UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

MARTINEZ-ANDINO, Plaintiff-Petitioner, v. **MULLIN,** ***et al.***, Defendants-Respondents.	Case No. 1:26-cv-01208-BAH **JUDGE BERYL A. HOWELL**

MEMORANDUM IN SUPPORT OF EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

INTRODUCTION

Plaintiff, Jose Eliezer Martinez-Andino, is a citizen and national of Honduras. For over eight days, Plaintiff's counsel ("Counsel") has been unable to locate or communicate with him despite repeated efforts to contact U.S. Immigration and Customs Enforcement ("ICE") and U.S. Customs and Border Protection ("CBP"). Both agencies are denying that Plaintiff is in their custody and refusing to provide his whereabouts or how Counsel can communicate with him.

Plaintiff challenges the legality of this withholding and delay of agency action and moves for a Temporary Restraining Order ordering that Defendants, within 24 hours of an order by this Honorable Court, disclose Plaintiff's physical location, identify the agency exercising custody over Plaintiff, and provide Plaintiff with immediate access to counsel.

FACTS OF THE CASE

Plaintiff is a native and citizen of Honduras. He was born on [redacted] in San Pedro Sula, Honduras. Plaintiff entered the United States on or about September 12, 2020 through the U.S./Mexico border in Texas when he was 14 years old. He was determined to be an unaccompanied minor child. *See* **ECF No. 1-2 at p. 36**, U.S. Dept of Health and Human Service, Verification of Release of Unaccompanied Minor Child.

Plaintiff was placed in immigration removal proceedings by service of a Notice to Appear, which charges him as subject to removability pursuant to INA § 212(a)(6)(A)(i), as present in the United States without being admitted or paroled. *See* **ECF No. 1-2 at p. 12,** Notice to Appear. On July 7, 2023, the Immigration Court granted dismissal of removal proceedings upon joint motion by Respondent's prior Counsel and the U.S. Department of Homeland Security. The Immigration Judge noted Plaintiff has an approved I-360 application and intends to file for adjustment of status with U.S. Citizenship and Immigration Services to become a lawful permanent resident when his priority date becomes current. *See* **ECF No. 1-2 at p. 16**, Court Order. Accordingly, Plaintiff is not subject to any final administrative removal order and will be eligible to seek adjustment of status.

Plaintiff was apprehended by immigration officials while driving through the state of Minnesota on or about Wednesday, March 18, 2026. On Monday, March 23, 2026, Plaintiff called Counsel from the Cascade County Jail in Cascade County, Montana. He indicated his belief that he would be transferred to ICE for processing after signing documents he did not fully understand. He explained he felt he had no other option but to sign the paperwork. He was unable to articulate to Counsel what documents he signed. However, he expressed a fear of returning to Honduras. *See* **ECF No. 1-2 at p. 2**, Affidavit.

While on the phone with Plaintiff, Counsel checked the ICE Online Detainee Locator System, which reflected that Plaintiff was "in CBP custody." *See* **ECF No. 1-2 at p. 7**, ICE Detainee Locator, March 23, 2026. On Monday, March 30, 2026, Plaintiff's relative advised Counsel that he called over the weekend to say that he would be moved with a group of individuals from Montana to Arizona and then to Washington state. On Tuesday, March 31, 2026, Cousel's law firm was hired to represent Plaintiff and assist with his release from ICE or CBP Custody. CBP has informed Counsel that the

Plaintiff has been transferred to ICE custody on or about March 31, 2026. In reliance on CBP's assertion that Plaintiff had been transferred to ICE, Counsel filed a Form G-28 Notice of Entry of Appearance as Attorney or Representative with ICE on March 31, 2026.

Since March 31, Counsel has contacted multiple ICE and CBP offices, as well as detention facilities, to determine Plaintiff's location. Counsel provides an affidavit from her Partner, Allison T. Chan, Esq., who worked on the matter. *See* **ECF No. 1-2 at pp. 2-5**, Affidavit of A. Chan ¶ 10; **ECF No. 1-2 at p. 19**, Call Logs on April 1; **ECF No. 1-2 at pp. 20–31**, Correspondences with ICE-ERO and Northwest ICE Processing Center. Counsel has called ICE-ERO in Pheonix, AZ and Seattle, WA. Counsel called ICE holding facilities and detention centers in Arizona and Washington state. She also spoke with CBP officers at Havre Station and Plentywood Station. She has also spoken to ICE Headquarters in D.C. *Id.*

ICE has continued to deny taking custody of the Plaintiff at the time of the mysterious transfer and since that day. In turn, CBP has continued to assert that Plaintiff was transported to ICE on March 30 or March 31. The ICE Detainee locator showed Plaintiff to be "in CBP Custody" since March 23, 2026, and as recently as April 9, 2026. The ICE Detainee locator initially did not reflect Plaintiff's A number, but it was updated at some point between March 23 and March 31 to show his A Number. *See* **ECF No. 1-2 at 7, 33**, ICE Detainee Locator Search Results.

The last status update on Plaintiff's location was on April 6, 2026 from CBP at Plentywood Station. CBP advised Plaintiff's Counsel on a phone call that their system showed "removed via ICE error." CBP was unable to provide Counsel the meaning of this status.

On April 6, 2026, ICE-ERO Pheonix surmised that CBP may have "returned him to his country of citizenship, without transferring him to ICE custody." *See* **ECF No. 1-2 at pp. 21–24**, Correspondence with ICE-ERO Pheonix, AZ. Defendants have failed to provide any information regarding Plaintiff's whereabouts or facilitate communication.

Plaintiff's relatives had been speaking with Plaintiff regularly since he was detained on March 18. However, they have not had any communication with Plaintiff since the weekend of March 28. *See* **ECF No. 1-2 at pp. 3-5**, Affidavit ¶ 10.

Plaintiff is the beneficiary of an approved I-360 Petition for Special Immigration Juvenile Status ("SIJS"), which was filed on January 23, 2023. SIJS classification is reserved for minors in the United States in need of protection of the juvenile court because reunification with one or both parents is not viable due to abuse, neglect or abandonment. *See* INA § 101(a)(27)(J). SIJS classification is effectually a determination that it is not in the best interest of the noncitizen to be returned to his or her home country. *Id.* A SIJS grant is a clear path to lawful permanent residency; however numerical limitation to the number of visas available for SIJS noncitizens and a waiting period to apply for adjustment of status to a lawful permanent resident (i.e. green card). Noncitizens granted SIJS classification are granted "deferred action" which provides protection from deportation and eligibility to apply for work permits while they await eligibility for adjustment of status. The priority date currently eligible for seeking adjustment of status is January 1, 2023. As such, Mr. Martinez Andino is likely only months away from applying for his green card.

Plaintiff has been granted deferred action from June 22, 2023 for four (4) years. He is eligible for employment authorization and to remain in the United States until a visa is available to file his application for adjustment of status. *See* **ECF No. 1-2 at 9**. Plaintiff has a U.S. citizen child who is 3 years old and several relatives in the United States. They have not received any calls from Plaintiff outside of the country. Defendants' actions have rendered Plaintiff effectively disappeared.

LEGAL ARGUMENT

I. Motion for Temporary Restraining Order and Preliminary Injunctive Relief.

To obtain a temporary restraining order, a petitioner-plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *Piedmont Heights Civic Club, Inc. v. Moreland*, 637 F.2d 430 (5th Cir. 1981)).

A. Plaintiff will likely succeed on the merits.

Defendants have unlawfully withheld agency action by failing to disclose Plaintiff's location and permit access to counsel. *See* 5 U.S.C. § 706(1). Courts may compel agency action unlawfully withheld. *Norton*, 542 U.S. at 64. Here, the delay has been unreasonable under the factors set forth in *Telecomms. Research & Action Ctr. v. FCC*, 750 F.2d 70, 80 (D.C. Cir. 1984). That decision sets forth the following contours of a standard to consider whether an agency's delay is so egregious as to warrant mandamus:

> Although the standard is hardly ironclad, and sometimes suffers from vagueness, it nevertheless provides useful guidance in assessing claims of agency delay: (1) the time agencies take to make decisions must be governed by a "rule of reason," *PEPCO*, 702 F.2d at 1034, *MCI*, 627 F.2d at 340; (2) where Congress has provided a timetable or other indication of the speed with which it expects the agency to proceed in the enabling statute, that statutory scheme may supply content for this rule of reason, *PCHRG v. FDA*, 740 F.2d at 34–35; *PCHRG v. Auchter*, 702 F.2d at 1158, n. 30; *PEPCO*, 702 F.2d at 1034; (3) **delays that might be reasonable in the sphere of economic regulation are less tolerable when human health and welfare are at stake**; *PCHRG v. FDA*, 720 F.2d at 34; *PCHRG v. Auchter*, 702 F.2d at 1157; *see also Blankenship v. Secretary of Health, Education, and Welfare*, 587 F.2d 329, 334 (6th Cir. 1978); (4) the court should consider the effect of expediting delayed action on agency activities of a higher or competing priority, *see, e.g., PCHRG v. FDA*, 740 F.2d at 34; *PCHRG v. Auchter*, 702 F.2d at 1158; (5) the court should also take into account **the nature and extent of the interests prejudiced by delay**, *PCHRG v. FDA*, 740 F.2d at 35; and (6) the court need not "find any impropriety lurking behind agency lassitude in order to hold that agency action is 'unreasonably delayed.'" *PCHRG v. FDA*, 740 F.2d at 34.

Id. (emphasis added). All factors support granting mandamus. As such, Plaintiff is likely to succeed on the merits.

B. Plaintiff will Suffer Irreparable Harm

The harm that flows from the violation of Plaintiff's constitutional rights, deprivation of access to counsel, and potential removal from the United States while he has been granted deferred action and is very nearly eligible to apply to become a permanent resident is unquestionably irreparable. A temporary restraining order is appropriate where Plaintiff demonstrates a clear right to relief, a clear duty to act, and no adequate alternative remedy. Defendants have a nondiscretionary duty to maintain accurate custody information and permit attorney access. Plaintiff has a clear right to such information and access. Defendants have failed to perform these duties. No adequate alternative remedy exists where Plaintiff might be robbed of moved to a country he has a fear of returning to and might be confused into signing away rights that access to Counsel would safeguard. And, irreparable harm is virtually presumed in cases like this one where an individual is detained without due process. *Torres-Jurado v. Biden*, No. 19 CIV. 3595 (AT), 2023 WL 7130898, at *4 (S.D.N.Y. Oct. 29, 2023). ("[B]efore the Government unilaterally takes away that which is sacred, it must provide a meaningful process.").

C. Balance of the Equities and Public Interest

The "public interest is best served by ensuring the constitutional rights of persons within the United States are upheld." *See Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)). As discussed above, the abrupt detention without access to counsel of Plaintiff likely violated federal law and due process. His continued detention without the ability to contact family or his attorney continues those violations in a troubling prolongation of this wrong. "There is generally no public interest in the perpetuation of unlawful agency action," and "there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations."

League of Women Voters of United States v. Newby, 838 F.3d 1, 12 (D.C. Cir. 2016) (cleaned up). Here, Plaintiff's continued disappearance is in violation of Fifth Amendment rights and far outweighs any burden the Respondents would suffer by granting Plaintiff's motion.

CONCLUSION

For the foregoing reasons, the Court should grant the instant motion to order that Defendants, within 24 hours of an order by this Honorable Court, disclose Plaintiff's physical location, identify the agency exercising custody over Plaintiff, and provide Plaintiff with immediate access to counsel.

Dated: April 10, 2026

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CERTIFICATE OF SERVICE

On April 10, 2026, Undersigned Counsel filed the accompanying document through CM/ECF in which the following attorney has entered a Notice of Appearance on behalf of Defendants in this action:

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Dated: April 10, 2026

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