

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSE ELIEZER MARTINEZ-ANDINO,	)	
	)	
Plaintiff-Petitioner,	)	
	)	
v.	)	Civil Action No. <u>1:26-cv-01208-BAH</u>
	)	
MARKWAYNE MULLIN, <i>et al.</i>	)	
	)	
Defendants-Respondents.	)	
	)	

PLAINTIFF'S RESPONSE TO DEFENDANTS' FILING (ECF NO. 10)

Plaintiff respectfully submits this response to Defendants' April 13, 2026 filing.

I. INTRODUCTION

The current record reflects a series of procedural failures. Plaintiff was denied access to counsel despite repeated requests, was not provided a meaningful explanation of the documents he was asked to sign and was removed pursuant to a purported "voluntary departure" that he did not knowingly or voluntarily accept. He also repeatedly expressed fear of return to Honduras and requested an opportunity to be heard, which was not provided.

Defendants' response answers the Court's factual questions in a narrow sense but does not address the central issue in this case: whether Plaintiff's removal—executed hours before (and possibly during) a scheduled federal court hearing and under circumstances that prevented him from accessing counsel or meaningfully asserting his rights—was lawful. Defendants do not meaningfully address any of these issues. Instead, they rely on the fact that Plaintiff had been transferred out of U.S. custody by the time of the Court's hearing. That fact does not resolve the legality of the removal and does not deprive this Court of the ability to grant effective relief.

II. STATEMENT OF FACTS

Plaintiff was apprehended by immigration authorities on March 18, 2026. In the days following his apprehension, he maintained contact with family members and, on March 23, 2026, spoke with retained counsel. Beginning on or about March 28, 2026, however, all communication between Plaintiff and his family and counsel ceased. Plaintiff's counsel and family were unable to reach him despite repeated efforts. During this same period, Plaintiff was transferred through multiple detention facilities across several states.

Plaintiff's counsel was able to speak with Plaintiff on the phone around 9:00AM EST on Monday, April 13, 2026. Plaintiff confirmed several details about his apprehension, detention, and circumstances of his removal. According to Plaintiff's sworn declaration, signed on April 13 from Honduras, during the period from approximately March 31 through April 9, 2026, he repeatedly requested access to counsel. *See* Plaintiff's Declaration. Those requests were ignored or denied. Plaintiff further states that he was presented with immigration paperwork that was not explained to him and was told that he had no option but to sign it. He subsequently attempted to rescind his signature.

Plaintiff also repeatedly informed immigration officials that he feared returning to Honduras and requested an opportunity to speak with a judge or receive an interview. According to his declaration, those requests were not acted upon. *See* Plaintiff's Declaration.

On April 9, 2026, Plaintiff's counsel executed a sworn declaration documenting the loss of contact with Plaintiff and raising concerns regarding his custody status, including a government record indicating that Plaintiff had been "removed via ICE error."

On April 10, 2026, Plaintiff filed this action along with an emergency motion for a temporary restraining order. Later that day, at approximately 3:15 p.m., the Court scheduled a hearing on Plaintiff's motion.

According to Defendants, Plaintiff had departed the United States earlier that day at a 8:00 a.m. EST on a removal flight and arrived in Honduras at approximately 12:50 p.m. EST. Defendants assert that Plaintiff was transferred out of U.S. custody no later than 2:00 p.m. EST. However, the Declaration of Christopher George, Deputy Assistant Director for the International Operations Division (IOD) within the Removal Division, Enforcement and Removal Operations (ERO), U.S. Immigration and Customs Enforcement (ICE), Department of Homeland Security (DHS) at ECF No. 12 provides little confidence in this convenient sequence. At paragraph 3 of his Declaration, he states, “I provide this declaration based on my personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, and information portals maintained and relied upon by DHS in the regular course of business.” ECF No. 12, Declaration of Christopher George.

However, those records and information portals have proven to be internally inconsistent and unreliable in this case where DHS records have reflected various contradictory facts. Thirty minutes before the 4:00 p.m. EST hearing on Friday April 10, Counsel for Defendant’s represented that Plaintiff was removed at 5:00 a.m. EST that morning. Then, at the 4:00 p.m. emergency hearing, Defendants represented that Plaintiff had last been in the custody of Customs and Border Protection. After the hearing, Counsel for Defendants reversed to state he had been in ICE custody less than an hour after that earlier representation. Now, in their response, Counsel for Defendants amended the flight time to 8:00 a.m. EST on Friday April 10.

And, critically, Plaintiff’s own Declaration at ECF No. 13 is based on his own personal observations, rather than unreliable and proven inconsistent records. Plaintiff’s Declaration directly contradicts many of the details in the Declaration of Christopher George. Defendants contend that Plaintiff “took Voluntary Departure.” Plaintiff disputes that characterization and maintains that any purported waiver of rights was not knowing or voluntary.

III. DEFENDANTS' RESPONSE DOES NOT RESOLVE THE LEGAL ISSUES BEFORE THE COURT

a. The Government's Reliance on "Voluntary Departure" Is Unsupported

Defendants assert that Plaintiff "took Voluntary Departure." ECF No. 10 at 3. But they provide no evidence that any waiver of rights was knowing, intelligent, or voluntary. *See* 8 C.F.R. § 1003.25(b)(6). Plaintiff submitted sworn testimony that he was told he had no choice but to sign the paperwork presented to him, the contents and consequences of that paperwork were not explained, he repeatedly attempted to rescind his signature, and he was denied access to counsel during the period in which these events occurred. *See* Plaintiff's Declaration.

Defendants do not address these allegations. Nor do they address Plaintiff's repeated statements that he feared returning to Honduras and his requests for a hearing.

A removal predicated on an uninformed or coerced waiver—and carried out despite expressed fear—cannot be sustained simply by labeling it "voluntary." The Supreme Court has long recognized that waivers of important rights must be knowing and voluntary to be valid. *United States v. Mendoza-Lopez*, 481 U.S. 828, 840 (1987). Any voluntary departure paperwork that the Plaintiff allegedly signed was at the expense of due process rights; Plaintiff was provided misleading and confusing information about the law and the removal process, especially in light of the fact that he was months away from filing for his green card.

Furthermore, it's unclear under which section of the regulations Plaintiff signed for voluntary departure, or whether he signed stipulated removal order under 8 C.F.R. § 1003.25(b)(6). The Automated Case Information System found at <https://acis.eoir.justice.gov/en/caseInformation>, a public online website allowing individuals to check their immigration status, appears to show

Plaintiff's matter has having been dismissed by the Immigration Court on July 7, 2023. This supports a finding that Plaintiff is not subject to any final administrative removal order.

b. Defendants' Account Raises Unresolved Questions Based on CBP Records Reflecting Plaintiff was "Removed Via ICE Error."

Defendants' submission leaves key factual issues unresolved. At the April 10 hearing, government counsel initially represented that Plaintiff had last been in the custody of Customs and Border Protection, and later corrected that statement to identify Immigration and Customs Enforcement as the custodial agency. ECF No. 10 at 2. In addition, Plaintiff has submitted evidence that government records described his removal as occurring "via ICE error." Defendants do not address or explain that notation. *See* Plaintiff's Complaint, pg. ¶ 32; *see also* Exh. A, Affidavit of A. Chan pg. 3, ¶ 10. This is significant and not addressed in the Defendant's response. These inconsistencies underscore that the record is incomplete and that further factual development is necessary.

c. Custody at the Time of the Hearing Does Not Exclusively Resolve This Case

Defendants' emphasis on the fact that Plaintiff was no longer in U.S. custody at 4:00 p.m. is legally misplaced. The Supreme Court has made clear that a case is not moot where a court can still grant "any effectual relief whatever." *See Chafin v. Chafin*, 568 U.S. 165, 172 (2013). The D.C. Circuit has similarly recognized that a case remains live where meaningful relief is available. *See Utility Air Regulatory Group v. EPA*, 320 F.3d 272, 277 (D.C. Cir. 2003).

IV. THIS CASE IS NOT MOOT AND EFFECTIVE RELIEF REMAINS AVAILABLE

Effective relief remains available in this case. The Supreme Court has recognized that, where a noncitizen has been improperly removed, a court may direct the Government to "facilitate"

the individual's return and restore the status quo ante. *See Noem v. Garcia*, 145 S. Ct. 1017, 1018 (2025); *see also Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946). Plaintiff seeks that form of relief here. He does not ask the Court to command a foreign sovereign, but rather to direct Defendants to take steps within their authority to facilitate his return and restore the status quo ante.

V. FURTHER RELIEF AND FACTUAL DEVELOPMENT ARE WARRANTED

Given the unresolved factual issues and the serious procedural concerns reflected in the record, further relief is warranted. In addition to the requests contained in Plaintiff's second motion for TRO, Defendants should be required to:

1. Explain the basis for the purported voluntary departure;
2. Address Plaintiff's requests for counsel between March 31 to April 9, and his expressed fear of return;
3. Clarify the meaning of the "removed via ICE error" notation; and
4. Provide a complete account of Plaintiff's custody and transfers, including the logs and records upon which the Declaration of Christopher George is based.

In addition, consistent with *Noem v. Garcia*, the Court should order Defendants to take all reasonable steps to facilitate Plaintiff's return. Respondent's return to the United States under 8 C.F.R. § 212.5(d)(5) would allow him to later apply for adjustment of status (i.e. green card) when the priority date becomes current on his approved immigrant visa based upon his special immigrant juvenile status.

VI. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that the Court grant further relief and require Defendants to take steps consistent with facilitating Plaintiff's return and restoring the status quo such that Plaintiff is in the same position (or as close to it as possible) as he was prior to this unlawful removal.

Dated: April 13, 2026

/s/Margaret W. Wong

Margaret W. Wong, Esq. (Ohio 9068)

Margaret W. Wong & Associates LLC

3150 Chester Avenue

Cleveland, Ohio 44114

(216) 566-9908

wong@imwong.com

Pro Hac Vice Attorney for Plaintiff-Petitioner

/s/ Susan Blumenthal

Margaret W. Wong, Esq. (Ohio 89586)

Margaret W. Wong & Associates LLC

3150 Chester Avenue

Cleveland, Ohio 44114

(216) 566-9908

wong@imwong.com

Pro Hac Vice Attorney for Plaintiff-Petitioner

/s/ Allison T. Chan

Margaret W. Wong, Esq. (New York 5135694)

Margaret W. Wong & Associates LLC

3150 Chester Avenue

Cleveland, Ohio 44114

(216) 566-9908

wong@imwong.com

Pro Hac Vice Attorney for Plaintiff-Petitioner

CERTIFICATE OF SERVICE

On April 14, 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:

Brian J. Levy
Assistant United States Attorney
601 D Street, NW
Washington, DC 20530

Dated: April 10, 2026

/s/Margaret W. Wong

Margaret W. Wong, Esq. (Ohio 9068)

Margaret W. Wong & Associates LLC

3150 Chester Avenue

Cleveland, Ohio 44114

(216) 566-9908

wong@imwong.com

Pro Hac Vice Attorney for Plaintiff-Petitioner