Are UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOSE ELIEZER MARTINEZ-ANDINO, Plaintiff, v. MARKWAYNE MULLIN, Secretary of Homeland Security, et al., Defendants.	Civil Action No. 26-1208 (BAH)

MOTION TO DISMISS THE AMENDED COMPLAINT AND MEMORANDUM IN SUPPORT THEREOF AND MEMORANDUM IN OPPOSITION TO PLAINTIFF'S SECOND MOTION FOR A TEMPORARY RESTRAINING ORDER

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Defendants the Department of Homeland Security; Acting Attorney General Todd Blanche; Secretary Markwayne Mullin in his official capacity as Secretary of Homeland Security; David Venturella, in his official capacity as Acting Director of U.S. Immigration and Customs Enforcement ("ICE");[1] Marcos Charles, in his official capacity as Acting Executive Associate Director of ICE Enforcement and Removal Operations; Rodney S. Scott, in his official capacity as Commissioner of U.S. Customs and Border Protection; and Walter N. Slosar, in his official capacity as Senior Official Performing the Duties of the Chief, U.S. Border Patrol (collectively "Defendants"), by and through undersigned counsel, respectfully move to dismiss Plaintiff Jose Eliezer Martinez-Andino's amended complaint ("Am. Compl.," ECF No. 19) and file this memorandum in opposition to Plaintiff's second motion for a temporary restraining order ("Pl.'s 2d Mot.," ECF No. 8). As explained below, this Court does not have jurisdiction over Plaintiff's claims, nor has Plaintiff plausibly stated a claim upon which relief may be granted. While Plaintiff's situation may be sympathetic, the Court may not grant relief to an expatriated noncitizen who has no right of entry to the United States.[2]

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[1] *See* Fed. R. Civ. P. 25(d) ("The officer's successor is automatically substituted as a party.").

[2] Among other things, Plaintiff raises claims under the Administrative Procedure Act ("APA"). The Local Rules state that the Government should file a certified list of the contents of the administrative record simultaneously with this motion. Local Civ. Rule 7(n)(1). But the Government does not rely on anything in the administrative record and instead relies only on the allegations in Plaintiff's complaint or the declarations filed with the Court. The Government requests that the Court excuse it from having to file the certified list at this time. *See, e.g.*, *Akbar v. Cuccinelli*, Civ. A. No. 18-2808 (RCL), 2020 WL 1287817, at *4 (D.D.C. Mar. 18, 2020) (granting Government's motion for relief from Local Civil Rule 7(n)(1) "to conserve scarce agency resources" where Government had filed a motion to dismiss for lack of subject matter jurisdiction); *District of Columbia v. Trump*, 810 F. Supp. 3d 19, 35 n.8 (D.D.C. 2025); *Nat'l Ass'n of Postal Supervisors v. U.S. Postal Serv.*, Civ. A. No. 19-2236 (RCL), 2023 WL 5221367, at *6 (D.D.C. Aug. 15, 2023).

BACKGROUND

Except where noted otherwise, Defendant takes Plaintiff's allegations as true solely for the purpose of this motion. *See Public Emps. for Envt'l Resp. v. Zeldin*, --- F.4th ---, No. 24-5294, 2026 WL 1191153, at *4 (D.C. Cir. May 1, 2026) ("At this posture, we accept the well-pleaded factual allegations as true and draw all reasonable inferences from those allegations in the plaintiff's favor, but we do not assume the truth of legal conclusions or accept inferences that are unsupported by the facts alleged in the complaint." (internal quotation marks omitted) (quoting *In re U.S. Off. of Pers. Mgmt. Data Sec. Breach Litig.*, 928 F.3d 42, 54 (D.C. Cir. 2019))).

I. Plaintiff Is a Noncitizen Subject to Removal

Plaintiff is a citizen of Honduras. Am. Compl. ¶ 2. He entered the United States "on or about September 12, 2020 . . . when he was 14 years old." Am. Compl. ¶ 9. He reports being "the beneficiary of an approved I-360 Petition for Special Immigrant Juvenile Status" and had "a valid grant of Deferred Action." Am. Compl. ¶ 2. Neither the Special Immigrant Juvenile ("SIJ") classification nor Deferred Action prevent Plaintiff from being removed.

SIJ classification does not provide status that prevents inadmissibility. Although 8 U.S.C. § 1101(a)(27)(J) refers to Special Immigrant Juvenile classification as Special Immigrant Juvenile "status," Special Immigrant Juvenile classification does not provide immigration status under the Immigration and Nationality Act. *See* Am. Compl. ¶ 21 (calling it a "classification" that allows Plaintiff "to seek adjustment of status"); *United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) (citing 8 U.S.C. § 1182(a)(6) for the proposition that noncitizens "who are present in the United States without having been admitted or paroled are "inadmissible" and subject to removal"); *Special Immigrant Status; Certain Aliens Declared Dependent on a Juvenile Court; Revocation of Approval of Petitions; Bona Fide Marriage Exemption to Marriage Fraud Amendments; Adjustment of Status*, 58 Fed. Reg. 42,843, 48,849 (Aug. 12, 1993) ("[F]or the purpose of applying for adjustment of status as a special immigrant juvenile under section 101(a)(27)(J) of the Act only, these juveniles will be treated as if they had been paroled into the United States.").

The classification is available to noncitizens under the age of twenty-one who have been declared dependent on a juvenile court or legally committed to or placed into the custody of an entity or individual, and whose reunification with at least one parent is not viable or for whom it has been determined in administrative or judicial proceedings that it would not be in their best interest to return to the unaccompanied noncitizen child's or parent's country of nationality or country of last habitual residence. 8 U.S.C. § 1101(a)(27)(J).

SIJ classification is a pathway to obtaining lawful status: if the SIJ petition is approved, the noncitizen may apply to adjust his status to that of a lawful permanent resident once an immigrant visa is available to him. 8 U.S.C. § 1255(a), (h); 8 C.F.R. § 245.2(a)(2)(i)(A). Congress, however, limited the number of immigrant visas annually available to aliens in the employment-based fourth preference category, which includes special immigrants. 8 U.S.C. § 1153(b)(4). Consequently, because there are more special immigrants than available immigrant visas, special immigrants must wait, often for years, before an immigrant visa is available, which is determined by the priority date (i.e., the date when USCIS received their Special Immigrant Juvenile petition). While persons with the Special Immigrant Juvenile classification may eventually apply to adjust status to that of a lawful permanent resident, many are still subject to arrest, detention, and removal from the United States until their priority date is current. *See United States v. Granados-Alvarado*, 350 F. Supp. 3d 355, 357 (D. Md. 2018) ("SIJ designation does not strip the U.S. government of all removal powers."). No statute, regulation, or other authority requires USCIS to consider special immigrants for deferred action or employment authorization documents based on their special immigrant classification.

Deferred Action is fundamentally discretionary. It "does not confer any immigration or citizenship status or establish any enforceable legal right to remain in the United States and, consequently, may be canceled at any time." *Arpaio v. Obama*, 27 F. Supp. 3d 185, 193 (D.D.C. 2014), *aff'd*, 797 F.3d 11 (D.C. Cir. 2015) ("[D]eferred action remains discretionary and reversible, and 'confers no substantive right, immigration status or pathway to citizenship.'").

II. <u>Plaintiff Was Detained</u>

According to Plaintiff's Complaint, "Plaintiff was apprehended by immigration officials on or about Wednesday, March 18, 2026 and detained at the Cascade County Jail in Montana." Am. Compl. ¶ 24. On March 23, Plaintiff called Allison Chan and "indicated his belief that he would be transferred to ICE for processing after signing documents he did not fully understand." Am. Compl. ¶ 25. As discussed below, one of the documents was written in Spanish. *See* Ex. A. Other documents were translated into Spanish. *See* Ex. B at 4 ("The [noncitizen] was provided an oral interpretation/written translation of this Declaration in the [noncitizen's] preferred language.").

On March 30, 2026, a relative called "Counsel" to relay that Plaintiff said "that he would be moved with a group of individuals from Montana to Arizona and then Washington state." Am. Compl. ¶ 26. On March 31, 2026, someone hired "Cou[n]sel's law firm . . . to represent Plaintiff" and seek his release. *Id.* ¶ 27. Counsel's law firm, however, was unable to secure Plaintiff's release. The law firm "contacted multiple ICE and CBP offices, as well as detention facilities" but was unable to learn where Plaintiff was in custody. *Id.* ¶ 29.

III. <u>Plaintiff Agrees to a Voluntary Departure and Flies to Honduras.</u>

On March 18, 2026, Plaintiff signed several documents, including DHS Form I-826, written in Spanish. *See* Ex. A. "Form I-826[] . . . advises an alien of the consequences of accepting voluntary return." *United Farm Workers v. Noem*, Civ. A. No. 25-0246, 2026 WL 185064, at *13 (E.D. Cal. Jan. 25, 2026). The form explains, among other things, that Plaintiff had the right to talk to a lawyer. Ex. A. ("Usted tiene el derecho de contactar a un abogado de inmigraci6n u otro representante legal para que lo represente en sus audiencias, o para que le conteste cualquier pregunta concerniente a sus derechos legales en las Estados Unidos."). In other words, the form explained to Plaintiff that he had the right to contact an immigration attorney or other legal representative. However, as an alternative, a noncitizen could return to their home country, which runs the risk of losing certain immigration benefits that are available only for people who remain in the United States. *Id.* ("Como alternativa, usted puede pedir que lo devuelvan a su pais lo mas pronto posible, sin una audiencia. Si elige regresar a su pais, usted podria perder la oportunidad de solicitar ciertos beneficios de inmigración o formas de prevenir la remoci6n que solamente estan disponibles para las personas presentes en las Estados Unidos."). Even if a Plaintiff agrees to voluntarily return, they can change their mind at any time before they leave the country. *Id.* ("Si elige regresar a su pais, usted puede cambiar de idea y pedir una audiencia ante un juez en la corte de inmigración en cualquier momenta antes de su salida de las Estados Unidos. Usted debe notificar inmediatamente a un oficial de inmigración si cambia de idea.").

The form presented Plaintiff with three choices and he signed the third choice, which states that he admits to being illegally in the United States, did not believe he was in danger in his country, and agrees to being detained until he leaves. *See id.* ("Admito que estoy ilegalmente en las Estados Unidos, y no considero que estaria en peligro si regreso a mi pais. Renuncio a mi derecho a una audiencia ante la carte de inmigración. Deseo regresar a mi pais en cuanto se pueda disponer mi salida. Entiendo que pudiera permanecer detenido hasta mi salida."). Plaintiff also signed Form I-210, Voluntary Departure and Verification of Departure, and the Addendum to DHS Form I-210—Alien Declaration, which was translated into his "preferred language." CITE.

"On April 10, 2026, at approximately 8:00 AM EST, Martinez-Andino departed the United States via Mesa, Arizona, on a chartered removal flight to Honduras." Decl. of Chirstopher George ("George Decl.") ¶ 5, ECF No. 12.[3]

IV. The Instant Action

On April 10, 2026, Plaintiff filed the Complaint in this action. The asserted purpose of the action was "to locate a noncitizen who has effectively 'disappeared' within the custody of" DHS. Compl. ¶ 1; *accord id.* ¶ 6 ("Plaintiff seeks immediate relief requiring Defendants to disclose his location and provide access to counsel[.]"). The Complaint raised four claims of relief: (1) mandamus "to maintain accurate custody information and permit attorney access," Compl. ¶ 42; (2) mandamus under the Administrative Procedure Act to remedy the alleged failure "to disclose Plaintiff's location and permit access to counsel," Compl. ¶ 46; (3) a freestanding claim under the Fifth Amendment in response to purported interference with Plaintiff's right to counsel, Compl. ¶ 52; and (4) a writ of habeas corpus, seemingly to "locate" Plaintiff. Compl. ¶ 54.

Alongside the complaint, Plaintiff filed an emergency motion for temporary restraining order. *See* Pl.'s 1st Mot., ECF No. 2. The emergency motion sought an order to

> 1. Disclose Plaintiff's current physical location to his Counsel and the Court;
>
> 2. If the Plaintiff is in custody, identify the agency currently exercising custody; and

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[3] George is the "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)." George Decl. ¶ 1.

> 3. If the Plaintiff is in the custody of the US government, provide Plaintiff with immediate access to counsel.

Proposed Order, ECF No. 2-1; *accord* Pl.'s 1st Mot. at 2, ECF No. 2.

Around 3:15PM, the Court scheduled a teleconference on Plaintiff's emergency motion. *See* Defs.' Resp. at 1, ECF No. 10. Around 3:30PM, counsel for Defendants informed Plaintiff's counsel that Plaintiff had flown to Honduras. *Id.*

At 4:07PM, the Court held the hearing. *See* Apr. 10, 2026 Min. Order; Hr'g Tr. at 1. At the time of the hearing, the agency was in the process of "getting more information." Hearing Tr. at 3:13–14. Plaintiff had been on a flight to Honduras that morning, the flight had landed, and Plaintiff was no longer in custody. Hr'g. Tr. at 4:25–5:3; *id.* at 5:17–18 ("I've been told that the flight he was on landed."). All passengers on Plaintiff's flight "were confirmed as handed over to the custody of the Government of Honduras' Instituto Nacional de Migración by 4:10 PM EST." George Decl. ¶ 7.[4]

The Court asked "in whose custody" Plaintiff "got to Honduras." Defendants' counsel said, "I don't know . . . I am not sure . . . . I don't want to mislead anybody with any certainty. I think at that point it might have been CBP, but we're still trying to reconstruct the timeline from when he was arrested until when he arrived in Honduras." Hr'g Tr. 7:15–8:14.

Based on the undisputed fact that Plaintiff was in Honduras, the Court explained that it was a "mere Article III Judge" with "a request in front of [it] for information." Hr'g Tr. 10:18–19. Plaintiff's counsel disputed whether Plaintiff was still in government custody and "orally . . . request[ed] . . . that [Plaintiff] . . . if he is still, as of this moment, in U.S. custody and to be returned

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4 Previous discussions of timing were based on a misunderstanding of the time zones that applied to records. *See* George Decl. ¶ 5.

and to maintain the status quo until further hearings on our petition for habeas corpus and Administrative Procedures Act be allowed to proceed." Hr'g Tr. 11:24–12:19.

As such, the Court concluded that Plaintiff had received the requested information and likely could communicate with counsel. *See* Hr'g Tr. 12:15–13:7. The Court further noted that it expected Defendants' counsel "as an officer of the court, to share" information about Plaintiff's whereabouts with Plaintiff's counsel. In conclusion, the Court further ruled that "if, as of the time of this hearing that Mr. Martinez-Andino remains in the custody of a federal agency, . . . he be permitted to communicate with his counsel immediately." Hr'g Tr. 14:18–22.

The Court ordered in relevant part:

> (1) that defendants "[d]isclose Plaintiff's current physical location to his Counsel and the Court," which relief was provided at the hearing when defendants' counsel disclosed that plaintiff had been flown to and was presently in Honduras;
>
> (2) that, "[i]f the Plaintiff is in custody, [defendants] identify the agency currently exercising custody," which relief was provided at the hearing when defendants' counsel disclosed that plaintiff is, to counsel's knowledge, no longer in U.S. custody but was last in the custody of Customs and Border [Protection]; and
>
> (3) that, "[i]f plaintiff is in the custody of the US government, [defendants] provide Plaintiff with immediate access to counsel," which relief was directed to be provided promptly by any available means. Plaintiff's motion is DENIED insofar as plaintiff is no longer in the custody of any agency of the U.S. Government.

Apr. 10, 2026, Min. Order.

Immediately after the hearing, the undersigned counsel corrected his misunderstanding and informed Plaintiff's counsel that Plaintiff was last in the custody of ICE. *See* Defs.' Resp. at 2, ECF No. 10 (quoting Pl.'s 2d Mot. at 2, ECF No. 8). Although Plaintiff was removed from CBP custody, ICE conducted the actual removal.

V. <u>Second Motion for Temporary Restraining Order</u>

Around 6:00 P.M., Plaintiff filed his second motion for a temporary restraining order ("Pl.'s 2d Mot.," ECF No. 8), largely repeating arguments that Plaintiff had had made at the end of the hearing and that the Court impliedly rejected. Without identifying any legal basis for any requested relief, Plaintiff requested the following relief:

> 1. Disclose whether Plaintiff remained in custody at the time of the hearing that began at 4:00 p.m. EDT (2:00 p.m. Honduras local time);
>
> 2. Disclose which agency last had custody of Plaintiff, if he is no longer in agency custody, along with the time and address of his release from custody;
>
> 3. Provide Plaintiff with immediate access to counsel, if he remains in agency custody;
>
> 4. Not to release the Plaintiff to the Honduran government or to his liberty in Honduras;
>
> 5. Parole Plaintiff back into the United States under 8 C.F.R. § 212.5(d)(5) to rectify his wrongful removal; and
>
> 6. If Plaintiff is no longer in custody, to facilitate his return to the custody of the United States for him to be paroled back to the United States.

Pl.'s 2d Mot. at 3, ECF No. 8.

The Court ordered Defendants to file "a response to plaintiff's factual queries sought in the motion, namely:[1.] 'whether Plaintiff remained in custody at the time of the hearing that began at 4:00 p.m. EDT (2:00 p.m. Honduras local time)'; and[2.] 'which agency last had custody of Plaintiff, if he is no longer in agency custody, along with the time and address of his release from custody.'" Apr. 10, 2026.

On April 13, 2026, Defendants filed their response. In the response, Defendants explained that Plaintiff was not in custody at the time of the hearing because no later than 2:00 P.M. EST, Plaintiff was transferred from ICE custody to the custody of Government of Honduras's Instituto Nacional de Micración at the Ramón Villeda Morales International Airport. Defs.' Resp. at 3–4 (citing George Decl. ¶ 6, ECF No. 12).

On April 14, 2026, Plaintiff filed a reply in which he asserted that Defendants' sworn declaration was "convenient" and provided a declaration from Plaintiff in which Plaintiff asserted that he remained in custody when the hearing took place because he asked for the time both when the plane landed and when he left the plane: "Recuerdo esa hora porque preguntamos qué hora era cuando aterrizamos, y luego qué hora era cuando bajamos del avión." Pl. Decl., ECF No. 13-1 at 3–4; *see also id.* at 1 ("I remember the time because we asked what time it was when we landed, and then we asked what time it was when we got off the plane.").

The Court directed the parties to propose "a schedule to fully brief any issues, including whether this Court has jurisdiction to order the outstanding relief sought by plaintiff." Apr. 14, 2026, Min. Order. The parties agreed to a briefing schedule under which, by April 29, 2026, Plaintiff would file an amended complaint and an amended motion for a temporary restraining order or a preliminary injunction, and the Court so ordered the briefing schedule. Apr. 15, 2026, Min. Order.

VI. The Amended Complaint

On April 29, 2026, Plaintiff filed an amended complaint but did not file an amended temporary restraining order. The Amended Complaint raises five causes of action: (1) Mandamus "to maintain accurate custody information and permit attorney access," Am. Compl. ¶ 66; (2) the Administrative Procedure Act for mandamus because Defendant allegedly "fail[ed] to disclose Plaintiff's location and permit access to counsel," Am. Compl. ¶¶ 70, 72; (3) a freestanding claim under the Fifth Amendment for allegedly "interfere[ing]" with Plaintiff's right to counsel, Am. Compl. ¶ 76; (4) a freestanding claim under the *Accardi* doctrine for failing to comply with "the Performance-Based National Detention Standards (PBNDS) and 8 C.F.R. § 292.5(b)," Am Compl. ¶ 79; and (5) a claim under the All Writs Act for "[a]n order compelling the facilitation of Plaintiff's return," Am. Compl. ¶ 85.

LEGAL STANDARDS

I. Rule 12(b)(1)

Federal Rule of Civil Procedure ("Rule") 12(b)(1) requires dismissal of claims where the Court "lack[s] jurisdiction over the subject matter." Fed. R. Civ. P. 12(b)(1). "Rule 12(b)(1) presents a threshold challenge to the Court's jurisdiction . . . [and] the Court is obligated to determine whether it has subject-matter jurisdiction in the first instance." *Curran v. Holder*, 626 F. Supp. 2d 30, 32 (D.D.C. 2009) (internal citation and quotation marks omitted). "A federal court presumptively lacks jurisdiction in a proceeding until a party demonstrates that jurisdiction exists." *Commodity Futures Trading Comm'n v. Nahas*, 738 F.2d 487, 492 n.9 (D.C. Cir. 1984) (emphasis added); *see Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) ("[I]t is presumed that a cause lies outside [the federal courts'] limited jurisdiction."). "If sovereign immunity has not been waived, a claim is subject to dismissal under Rule 12(b)(1) for lack of subject matter jurisdiction." *Clayton v. District of Columbia*, 931 F. Supp. 2d 192, 200 (D.D.C. 2013) (citing *FDIC v. Meyer*, 510 U.S. 471, 475 (1994)). "If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action." Fed. R. Civ. P. 12(h)(3).

While the Court must accept as true all of the factual allegations in the complaint and draw all reasonable inferences in favor of the plaintiff, *Brown v. District of Columbia*, 514 F.3d 1279, 1283 (D.C. Cir. 2008), it need not "accept inferences unsupported by the facts alleged or legal conclusions that are cast as factual allegations[,]" *Rann v. Chao*, 154 F. Supp. 2d 61, 64 (D.D.C. 2001). Further, the Court may consider evidence outside of the complaint to review whether it has subject matter jurisdiction. *See William v. Donavan*, 219 F. Supp. 3d 167, 180 (D.D.C. 2016) ("In assessing jurisdiction, the Court may go outside the pleadings and consider evidence found in the record, when necessary to fully resolve 12(b)(1) jurisdictional challenges." (citation modified)).

II. <u>Rule 12(b)(6)</u>

Under Rule 12(b)(6), the Court may dismiss a complaint where a plaintiff fails to state a claim upon which relief can be granted. To survive a Rule 12(b)(6) motion to dismiss, "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). When resolving a motion to dismiss pursuant to Rule 12(b)(6), the pleadings are construed broadly so that all facts pleaded therein are accepted as true, and all inferences are viewed in a light most favorable to the plaintiff. *See Iqbal*, 556 U.S. at 678. However, a court is not required to accept conclusory allegations or unwarranted factual deductions as true. *Id.* "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Id.* Likewise, a court need not "accept as true a legal conclusion couched as a factual allegation." *Papasan v. Allain*, 478 U.S. 265, 286 (1986). Ultimately, the focus is on the language in the complaint and whether that sets forth sufficient factual allegations to support a plaintiff's claims for relief.

III. <u>Mandatory Injunctive Relief</u>

"A preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008). "A plaintiff seeking a preliminary injunction 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." *Id.* at 20. The moving party bears the burden of persuasion and must demonstrate "by a clear showing" that the requested relief is warranted. *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006). A "court must be persuaded as to all four factors." *Scottsdale Capital Advisors Corp. v. Fin. Indus. Regul. Auth. Inc.*, 678 F. Supp. 3d 88, 100 (D.D.C. 2023).

Thus, if the Court concludes that a claim fails as a matter of law—on a point of jurisdiction or merits—then a preliminary injunction is inappropriate. *See United States Ass'n of Reptile Keepers, Inc. v. Zinke*, 852 F.3d 1131, 1135 (D.C. Cir. 2017). Because preliminary injunctions are not "awarded as of right," but "[a]s a matter of equitable discretion, a preliminary injunction does not [even] follow as a matter of course from a plaintiff's showing of a likelihood of success on the merits." *Benisek v. Lamone*, 585 U.S. 155, 158 (2018). Even if the movant can show a strong likelihood of success on the merits but fails to make a sufficient showing of irreparable injury, the Court should deny the request for preliminary injunctive relief without considering the other factors. *CityFed Fin. Corp. v. Office of Thrift Supervision*, 58 F.3d 738, 747 (D.C. Cir. 1995).

Where a party "seeks a mandatory injunction—to change the status quo through action rather than merely to preserve the status quo—typically the moving party must meet a higher standard than in the ordinary case: the movant must show 'clearly' that [it] is entitled to relief or that extreme or very serious damage will result." *Farris v. Rice*, 453 F. Supp. 2d 76, 78 (D.D.C. 2006); *Pantoja v. Martinez*, No. 21-7118, 2022 WL 893017, at *1 (D.C. Cir. 2022) (per curiam) (characterizing injunction that would reinstate the plaintiff in his prior leadership roles as a "mandatory preliminary injunction . . . requir[ing] a higher standard than an ordinary preliminary injunction"); *but see League of Women Voters of United States v. Newby*, 838 F.3d 1, 7 (D.C. Cir. 2016) (rejecting distinction between a mandatory and prohibitory injunction).

ARGUMENT

I. <u>The Acting Attorney General Is an Improper Defendant.</u>

Plaintiff has named Acting Attorney General Todd Blanche as a defendant in this lawsuit. But he does not allege any wrongdoing by the Department of Justice, and therefore, Acting Attorney General Blanche should be dismissed. Specifically, Plaintiff states that Blanche "is the Acting Attorney General, U.S. Department of Justice." Am. Compl. ¶ 16. But Plaintiff does not plead with specificity any allegations against the Acting Attorney General. The only references to the Department of Justice or Department personnel are to immigration court and statements made by undersigned counsel. Am. Compl. ¶¶ 49–54, 49 n.3. None of those allegations support any element of any of Plaintiffs' claims. Therefore, Acting Attorney General Blanche should be dismissed. *See Dey v. Rubio*, Civ. A. No. 24-0944 (AHA), 2025 WL 2320364, at *3 (D.D.C. Aug. 11, 2025) (dismissing claim against the Attorney General because immigration plaintiff "is not appearing in immigration court, seeking appellate review of an immigration court decision, or participating in an administrative hearing"); *cf. Govern GPT, Inc. v. Rubio*, Civ. A. No. 24-2855 (RCL), 2025 WL 2758477, at *3 (D.D.C. Sept. 26, 2025) (dismissing immigration claims against Attorney General where her role was speculative).

II. Most—If Not All—of the Second Motion for a Temporary Restraining Order Is Moot

Because Plaintiff did not file an amended injunction motion consistent with the scheduling order, *see* Apr. 15, 2026, Min. Order, it appears that Plaintiff has abandoned emergency injunctive relief. To the extent the Court disagrees, Defendant discusses the motion below.

Plaintiff filed his second motion for a temporary restraining order while the original complaint remained in effect. That original complaint brought claims solely based on the two premises that Defendant (1) failed in a duty to provide counsel information about where Plaintiff was detained and (2) failed provide access to counsel. *See* Compl. ¶¶ 40–55. The relief sought in the second motion for a temporary restraining order was based on facts postdating the Complaint and demanded, among other things, Plaintiff be returned to the United States. Because the motion was no longer tethered to the facts or legal theory of the complaint, it was beyond the Court's jurisdiction. *See Adair v. England*, 193 F. Supp. 2d 196, 200 (D.D.C. 2002) ("Even when a motion for a preliminary injunction is predicated on a complaint, if the motion raises issues different from those presented in the complaint, the court has no jurisdiction over the motion."); *accord* Feb. 3, 2026, Min. Order, *Fisher v. Yellen*, Civ. A. No. 23-0329 (D.D.C. Feb. 2, 2026).

Even if the mismatch between the operative complaint and the second motion for a temporary restraining order did not render the entire motion moot or could be cured by (rather than mooted by) the filing of the Amended Complaint, substantial parts of the motion remain moot. As discussed in more detail below, Plaintiff did not identify any causes of action or allege facts that would allow claims to be pleaded. But, even if Plaintiff had pleaded claims, the mootness can be seen from the six requests for relief sought.

Specifically, the first four requests for relief in the motion all are certainly moot. The first two requests ask the Court order Defendant provide two pieces of information—"[d]isclose whether Plaintiff remained in custody at the time of the hearing that began at 4:00 p.m. EDT (2:00 p.m. Honduras local time)" and "[d]isclose which agency last had custody of Plaintiff, if he is no longer in agency custody, along with the time and address of his release from custody." Pl.'s 2d Mot. at 3, ECF No. 8. Defendants have done so. *See* Defs.' Resp. at 3 ("[N]o later than 2:00 PM EST, Plaintiff was transferred from ICE custody to the custody of Government of Honduras's Instituto Nacional de Micración.").

The second two parts of Plaintiff's motion "depended on whether Plaintiff was in U.S. custody." Apr. 14, 2026, Min. Order. That is, those parts asked for relief that made sense only if Plaintiff remained in government custody. They asked the Court to order Defendant to "[p]rovide Plaintiff with immediate access to counsel, if he remains in agency custody" and "[n]ot to release the Plaintiff to the Honduran government or to his liberty in Honduras," but he was no longer in custody by the time the hearing was held and by the time motion was filed. Pl.'s 2d Mot. at 3. In other words, there is no relief the Court could provide to Plaintiff regarding this request because Plaintiff was no longer in the custody of the United States government.

Further Plaintiff appeared to concede that, its fifth request, "[p]arol[ing] Plaintiff" was contingent on Plaintiff remaining in custody because its sixth request—to "facilitate his return to the custody of the United States[]"—was sought "[i]f Plaintiff is no longer in custody." Pl.'s 2d Mot. at 3.

To the extent that the Court concludes that it has maintained jurisdiction over Plaintiff's second motion at all or the fifth or sixth requests for relief, the motion fails for lack of standing as discussed below. The Court lacks the authority to order the government to parole Plaintiff or return him to the United States and therefore lacks jurisdiction over whatever claim Plaintiff meant to plead that Plaintiff believes would allow for that relief.

III. Several Causes of Action Plaintiff's Requests Related to His Location and His Right to Counsel Are Moot and Otherwise Fail.

A. Counts 1 and 2 Are Moot or Fail Because the Plaintiff Already Is Connected With Counsel

For similar reasons to the second motion, most of the Amended Complaint is moot. Much of the relief sought has been remedied by the passage of time. Specifically, Plaintiff brings four causes of action premised on the failure to provide information about Plaintiff's whereabouts or the alleged failure to allow for attorney-client communication while Plaintiff was in custody between March 18 and April 10, 2026. *See* Am. Compl. ¶¶ 66–69 (seeking mandamus to provide Plaintiff with "custody information and . . . attorney access"); *id.* ¶¶ 70–72 (asserting a claim of unreasonable delay in "disclos[ing] Pliantiff's location and permit[ting] access to counsel while he was under the custody of the agency"); *id.* ¶ 76 (alleging that Defendant "interfere[d]" with Plaintiff's right to counsel); *id.* ¶ 80 (arguing that "failing to update [Plaintiff's] location" online and effecting Plaintiff's voluntary departure without notifying counsel violated ICE's internal rules). Whatever actions Plaintiff believes Defendants should have taken is no longer relevant now that Plaintiff no longer is in Defendants' custody.

A writ of mandamus to disclose Plaintiff's location and facilitate contact with counsel would be meaningless now that Plaintiff is out of government custody and in contact with counsel. In the alternative, the court would jurisdiction over Plaintiff's mandamus claim because Plaintiff failed to identify "a crystal-clear legal duty" for which mandamus would provide relief. *In re Ctr. for Biological Diversity*, 53 F.4th 665, 670 (D.C. Cir. 2022). Now that counsel knows where Plaintiff is and can contact Plaintiff, there is no further relief the Court can order Defendants to provide with respect to the purported duty. *See, e.g.*, *Shepard v. Quinlan*, Civ. A. No. 90-0895 (RCL), 1991 WL 221137, at *1 (D.D.C. Oct. 7, 1991) (mandamus claim moot once Plaintiff was no longer in federal custody); *Martin-Trigona v. Smith*, 712 F.2d 1421, 1427 (D.C. Cir. 1983) "[Plaintiff's] individual claims became moot when he was released from prison."); *Bouguettaya v. Chertoff*, 472 F. Supp. 2d 1, 1–2 (D.D.C. 2007) (denial of application during litigation mooted mandamus claim about application).

Similarly, Plaintiff's APA claim about undue delay in providing information about his whereabouts or access to counsel is no longer live now that the Government has provided the requested information regarding Plaintiff's whereabouts, he has been released from custody, and he undisputedly has access to counsel. *See Mehneh v. Rubio*, 164 F.4th 928, 931–32 (D.C. Cir. 2026) (where agency completed action on purportedly delayed task, plaintiffs' undue delay claims were moot).

B. Count 3 Fails Because it is Moot; Alternatively, it Fails on the Merits

Similarly, Plaintiff's *Accardi* claim fails because it is moot for the same reasons as the APA claim and the mandamus claim. *See Americans for Immigrant Just. v. Dep't of Homeland Sec.*, Civ. A. No. 22-3118 (CKK), 2023 WL 1438376, at *17 (D.D.C. Feb. 1, 2023) ("[A]n *Accardi* claim is simply a subset of claims for relief cognizable under the APA."). Thus, it should be dismissed for the same reasons as the APA claim.

In the alternative, Plaintiff fails to state an *Accardi* claim. Here, Plaintiff challenges the application of "the Performance-Based National Detention Standards (PBNDS) and 8 C.F.R. § 292.5(b)." Am. Compl. ¶ 79.

First, on its face, 8 C.F.R. § 292.5(b) does not apply to Plaintiff. Under that section, noncitizens have a right to be represented by counsel "[w]henever an examination is provided for in this chapter[.]" 8 C.F.R. § 292.5(b). "[N]oncitizens' right to counsel under the INA and its implementing regulations applies only once there is an 'examination,' not before." *Ghafi v. Dep't of Homeland Sec.*, Civ. A. No. 24-3736, 2025 WL 1507075, at *2 (N.D. Cal. May 27, 2025); *cf. Freza v. Att'y Gen. United States*, 49 F.4th 293, 298 (3d Cir. 2022) (describing the regulation as effecting the right to effective counsel in removal proceedings); *Salvador v. Sessions*, Civ. A. No. 18-1608, 2019 WL 1545182, at *6 (E.D. Pa. Apr. 9, 2019) ("USCIS regulations do not prohibit contact with an applicant represented by counsel without his lawyer present during an investigation."). Plaintiff does not indicate that any "examination" occurred here and therefore the right under the regulation would not attach. *See* Compl. ¶¶ 43–44.

Second, Plaintiff cannot challenge the application of the Performance-Based National Detention Standards (the "Standards") for two reasons. To start, the *Accardi* doctrine binds an agency to its own legislative rules. *United States ex rel. Accardi v. Shaughnessy*, 347 U.S. 260, 267 (1954); *Fiorito v. Entzel*, Civ. A. No. 17-2158, 2019 WL 1446403, at *5 (C.D. Cal. Mar. 27, 2019) ("[T]he regulations in [*Accardi*] were legislative rather than interpretive, they had 'the force and effect of law.'"), *R. & R. adopted*, 2019 WL 1438067 (C.D. Cal. Mar. 29, 2019), *aff'd*, 845 F. App'x 706 (9th Cir. 2021). Indeed, as the D.C. Circuit recently declared, *Accardi* is limited to challenges in which the agency has alleged violated "'existing valid regulations' and binding precedents." *Castaneira v. Noem*, 138 F.4th 540, 551 (D.C. Cir. 2025). But, here, Plaintiff challenges neither a regulation nor binding precedent. Instead, he challenges "Standards" that apply to ICE detention. *See Performance Based National Detention Standards 2011*, ICE https://www.ice.gov/doclib/detention-standards/2011/pbnds2011r2016.pdf. Plaintiff provides no evidence that the Standards are "intended to be binding norms" nor does he provide any basis for applying the Standards to his custody by CBP. *C.G.B. v. Wolf*, 464 F. Supp. 3d 174, 224 (D.D.C. 2020) (quoting *Damus v. Nielsen*, 313 F. Supp. 3d 317, 336 (D.D.C. 2018)) (internal quotation marks omitted). Plaintiff also does not identify any specific Standard that was violated. And even if he had, the Standards are "internal guidelines" that do not "create a cause of action in federal court." *Wright v. FBI*, Civ. A. Nos. 02-915, 03-225 (GK), 2006 WL 2587630, at *10 (D.D.C. July 31, 2006), *reconsideration granted in part on other grounds*, 598 F. Supp. 2d 76 (D.D.C. 2009). Thus, Plaintiff has failed to plead the agency "fell substantially short" of the alleged procedural requirement. *Sheble v. Huerta*, 755 F.3d 954, 957 (D.C. Cir. 2014) (quoting *Lopez v. FAA*, 318 F.3d 242, 248 (D.C. Cir. 2003)).

Moreover, Plaintiff's claim fails because he does not establish that there was "any discrete final agency decision not to implement" the Standards—just that he believes the Standards were violated in his case. *C.G.B.*, 464 F. Supp. 3d at 225; *see also Ams. for Immigrant Just.*, 2023 WL 1438376, at *18 (holding there was no *Accardi* claim unlike a case where a plaintiff "relied on a specific and deliberate decision not to enforce particular [Standards] provisions as a rule" (emphasis omitted)).

C. Plaintiff's Fifth Amendment Claim Should be Dismissed

For the same reasons, Plaintiff's Fifth Amendment claim is moot. Now that Plaintiff indisputably has access to counsel, there is no further relief for the Court to grant. For instance, in

C.M. v. Noem, 796 F. Supp. 3d 1198, 1219 (S.D. Fla. 2025), immigration detainees alleged that their due process rights were being violated because the government refused to identify an immigration court that had jurisdiction over a particular detention center. Once the defendants provided the information, the Court explained "Plaintiffs have therefore received all the relief they seek. The Court can do no more. At this point, any ruling by the Court on the Fifth Amendment claim would be purely advisory." *Id.*

Indeed, as a general matter, voluntary departure from the country moots claims about immigration detention. *See, e.g.*, *Davi Avelar De Mederios v. Warden*, Civ. A. No. 26-3285, 2026 WL 1274677, at *1 (E.D. Cal. May 8, 2026) (when "petitioner voluntarily departed the United States," the petitioner's "removal moot[ed] his pending challenge to his immigration detention"); *S.E.G.L. v. Noem*, Civ. A. No. 26-0209, 2026 WL 1010108, at *1 (N.D. Tex. Mar. 27, 2026) (habeas petition moot when "Respondents advise that ICE facilitated Petitioner's voluntary departure from the United States"), *R. & R. adopted*, 2026 WL 1010034 (N.D. Tex. Apr. 14, 2026); *Cisneros v. Bradford*. Civ. A. No. 25-5700, 2026 WL 1169908, at *1 (S.D. Tex. Feb. 18, 2026) ("Because he has been granted voluntary departure, Cisneros is no longer subject to continued immigration detention. That leaves no live issue for this Court to resolve."), *R. & R. adopted*, 2026 WL 1169272 (S.D. Tex. Apr. 28, 2026).

D. Neither Plaintiff's Request for Injunctive Relief nor for a Declaratory Judgment Can Unmoot These Claims

Plaintiff cannot seek injunctive relief for the claims that have been mooted because he is not in immigration custody and fails to show that he will be again. *See Murthy v. Missouri*, 603 U.S. 43, 68 (2024) ("To obtain forward-looking relief, the plaintiffs must establish a substantial risk of future injury that is traceable to the Government defendants and likely to be redressed by an injunction against them."). Thus, he cannot obtain a "permanent injunction prohibiting

Defendants from further interfering with [his] access to counsel or his right to seek adjustment of status." Compl. (Prayer for Relief) ¶ 3.

Plaintiff also cannot save the above-discussed claims by seeking a declaratory judgment that what Defendants did was illegal. "If a plaintiff has made no challenge to some ongoing underlying policy, but merely attacks an isolated agency action, then the mooting of the specific claim moots any claim for a declaratory judgment that the specific action was unlawful, unless the specific claim fits the exception for cases that are 'capable of repetition, yet evading review,' or falls within the 'voluntary cessation' doctrine[.]" *City of Houston, Tex. v. Dep't of Hous. & Urb. Dev.*, 24 F.3d 1421, 1429 (D.C. Cir. 1994). Here, Plaintiff does not challenge an underlying policy, nor could he under *City of Los Angeles v. Lyons*, 461 U.S. 95 (1983). Now that he has been removed from the United States, he is not subject to any Department of Homeland Security policy. *See City of Houston*, 24 F.3d at 1430 ("[I]f a plaintiff challenges an ongoing agency policy by seeking declaratory relief, but lacks standing to attack future applications of that policy, then the mooting of the plaintiff's specific claim obviously leaves the court unable to award relief."); *Lyons*, 461 U.S. at 104 ("[P]ast wrongs do not in themselves amount to that real and immediate threat of injury necessary to make out a case or controversy."); *Morrison v. Fed. Bureau of Prisons*, Civ. A. No. 21-2860 (BAH), 2023 WL 172202, at *4 (D.D.C. Jan. 12, 2023) ("The violations alleged by plaintiff simply cannot recur as to plaintiff and his standing to raise his claims therefore depends on whether he somehow (1) finds himself back in the custody of the BOP, and (2) personally faces the alleged hardships upon reincarceration. This is an 'untenable' hypothetical.").

E. All Writs Act Cannot Be Used to Create Jurisdiction

Finally, the Court lacks jurisdiction over Plaintiff's claim arising under the All Writs Act. *See Am.* Compl. ¶¶ 82–87. Plaintiff concedes that the Court no longer has jurisdiction, and asserts that an order under the All Writs Act "is necessary to restore the Court's jurisdiction." Am. Compl.

¶ 87. The All Writs Act, however, does not "restore" jurisdiction. The "language" of the All Writs Act "makes clear that the authority to issue writs is confined to the issuance of process 'in aid of' jurisdiction that is created by some other source and not otherwise enlarged by the All Writs Act." *Ross v. United States*, 460 F. Supp. 2d 139, 151 (D.D.C. 2006). As Plaintiff admits, the Court no longer had jurisdiction over him, and the All Writs Act cannot expand that jurisdiction.

Nevertheless, Plaintiff argues that the All Writs Act should be used because "[t]he removal of the Plaintiff was an affirmative act by Defendants that frustrated the Court's ability to adjudicate the emergency motion and provide the requested relief." Am. Compl. ¶ 86. That, too, misunderstands the All Writs Act. The All Writs Act can be used to effectuate judgments. *See Harris v. Dep't of Just.*, Civ. A. No. 23-0705 (UNA), 2023 WL 2992468, at * (D.D.C. Apr. 17, 2023) ("§ 1651 does not create jurisdiction, but merely allows a court to exercise continuing jurisdiction in aid of, or in supervising, its own judgments." (quoting *United States v. Salgado*, 692 F. Supp. 1265, 1269 n.3 (E.D. Wash. 1988)) (internal quotation marks omitted)). But Plaintiff does not seek to effectuate a judgment. In fact, as discussed above, Plaintiff was on the plane to Honduras before Plaintiff filed his motion, and was released from government custody before the Court held its hearing. Moreover, Plaintiff argued that the Court should order Defendants to keep Plaintiff in custody, but the Court declined to do so. *See* Hr'g Tr. 11:14–19 ("orally mak[ing] th[e] request of the Court that he not be returned to Honduras if he is still, as of this moment, in U.S. custody and to be returned and to maintain the status quo until further hearings on our petition for habeas corpus and Administrative Procedures Act be allowed to proceed"). Plaintiff does not seek to effectuate an order the Court made while it had jurisdiction over Plaintiff. He seeks to have this Court issue an order under the All Writs Act to effectuate an order that Plaintiff wishes the Court had made. This goes beyond the power granted by the All Writs Act. *See D.A. v. Noem*, 800

F. Supp. 3d 43, 52 (D.D.C. 2025) (explaining that the All Writs Act did provide the requested relief to plaintiffs removed from the country)

IV. The Court Lacks Jurisdiction over Plaintiff's Complaint Because the Injunctive Relief Requested Is Reserved to the Political Branches.

If the Court "concludes that it lacks subject-matter jurisdiction, the court must dismiss the complaint in its entirety." *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006); *see also Schindler Elevator Corp. v. Wash. Metro Area Transit Auth.*, 514 F. Supp. 3d 197, 212 (D.D.C. 2020) (dismissing case *sua sponte* after finding the plaintiff lacked standing). For a court to have subject-matter jurisdiction, a plaintiff must have standing. *See Sweigert v. Perez*, 334 F. Supp. 3d 36, 41 (D.D.C. 2018) ("To establish subject matter jurisdiction, a plaintiff must have standing, as governed by Article III of the Constitution."). In turn, for a plaintiff to have standing, he must have: "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant[s], and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Thus, a court lacks subject-matter jurisdiction over a claim if Plaintiff's injuries are not redressable. *See, e.g.*, *Aviation Suppliers Ass'n v. Huerta*, 689 F. App'x 644, 645 (D.C. Cir. 2017) (no subject-matter jurisdiction where court provide "no relief").

A. Plaintiff's Claim Is Not Redressable to the Extent He Seeks to an Injunction to Return to the United States

Here, Plaintiff does not have a right to reenter the United States, and this Court may not order the relief that he requests. Such an order would effectively supplant the Executive's role in deciding who may or may not be allowed to enter the country because, as Plaintiff impliedly concedes, he does not have lawful immigration status in the United States and therefore needs to be paroled back to the United States. Am. Compl. ¶ 6 (requesting "a Mandatory Injunction and Writ of Mandamus compelling Defendants to facilitate his immediate return to the United States via humanitarian parole under 8 C.F.R. § 212.5"); *id.* Prayer For Relief ¶ 2 (similar). Indeed, if the

Court granted the relief request, the order would effectively promote a violation of law by requiring the government to return an individual who has no legal authorization to be in the United States. Decisions to grant parole are left to the Executive's discretion.

To start, the Court would have to effectively recognize that Plaintiff has a right to enter this country. But no such right exists. The Supreme Court has reiterated the principle that the judiciary should not interfere with such decisions numerous times, and it cannot be circumvented. *See, e.g.*, *Dep't of State v. Muñoz*, 602 U.S. 899, 902 (2024) ("[B]ecause [plaintiff], as a noncitizen, has no constitutional right to enter the United States, he cannot elicit . . . challenge the denial of his visa."); *Kerry v. Din*, 576 U.S. 86, 88 (2015) (Scalia, J., plurality) ("[Because [plaintiff] is an unadmitted and nonresident alien, he has no right of entry into the United States, and no cause of action to press in furtherance of his claim for admission." (citing *Kleindienst v. Mandel*, 408 U.S. 753, 762 (1972)); *Mandel*, 408 U.S. at 762 ("It is clear that [plaintiff] personally, as an unadmitted and nonresident alien, had no constitutional right of entry to this country as a nonimmigrant or otherwise."). Because of separation of powers principles, the Court cannot order the return of an alien who has no status in the United States. That authority is "vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations," matters "exclusively entrusted to the political branches of government." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952); *see also Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 730 (D.C. Cir. 2022) (recognizing that decisions "including the selection of a removed [noncitizen's] destination, may implicate our relations with foreign powers and require consideration of changing political and economic circumstances.'" (quoting *Jama v. ICE*, 543 U.S. 335, 348 (2005))); *Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("[T]he responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government.").

And, as Plaintiff admits, his request for relief is contingent on the Court ordering the government to exercise its discretionary parole authority favorably to Plaintiff. But the grant of "humanitarian parole" that Plaintiff seeks is reserved exclusively to the discretion of the Secretary of Homeland Security. *See A.M.S. v. Edlow*, --- F. Supp. 3d ---, Civ. A. No. 25-0476 (RDM), 2026 WL 850779, at *12 (D.D.C. Mar. 27, 2026) ("[T]he text of Sections 1252(a)(2)(B)(ii) and 1182(d)(5)(A), when considered in conjunction, offer 'clear and convincing evidence that Congress intended to preclude judicial review of the [Secretary's] discretionary decisions about the [humanitarian parole] process[.]'" (quoting *Thigulla v. Jaddou*, 94 F.4th 770, 776 (8th Cir. 2024)); *see also Coal. for Humane Immigrant Rts. v. Noem*, Civ. A. No. 25-0872 (JMC), 2025 WL 2192986, at *7 (D.D.C. Aug. 1, 2025) ("Immigration law has long allowed the Executive Branch to exercise its discretion to temporarily allow into the United States noncitizens who are applying for admission to the Country instead of holding them in detention." (citing 8 U.S.C. § 1182(d)(5)(A))).

Put another way, Plaintiff is asking the Court to undo Plaintiff's decision to voluntarily depart and force the government to exercise its discretion to parole him into the United States, and then place him into in the removal process so that he can have the procedural protections he waived. But this Court lacks the authority to issue such an order because it would supplant the Secretary's discretionary parole authority and the Executive's prosecutorial discretionary authority. *Cf. Reno v. Am.-Arab Anti-Discrim. Comm.*, 525 U.S. 471, 483-84 (1999) (discussing that the decision to commence proceedings represents the initiation of the deportation process, which is left to the Executive's discretion because it has the ability "to abandon the endeavor" whether it be for "humanitarian reasons or simply for its own convenience").

Moreover, because Plaintiff is not in government custody and has no legal right to return to or remain in the United States, the Court cannot order the government to return Plaintiff to the United States, nor can it order the government of Honduras to do so. *See, e.g.*, *D.A. v. Noem*, 800 F. Supp. 3d 43, 52 (D.D.C. 2025) ("[T]here is no question that the court lacks the power to order the Executive Branch to order Ghana to keep Plaintiffs in Ghana or to order the Executive Branch to notify the Ghanaian government not to remove Plaintiffs to their countries of origin or other countries where they fear persecution or torture" (citation modified)); *In re Petitioners Seeking Habeas Corpus Relief in Rel. to Prior Detentions at Guantanamo Bay*, 700 F. Supp. 2d 119, 133 (D.D.C. 2010) ("[T]he Court can grant no relief to petitioners who are no longer in United States custody and whose disposition is entirely within the discretion of a foreign sovereign."), *aff'd sub nom. Chaman v. Obama*, No. 10-5130, 2012 WL 3797596 (D.C. Cir. Aug. 10, 2012). Because this Court lacks the ability to provide the relief that Plaintiff seeks, he lacks standing to bring his claims and cannot demonstrate that he is likely to succeed on the merits.

Plaintiff's only substantive response to this Court's lack of subject-matter jurisdiction over Plaintiff and his causes of action has been reliance on *Noem v. Garcia*, 604 U.S. ---, 145 S.Ct. 1017, 1018 (2025). But this case is nothing like *Abrego Garcia v. Noem*, 777 F. Supp. 3d 501 (D. Md. 2025). There, the court ordered the noncitizen's return to the United States where the court found that "an administrative error" led to his removal to El Salvador. *Abrego Garcia*, 777 F. Supp. 3d at 507 n.3; *see also id.* at 507 (concluding that "Defendants acknowledge[] they had no legal authority to arrest him, no justification to detain him, and no grounds to send him to El Salvador" and asserting that Defendants "confessed grievous error"). It was against this backdrop that the Supreme Court upheld the District Court's order to "facilitate" the petitioner's return to the United States. That order follows from the Supreme Court's prior recognition that the government can facilitate the return of aliens who have been removed but subsequently prevail on a petition for review. *See Nken v. Holder*, 556 U.S. 418, 435 (2009) ("Aliens who are removed may continue to pursue their petitions for review, and those who prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal."). This case is readily distinguishable. Plaintiff has not prevailed on any challenge to his removal, nor has he raised any such challenge that can be pursued in this Court.

Indeed, Plaintiff's vague allegations about "fear" are not sufficient to establish standing for the purposes of this case. There are "three types of relief" available to individuals based on the fear that they might have: asylum, withholding of removal, and the Convention Against Torture. *Huisha-Huisha*, 27 F.4th at 724. Of those three, only asylum "entitles a noncitizen to legal status in the United States." *Haitian Bridge All. v. Biden*, Civ. A. No. 21-3317 (JMC), 2026 WL 627405, at *2 (D.D.C. Mar. 6, 2026). But asylum is available only when the noncitizen's fear is a "'well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion' in their home country." *Huisha-Huisha*, 27 F.4th at 724. Comparatively, withholding of removal protects noncitizens "from removal to a particular country if it is likely that their life or freedom would be threatened based on a protected category such as race or religion; relief under Convention Against Torture protects noncitizens from "removal to countries where they face a likelihood of torture." *Id.*

Completely absent from Plaintiff's complaint is any allegation that he raised claims that he would be tortured or persecuted because of a protected category or otherwise while in detention or during the process of removal. *See generally* Compl. The absence of such allegations confirms the government did not act unlawfully when honoring Plaintiff's voluntary departure request. *Cf. Huisha-Huisha*, 27 F.4th at 733 (holding that Title 42 permits the government to expel noncitizens but not if doing so deprives them the opportunity to seek relief under Convention Against torture or withholding of removal). Plaintiff's filings never so much as hint at such a fear, nor has Plaintiff apparently pursued asylum in the nearly six years he has been in America. Am. Compl. ¶ 19. Indeed, Plaintiff's declaration explains that his fear is limited to one person: he is "afraid to be . . . in Honduras" because he "suffered a lot of physical abuse by [his] father when [he] was a child." Martinez Aff. (translation), ECF No. 13-1 at 2. While domestic abuse is appalling, Plaintiff has not suggested that he remains in danger of such abuse and domestic abuse generally is not a basis for an asylum claim nor is it sufficient for withholding of removal. *See Grace v. Barr*, 965 F.3d 883, 905–06 (D.C. Cir. 2020) (upholding guidance that states that "vulnerability to harm of domestic abuse" usually will not "establish the basis for asylum, refugee status, or a credible or reasonable fear of persecution").

B. Plaintiff's Claim Is Not Redressable to the Extent He Seeks to "Reinstat[e]" His Deferred Action and His Special Immigrant Classification

Plaintiff also seeks an order "vacating the execution of the removal and reinstating Plaintiff's grant of Deferred Action and his prior immigration status[.]" Compl. (Prayer for Relief) ¶ 3. In the first instance, it is not clear how an order "vacating the execution of the removal" is different from ordering Plaintiff be returned to the United States and paroled, nor how it could be effected when Plaintiff is not in government custody.

As to "reinstating" "Deferred Action" or his special immigrant classification, that, too, requests relief beyond the Court's jurisdiction. Those decisions also are left to the Executive and the Executive alone. *See Reno v. Am.-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 483–84 (1999) (explaining that deferred action was an exercise of "discretion"). Specifically, 8 U.S.C. § 1252(g) provides that "notwithstanding any other provision of law (statutory or nonstatutory) . . . no court shall have jurisdiction to hear any cause or claim by or on behalf of any alien arising from the decision or action by the [Secretary] to . . . execute removal orders against any alien," except through a petition for review from a final order of removal filed in a court of appeals.

This section was "directed against a particular evil: attempts to impose judicial constraints upon prosecutorial discretion[,]" including "'no deferred action' decisions and similar discretionary decisions." *Tazu v. Att'y Gen.*, 975 F.3d 292, 297 (3d Cir. 2020) (quoting *AADC*, 525 U.S. at 485 & n.9) (internal quotation marks omitted). This limitation exists for "good reason": "[a]t each stage the Executive has discretion to abandon the endeavor." *AADC*, 525 U.S. at 483–84. In addition, through Section 1252(g) and other provisions of the INA, Congress "aimed to prevent removal proceedings from becoming 'fragment[ed], and hence prolong[ed].'" *Tazu*, 975 F.3d at 296 (alterations in original) (quoting *AADC*, 525 U.S. at 487); *see Rauda v. Jennings*, 55 F.4th 773, 777–78 (9th Cir. 2022) ("Limiting federal jurisdiction in this way is understandable because Congress wanted to streamline immigration proceedings by limiting judicial review to final orders, litigated in the context of petitions for review.").

There is no daylight between the deferred action decisions discussed in *AADC* and Plaintiff's challenge here. *See id.* (deferred action is a decision to "decline to institute proceedings, terminate proceedings, or decline to execute a final order of deportation." (citing 6 C. Gordon, S. Mailman, & S. Yale–Loehr, Immigration Law and Procedure § 72.03 [2][h] (1998)). Other courts have since held that Section 1252(g) bars courts from reviewing deferred action decisions. *See, e.g.*, *Sanchez v. Gonzales*, 161 F. App'x 710 (9th Cir. 2006); *McCloskey v. Keisler*, 248 F. App'x 915, 917–18 (10th Cir. 2007). That is because Section 1252(g) was meant to avoid judicial oversight over decisions rooted in prosecutorial discretion. *See AADC*, 525 U.S. at 485.

V. For the Same Reasons, Plaintiff's Motion for a Temporary Restraining Order Should Be Denied.

For the reasons discussed above, to the extent Plaintiff's second motion for a temporary restraining order still is live and not moot, it should be denied. In Plaintiff's motion and in the reply, Plaintiff sets forth demands, but he has not made the case that he can prevail under any existing law by, for instance, showing that he has met the elements of a claim. *See* Pl.'s 2d Mot., ECF No. 8; Reply, ECF No. 15. Thus, Plaintiff has failed to "meet [his] burden to establish a likelihood of success on the merits" "by a clear showing." *Naveed v. Blinken*, Civ. A. No. 22-3579 (RBW), 2023 WL 4142952, at *1 (D.D.C. Jan. 18, 2023); *Chaplaincy of Full Gospel Churches v. England*, 454 F.3d 290, 297 (D.C. Cir. 2006).

Even if Plaintiff had argued a likelihood of success on the merits, the above analysis shows that the Court lacks subject-matter jurisdiction over those claims. Where there is no subject-matter jurisdiction over a Plaintiff's claims, Plaintiff cannot show a likelihood of success on the merits and injunctive relief must be denied. *See Popkin v. Burwell*, 172 F. Supp. 3d 161, 168 (D.D.C. 2016) ("[A] plaintiff cannot show any likelihood of success on the merits if a court lacks subject matter jurisdiction.").

* * *

CONCLUSION

For these reasons, the Court should dismiss Plaintiff's complaint and deny Plaintiff's second motion for a temporary restraining order for lack of jurisdiction

Dated: May 20, 2026

Respectfully submitted,

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