

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND**

GUSTAVO BASURTO OJEDA,

Petitioner,

v.

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

Respondent.

Civil Action No. _____

**MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY MOTION FOR
TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE**

Petitioner **GUSTAVO BASURTO OJEDA** (A-Number ) , by and through undersigned counsel, respectfully submits this memorandum of law in support of his Emergency Motion for a Temporary Restraining Order ("TRO") and for an order to show cause why a preliminary injunction should not issue pursuant to Federal Rule of Civil Procedure 65.

INTRODUCTION

Mr. Basurto Ojeda is a Mexican national who has resided in the United States for over a decade. On December 10, 2014, Immigration Judge Elizabeth A. Kessler granted his application for statutory withholding of removal under 8 U.S.C. § 1231(b)(3), based on a finding that he would face a likelihood of torture if removed to Mexico.

On June 10, 2025, during a routine annual check-in at the ICE-ERO Baltimore Field Office, ICE officers detained Mr. Basurto Ojeda without warning. He was accompanied by his U.S. citizen

spouse, who immediately contacted counsel after an ERO officer stated ICE's intent to remove him—not to Mexico, but to El Salvador. Petitioner has never been ordered removed there, and has never had the opportunity to seek protection from harm in that country.

ICE's sudden effort to remove him to an unadjudicated third country without first terminating his existing withholding protection or providing notice and an opportunity to seek asylum, withholding-only relief, or protection under the Convention Against Torture (CAT)—violates the Immigration and Nationality Act (INA), federal regulations, the Fifth Amendment's guarantee of due process, and binding precedent from the Supreme Court and the Fourth Circuit.

This Court should immediately enjoin the Respondent from executing or facilitating Petitioner's removal to El Salvador.

LEGAL STANDARD

A temporary restraining order is appropriate when the petitioner demonstrates (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm in the absence of relief; (3) that the balance of equities tips in the petitioner's favor; and (4) that an injunction is in the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Nken v. Holder*, 556 U.S. 418, 434 (2009).

ARGUMENT

I. Petitioner is Likely to Succeed on the Merits

Petitioner was granted country-specific protection from removal to Mexico under 8 U.S.C. § 1231(b)(3). That protection remains in force until ICE obtains a formal termination order from an immigration judge. *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021) (distinguishing the

post-final-order withholding context and noting its separate statutory safeguards). DHS has not initiated proceedings to terminate that protection.

Instead, ICE seeks to remove Petitioner to a different country—El Salvador—without any adjudication of whether he faces a risk of persecution or torture there. That violates the withholding statute, 8 C.F.R. §§ 208.16–208.18, and the Due Process Clause.

The Fourth Circuit has held that individuals facing removal are entitled to “a meaningful opportunity to be heard.” *Rusu v. INS*, 296 F.3d 316, 320 (4th Cir. 2002). Due process requires notice and a full opportunity to present protection claims before removal. ICE’s failure to provide such process renders removal unlawful.

II. Petitioner Faces Imminent, Irreparable Harm

Removal to El Salvador—an unadjudicated third country—without a hearing or fear screening creates an immediate risk of persecution and torture. That constitutes irreparable harm. The Supreme Court has recognized that “removal is a particularly severe penalty,” especially where a petitioner faces potential persecution or death. *Padilla v. Kentucky*, 559 U.S. 356, 365 (2010); see also *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001) (recognizing irreparable harm in the form of continued detention and unlawful removal).

Such harm is irreparable and cannot be remedied after removal. A preliminary injunction is the only means of preserving Petitioner’s rights and ensuring his safety.

III. The Balance of Equities and Public Interest Strongly Favor Relief

The government has no legally cognizable interest in removing individuals in violation of their statutory and constitutional rights. The Fourth Circuit has emphasized that “the public interest

is served by ensuring that executive action complies with the law.” *Centro Tepeyac v. Montgomery Cnty.*, 722 F.3d 184, 191 (4th Cir. 2013) (en banc).

Where, as here, Petitioner faces the threat of removal to a country never adjudicated in his immigration case, the equities weigh decisively in favor of preserving the status quo until lawful process is followed.

CONCLUSION

Petitioner has established a likelihood of success on the merits, irreparable harm, and that the equities and public interest favor immediate relief. This Court should issue a temporary restraining order enjoining Petitioner’s removal and direct the Respondent to show cause why a preliminary injunction should not issue.

Date: June 10, 2025

Respectfully submitted,

/s/Christine Somerlock
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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