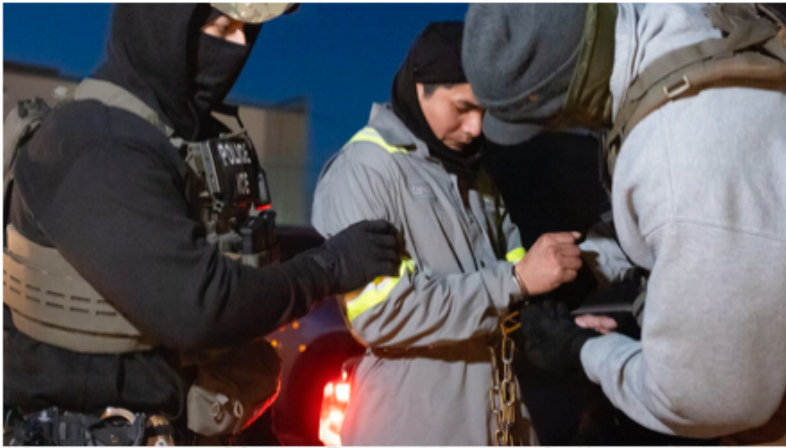


IN THE MEDIA: WHITAKER LEGAL

MARYLAND JUDGE ISSUES ORDER BLOCKING DEPORTATION AFTER HABEAS FILINGS

BY: IAN ROUND



The federal government may not remove immigrants with cases pending in Maryland after they file a petition for writ of habeas corpus under a standing order issued Wednesday.

The order preventing deportations, signed by Maryland District Court Chief Judge George Russell III, applies until 4 p.m. two business days after the petition

is filed. It comes as the Trump administration has removed hundreds of people without due process, violated court orders in immigration cases, and floated the idea of suspending habeas corpus.

The order is intended to preserve the court's jurisdiction over immigration cases and guarantee due process. It applies only to cases in Maryland, not nationwide. It states that after an "alien detainee" files a petition for writ of habeas corpus, "the Government/Respondents, including all those acting for them or on their behalf, are ENJOINED and RESTRAINED from removing Petitioners in such cases from the continental United States or altering their legal status." A writ of habeas corpus is used to bring a detainee before a judge to determine if their imprisonment, detention or removal is lawful.

The order states it is necessary "to preserve existing conditions and the potential jurisdiction of this Court over pending matters while the Court determines the scope of its authority to grant the request(ed) relief; to ensure Petitioners are able to participate in the adjudication of their requests for habeas relief, including participation in court proceedings and access to legal counsel for such purpose; to ensure the Court is able to evaluate their respective claims for relief based on their in-court testimony that may be offered; and to ensure the Government has a fulsome opportunity to brief and present arguments in its defense."

Nicole Whitaker, a Baltimore immigration lawyer, said the order appears to be a direct response to the government's removal of Kilmar Abrego García, a Maryland man from El Salvador who was deported without due process to an infamous Salvadoran prison, and has not been brought back to the United States despite an order by the Supreme Court to "facilitate" his return.

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If a person files a petition on a Monday morning, Whitaker said, they cannot be removed from the country or have their legal status changed until 4 p.m. on Wednesday.

"The Maryland court is saying, 'We're not going to let this happen again,' " Whitaker said in an interview. "It makes sure that the court has enough time to meaningfully hear the case." Whitaker said the order was unprecedented, as did Josh Blackman, a prominent conservative and libertarian lawyer.

"I am unfamiliar with a similar order in any other court," Blackman, a professor at South Texas College of Law Houston, wrote in an email to The Daily Record.

"Indeed, this order would seem to sweep far more broadly than traditional habeas practice. Generally, a court can only block removal after considering whether the alien is likely to prevail. Here, relief is granted automatically. I would expect the Trump Administration to find a way to challenge this rule in its entirety."

President Donald Trump this week appointed Blackman to the Religious Liberty Commission's advisory board of legal experts.

CBS News reported three-quarters of the Venezuelans deported to El Salvador had no criminal record. The Cato Institute found at least 50 of them hadn't violated immigration law either. The Maryland U.S. Attorney's Office declined to comment.

Spokespeople for the U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement did not immediately respond.

The order comes as the Trump administration argues it should have the power to deport millions of people without due process, claiming that providing trials — and proving the defendants deserve to be deported — would be impractical.

Abrego García has received the most media attention, but is far from the only person who has been deported without due process. Hundreds of Venezuelans were sent to the same Salvadoran prison, and have not been able to talk to their families or lawyers.

On Wednesday, NBC News reported, a Massachusetts federal judge said the administration had “unquestionably” violated a March court order when it sent people from several countries to South Sudan without the opportunity to object.

Stephen Miller, a top aide to Trump, told reporters last week that the administration was “actively looking at” suspending habeas corpus.

The Constitution states, “The Privilege of the Writ of Habeas Corpus shall not be suspended, unless when in Cases of Rebellion or Invasion the public Safety may require it.”

Meanwhile, Homeland Security Secretary Kristi Noem fumbled an answer when a lawmaker asked her to define habeas corpus. She said it was “a constitutional right that the president has to be able to remove people from this country and suspend their rights.”

Mark Graber, a professor at the University of Maryland School of Law, said the order was both legal and necessary.

“The order, while unusual, is within the law, which permits courts to issue an injunction to preserve their jurisdiction,” Graber stated in an email. “The injunction is necessary to prevent the Trump Administration from transporting people out of the country on dubious legal grounds and then claiming no American court can interfere because they are no longer in the jurisdiction of the United States.”

He continued, “To allow the Trump Administration to continue shipping persons beyond U.S. jurisdiction without hearings would, in effect, make all of the United States a potential no-law zone.”

U.S. Sen. Chris Van Hollen, a Maryland Democrat who flew to El Salvador and met with Abrego García in an effort to bring him back, credited Russell with upholding “bedrock principles of our legal system.”

“It’s an alarming sign of the times that our federal judges see the need to remind the Executive Branch of the most basic constitutional principles, but it is very important that the U.S. District Court in Maryland did so,” Van Hollen said in a statement to The Daily Record.

“President Trump cannot simply lock people up and ship them off to foreign prisons without any due process — a right afforded to everyone in America — and this order makes clear that our federal courts in Maryland must be given a proper opportunity to evaluate each case. These are bedrock principles of our legal system that must be respected and upheld.”