

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

GUSTAVO BASURTO OJEDA,

Petitioner, v.

NIKITA BAKER, Director, Baltimore Field
Office, U.S. Immigration and Customs
Enforcement,

Respondent.

Case No.: 1-25-cv-01862 (MJM)

DECLARATION OF CHRISTINE SOMERLOCK

I, Christine Somerlock, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

Introduction

I am an attorney licensed to practice law in Maryland and counsel of record for Petitioner Gustavo Basurto Ojeda. I submit this declaration to provide supplemental evidence in this matter. It sets out recent events and describes the attached exhibits, which document the procedural defects in his redetention and reasonable fear proceedings, the Department of Homeland Security's (DHS) use of removal procedures that do not comply with governing law, and Mr. Basurto's liberty interests.

I. Procedural History and Current Status of Proceedings

On June 10, 2025, Mr. Basurto was taken into ICE custody. The following day, June 11, 2025, he affirmatively expressed fear of removal to El Salvador. Also, Mr. Basurto's immigration

attorney, Charlie Carrillo, submitted written notice to DHS confirming that fear and requesting referral for a protection screening under 8 C.F.R. § 208.31.

Despite this claim, DHS did not schedule the screening interview until July 28, 2025 (47 days later). See **Ex. A, 2025.07.25 2025.08.06 Email Credible Fear Interview USCIS**. This delay violated § 208.31(b), which provides that an alien who expresses a fear “shall be referred” to an asylum officer for a reasonable fear determination, and absent exceptional circumstances the determination “will be conducted within 10 days of the referral.” It is also contrary to DHS’s own March 30, 2025 memorandum on third-country removals, which states that interviews should generally be conducted within twenty-four hours of referral. See **Ex. B, 2025.03.20 DHS Memo**.

On July 28, 2025, I attended the credible fear interview telephonically with the USCIS asylum officer and Mr. Basurto.

During the interview, the asylum officer’s line of questioning clearly misapplied the legal standard. Under 8 C.F.R. § 208.31(c), the screening requires only a reasonable fear of torture, meaning the alien need only establish a “reasonable possibility” of torture in the country of removal. The regulation further directs officers to consider “gross, flagrant or mass violations of human rights” as relevant evidence, 8 C.F.R. § 208.16(c)(3), and case law confirms that an applicant need not identify the specific individual or entity that would inflict the harm if the record shows a particularized and substantial risk of torture. *Matter of J-F-F-*, 23 I&N Dec. 912, 917 (A.G. 2006)). Additionally, the cases *Matter of S-M-J-*, 21 I. & N. Dec. 722 (BIA 1997) and *Matter of R-R-*, 20 I&N Dec. 547, 551 n.3 (BIA 1992), establish that administrative agencies may take administrative notice of commonly known facts about the country in question.

Instead, the officer repeatedly demanded that Mr. Basurto name specific individuals or entities in El Salvador who would harm him. In March 2022, the Government of El Salvador

declared a state of exception suspending fundamental rights, including due process protections, which it has extended 30 times and continues to enforce.¹ There is a high probability that law enforcement in El Salvador will use this state of exception to justify Mr. Basurto's imprisonment solely because of his tattoos, which local authorities associate with gang affiliation despite the absence of any evidence supporting such a claim. Yet, the officer disregarded Mr. Basurto's credible and reasonable assertions that individuals with tattoos have been wrongfully detained in CECOT.

When I raised concerns about indirect refoulement to Mexico and the widely known risks faced by tattooed deportees in El Salvador, the officer again pressed Mr. Basurto to identify specific individuals he personally knew who had been harmed in El Salvador, and to name exactly who in El Salvador would seek to send him to Mexico. In response, Mr. Basurto cited DHS's own public statements and recent news coverage on El Salvador and CECOT. See **Ex. C, DHS and State Department Info El Salvador**. Mr. Basurto further cited conversations with fellow Salvadoran detainees who informed him that he "doesn't stand a chance" in El Salvador.

Separately, on July 23, 2025, counsel submitted a written request under 8 C.F.R. § 241.13 for the prompt interview required when ICE revokes supervised release. See **Ex. D, 2025.07.23 2025.08.01 Email – Request for Interview**. ICE did not respond to that request or conduct the interview. Instead, on August 1, 2025, ICE sent an email stating there were "negative screen results for CAT protections" and recommending that we "contact USCIS for additional details on the decision." *Id.*

¹ *El Salvador Police Say Quotas and Rumors Fueled Bukele's Mass Arrests* <https://www.nytimes.com/2025/06/27/world/americas/el-salvador-crackdown.html>

This ICE email did not meet the requirements of § 208.31(g), which *obligates USCIS* (not ICE) to serve the written decision, advise of the right to Immigration Judge review within the prescribed timeframe, and provide the interview summary and record. On August 6, 2025, Attorney Carrillo submitted a written request for Immigration Judge review to USCIS. See **Ex. A, 2025.07.25 2025.08.06 Email Credible Fear Interview USCIS.**

To date, we have not received a written decision from USCIS, interview summary, notice of Immigration Judge review rights, or a response to our August 6, 2025, request for Immigration Judge review. The Immigration Judge's review of the Asylum Officer's determination serves as a check on DHS, the agency responsible for conducting the reasonable fear interview and carrying out the removal. Without oversight from a neutral factfinder, DHS would effectively serve as both judge and jury in the process.

II. Impact of Procedural Defects

We have not been provided with any confirmation that El Salvador has accepted Mr. Basurto for removal or that travel documents have been issued. DHS has also failed to provide any evidence that a request for travel documentation was submitted to the Embassy of El Salvador on June 10, 2025 or that El Salvador has formally accepted Mr. Basurto. Even if DHS produces such information now, it would not cure the fact that Mr. Basurto still has the legal right to Immigration Court review of his credible fear claim. Further, by detaining Mr. Basurto under this unlawful process, DHS has stripped the Maryland Immigration Court's jurisdiction to consider his applications for protection under the Convention Against Torture or withholding of removal to El Salvador. Mr. Basurto seeks release so that he may present those claims in the proper forum.

Finally, DHS is applying "guidelines" modeled on Title 42 expulsions. See **Ex. B, 2025.03.20 DHS Memo.** Those procedures are part of a policy designed to quickly turn away

asylum seekers at the border during emergencies such as the COVID-19 pandemic. That expedited, summary procedure was never intended for someone like Mr. Basurto, who has lived in the United States since age eleven, nearly twenty years, and who is entitled to a full adjudication of his claims. *See* Section III, Liberty Interests. Removal is not reasonably foreseeable; it appears so only because DHS has bypassed required due process.

III. Liberty Interests

Mr. Basurto has significant family and community ties in the United States. Exhibit E includes photographs of his family, birth certificates of his children, his marriage certificate, and letters from his wife and mother-in-law. *See Ex. E, Evidence of Mr. Basurto's Liberty Interests.* The letters describe the hardship his detention and possible removal would cause, including loss of financial and emotional support for his United States citizen wife and their three U.S. citizen children. *See Mathews v. Eldridge*, 424 U.S. 319, 335 (1976).

IV. Response to Government's August 8, 2025, Supplemental "Foreseeability" Evidence

In ECF No. 23, the Government submitted a declaration from Deputy Field Office Director Edwards, attached as Exhibit 1 (ECF 23-1), to support its claim that Mr. Basurto's removal is "reasonably foreseeable." The declaration instead confirms the procedural and substantive defects identified in Sections I and II above.

First, Edwards admits that when DHS revoked Mr. Basurto's supervised release and detained him on June 10, 2025, there was no acceptance by El Salvador, no request for travel documents, and no logistical steps toward removal. This shows there was no "changed circumstance" to justify revocation under 8 C.F.R. § 241.13(i)(2)–(3). The regulation requires a present, fact-based determination that removal is reasonably foreseeable, not speculative or

aspirational. See also *Karem Tadros v. Noem*, 2025 U.S. Dist. LEXIS 113198. Without confirmation from the receiving country, that determination rests on conjecture.

Second, Edwards cites a negative reasonable-fear finding (§ 12) as though it removes all legal barriers. Yet DHS has not served counsel with the USCIS decision or interview notes, and Mr. Basurto has not been provided Immigration Judge review as required by 8 C.F.R. § 208.31(f)–(g). Until these steps occur, the fear proceedings remain incomplete and cannot establish *lawful removal*.

Finally, Edwards asserts DHS will resume removal efforts after this habeas case is resolved (§ 13). That is not evidence of present foreseeability under *Zadvydas*. The Government's own declaration shows removal remains speculative, dependent on procedural steps not yet taken and on acceptance from a country that has yet to confirm willingness to receive him. Moreover, the Government has produced no documentation of any correspondence or coordination with the Salvadoran government, nor any evidence of an existing arrangement with El Salvador. They have offered no assurances that Mr. Basurto would be safe if removed there, or that El Salvador would not in turn remove him to Mexico, where Mr. Basurto was granted withholding of removal.

For these reasons, the Edwards declaration does not establish that Mr. Basurto's removal is reasonably foreseeable. It confirms DHS acted prematurely and without the present ability to remove him, in violation of the regulations governing revocation of supervised release and continued detention.

Executed on **August 8, 2025**.

Respectfully submitted,

/s/Christine Somerlock
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CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2025, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following counsel of record:

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