UNITED STATES UNLESS AND UNTIL THE GOVERNMENT PROVES IT HAS THE LAWFUL RIGHT TO DO SO

19. Once again, the Petitioner has a right to the ancient form of the writ; to have this Court ascertain whether the Government's actions in attempting to remove him are lawful.

20. If the Government believes it has the right to remove Mr. Nevarez, it must state why and he will be able to respond accordingly. If it does not, it must release him as his

detention has become divorced from the only possible detention authority the Government possesses over Mr. Nevarez.

III. THE RESPONDENTS MUST BE PREVENTED FROM REMOVING MR. NEVAREZ OUT OF THIS JUDICIAL DISTRICT DURING THE PENDENCY OF THESE PROCEEDINGS

21. Mr. Nevarez's participation in these proceedings would become difficult - and potentially impossible - if he were transferred out of the jurisdiction prior this Court resolving this petition, *even if* the Court retains jurisdiction no matter where the Respondents may seek to transfer him.

CLAIMS FOR RELIEF

COUNT 1: PETITION FOR WRIT OF HABEAS CORPUS TO PREVENT THE GOVERNMENT FROM REMOVING MR. NEVAREZ FROM THE UNITED STATES WHEN IT HAS NO LEGAL AUTHORITY TO DO SO

22. Mr. Nevarez re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

23. Mr. Nevarez may not be removed to any country at this time: although he may or may not be subject to an order of deportation (counsel has not seen any reinstated order, but has reason to believe that one may exist, though it has not been served on Mr. Nevarez if it does exist). The Government must be prevented from unlawfully detaining and removing him. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 117(2020) ("Habeas, [...] is the appropriate remedy to ascertain ... whether any person is rightfully in confinement or not.")(internal citations omitted).

COUNT 2: MR. NEVAREZ'S CURRENT DETENTION IS IN VIOLATION OF THE REGULATIONS, CONTRAVENES THE STATUTORY BASIS FOR POST-ORDER DETENTION AND VIOLATES PROCEDURAL AND DUE PROCESS PROTECTIONS

24. Mr. Nevarez re-alleges and incorporates by reference each and every allegation contained in the preceding paragraphs as if set forth fully herein, and does so for all additional counts.

25. Mr. Nevarez was granted deferred action as a crime victim; his present detention is unlawful and violates his procedural and substantive due process rights. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 117(2020) (“Habeas, [...] is the appropriate remedy to ascertain ... whether any person is rightfully in confinement or not.”)(internal citations omitted).

PRAYER FOR RELIEF

WHEREFORE, Petitioner prays that the Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Prevent the Petitioner's removal outside of this judicial district until this action is decided;
- (3) Issue a temporary stay of Petitioner's removal until this action is decided;
- (4) Grant the Writ of Habeas Corpus and;
- (5) Fashion such additional relief as is necessary and appropriate, including declaratory relief or other interim relief necessary to vindicate Petitioners' rights under U.S. and international law.

Dated: September 27, 2025

/s/ Matthew K. Borowski

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**VERIFICATION BY SOMEONE ACTING ON PETITIONER'S BEHALF PURSUANT
TO 28 U.S.C. § 2242**

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in the attached Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: September 27, 2025

/s/ Matthew K. Borowski

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