

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

GUSTAVO BASURTO OJEDA,

Petitioner,

v.


Civil Action No. _____

NIKITA BAKER,

in her official capacity as Field Office Director,
Baltimore Field Office, U.S. Immigration and
Customs Enforcement;

Respondent.

VERIFIED PETITION FOR WRIT OF HABEAS CORPUS
UNDER 28 U.S.C. § 2241 AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE RELIEF UNDER 28 U.S.C. § 1331

Petitioner GUSTAVO BASURTO OJEDA (A-Number ), by and through undersigned counsel, respectfully petitions this Court for a writ of habeas corpus pursuant to 28 U.S.C. § 2241. Petitioner also seeks declaratory and injunctive relief under 28 U.S.C. § 1331 to enjoin Respondents from removing him to El Salvador or any third country not previously designated in his immigration proceedings unless and until he is afforded written notice and a meaningful opportunity to seek protection under 8 U.S.C. § 1231(b)(3) and the Convention Against Torture (CAT). Petitioner further seeks release or other appropriate relief from unlawful detention, as no lawful or reasonably foreseeable path to removal currently exists.

Concurrently with this Petition, Petitioner has filed an Emergency Motion for a Temporary Restraining Order and a supporting memorandum of law, seeking immediate interim relief to prevent unlawful removal or transfer pending the Court's resolution of this matter.

JURISDICTION AND VENUE

1. This Court has jurisdiction over this habeas corpus petition under 28 U.S.C. § 2241 and 28 U.S.C. § 1331.
2. Venue lies in this District pursuant to 28 U.S.C. § 1391(e) because Petitioner is detained within the District of Maryland and Respondents operate within this District.

PARTIES

3. Petitioner is a citizen of Mexico who has been granted statutory withholding of removal under 8 U.S.C. § 1231(b)(3).
4. Respondents include the Field Office Director of the Baltimore Field Office for U.S. Immigration and Customs Enforcement (ICE), and any officials with authority over Petitioner's detention and removal.

FACTUAL BACKGROUND

5. Petitioner was granted withholding of removal under 8 U.S.C. § 1231(b)(3) following a finding that it is more likely than not that he will be tortured if removed to Mexico. See Exhibit A.
6. Despite that protection, ICE recently re-detained Petitioner and indicated an intent to remove him to El Salvador, a country not adjudicated in Petitioner's prior removal proceedings and where he has never had the opportunity to assert protection claims.
7. Petitioner has not been issued any written notice concerning his potential removal to El Salvador, and no immigration judge has adjudicated his risk of persecution or torture in that country.

8. Petitioner remains in ICE custody without any clear or lawful path for removal, in violation of statutory and constitutional safeguards.
9. Pursuant to Standing Order 2025-01 of the District of Maryland (Misc. No. 00-308), the filing of this petition temporarily enjoins Petitioner's removal from the United States and preserves the Court's jurisdiction. However, that order remains in effect only through the second business day after filing unless otherwise extended, and therefore Petitioner separately seeks preliminary and permanent relief to prevent unlawful removal to a third country and to obtain meaningful process.

CLAIMS FOR RELIEF

Claim One: Violation of INA § 241(b)(3) and CAT (8 U.S.C. § 1231(b)(3))

10. DHS granted Petitioner withholding of removal under § 241(b)(3) of the INA in 2014, based on a determination that he faced a clear probability of persecution if returned to Mexico. That protection is country-specific and prohibits removal to Mexico absent formal termination by an immigration judge.
11. ICE has neither sought nor obtained such termination and is instead attempting to remove him to El Salvador – a country that was not designated in the removal order and where no adjudication has occurred.
12. Removal to El Salvador would constitute an unlawful circumvention of the § 1231(b)(3) protection and violate binding CAT regulations. See 8 *C.F.R.* § 208.16(c); 8 *C.F.R.* § 208.18(b).

Claim Two: Violation of the Due Process Clause of the Fifth Amendment

13. The Due Process Clause guarantees that noncitizens facing removal have “a meaningful opportunity to be heard.” *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976); *Rusu v. INS*, 296 F.3d 316, 320 (4th Cir. 2002).
14. Petitioner has not received written notice or an individualized opportunity to seek protection from removal to El Salvador.
15. The Fourth Circuit has held that due process applies to all individuals in removal proceedings and mandates a full and fair process before any deprivation of liberty or protection. See *Rusu*, 296 F.3d at 320–21; *Gandarillas-Zambrana v. BIA*, 44 F.3d 1251, 1255–57 (4th Cir. 1995).

Claim Three: Unlawful Detention in Violation of *Zadvydas v. Davis*, 533 U.S. 678 (2001)

16. DHS cannot remove Petitioner to Mexico due to his withholding grant, and it has not identified a lawfully designated third country for removal.
17. Removal to El Salvador is impermissible under current law and no credible evidence suggests that lawful removal is imminent.
18. Petitioner’s continued detention thus lacks a removal-related justification and violates the rule in *Zadvydas v. Davis*, 533 U.S. 678, 699 (2001), which prohibits indefinite detention absent a “significant likelihood of removal in the reasonably foreseeable future.”

Claim Four: Arbitrary and Capricious Agency Action under the APA, 5 U.S.C. § 706(2)

19. DHS has attempted to effectuate removal to El Salvador without complying with any procedures required under 8 C.F.R. §§ 208.16 – 208.18 and has failed to initiate proceedings to terminate withholding or conduct an individualized fear screening.
20. This unexplained departure from required procedures constitutes arbitrary and capricious action under the Administrative Procedure Act. *Motor Vehicle Mfrs. Ass'n v. State Farm*, 463 U.S. 29, 43 (1983); *Diaz-Reynoso v. Barr*, 968 F.3d 1070, 1083 (9th Cir. 2020) (removal without CAT screening is arbitrary).

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court:

- A. Issue a writ of habeas corpus under 28 U.S.C. § 2241 ordering Respondents to show cause why Petitioner should not be released from custody;
- B. Declare that removal to El Salvador without notice and an opportunity to apply for protection violates 8 U.S.C. § 1231(b)(3), the Convention Against Torture, and the Fifth Amendment;
- C. Enjoin Respondents from removing Petitioner to El Salvador or any other country unless and until he is provided written notice and a meaningful opportunity to seek protection before an IJ;
- D. Order Petitioner's release unless Respondents identify a lawful, imminent path to removal that complies with statutory and constitutional protections;
- E. Grant such other and further relief as the Court deems just and proper.

Dated: June 10, 2025

Respectfully submitted,

/s/Christine Somerlock

Christine Somerlock

Maryland Bar No. 21579

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Attorneys for Petitioner

VERIFICATION

I, Christine S. Somerlock, declare under penalty of perjury under the laws of the United States that the foregoing is true and correct to the best of my knowledge.

Executed on June 10, 2025

/s/Christine Somerlock
Christine Somerlock

CERTIFICATE OF SERVICE

I hereby certify that on June 10, 2025, I served a true and correct copy of the foregoing by electronic mail to the following agency official:

NIKITA BAKER

Field Office Director, Baltimore Field Office
U.S. Immigration and Customs Enforcement
Office of Enforcement and Removal Operations

Email: Baltimore.Outreach@ice.dhs.gov

/s/ Christine Somerlock
Christine Somerlock
Counsel for Petitioner