

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)

REPLY IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

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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 Senior Official Performing the Duties of the 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 Rosario “Pete” Vasquez, in his official capacity as Chief, U.S. Border Patrol (collectively “Defendants”), by and through undersigned counsel, respectfully submit this reply in further support of their motion to dismiss Plaintiff Jose Eliezer Martinez-Andino’s amended complaint (“Am. Compl.,” ECF No. 19).

Plaintiff’s memorandum in opposition (“Pl.’s Opp’n,” ECF No. 24) asks that the Court rely on his equitable arguments to justify exercising jurisdiction. Courts do not have the authority to expand their jurisdiction. *See Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (“[Courts] possess only that power authorized by Constitution and statute, which is not to be expanded by judicial decree.” (citations omitted)); *In re: Biomet M2a Magnum Hip Implant Prods. Liab. Litig.*, Civ. A. No. 13-1359, 2016 WL 3901366, at *5 (N.D. Ind. July 18, 2016) (“Because parties can’t expand this court’s subject matter jurisdiction even by explicit consent, it naturally follows that they can’t do so indirectly through waiver, estoppel, or other equitable considerations.”); *cf. Garland v. Aleman Gonzalez*, 596 U.S. 543, 554 (2022) (rejecting argument that “would make a court’s jurisdiction . . . dependent upon the merits of the claim”); *Baker v. Ward*, Civ. A. No. 87-1365, 1987 WL 16541, at *1 (D.D.C. Aug. 27, 1987) (“It has long been established that since the diversity statute limits the power of the court, the court cannot use its

¹ See Fed. R. Civ. P. 25(d) (“The officer’s successor is automatically substituted as a party.”).

equitable powers to expand its jurisdiction.”). For the reasons discussed below, the Court should dismiss this case.

ARGUMENT

I. Plaintiff Bears the Burden of Proving Subject-Matter Jurisdiction Exists.

Analysis of Plaintiff’s Amended Complaint starts and ends with the standard for establishing subject-matter jurisdiction. “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); Def.’s Mot. at 11. A plaintiff must show that the Court has jurisdiction over each cause of action brought and each form of relief sought. *See Town of Chester, N.Y. v. Laroe Ests., Inc.*, 581 U.S. 433, 439 (2017) (“[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” (quoting *Davis v. Federal Election Comm’n*, 554 U.S. 724, 734 (2008))).

Plaintiff does not expressly dispute this blackletter law, nor could he. But he also does not seem to recognize it. *See generally* Pl.’s Opp’n (not discussing the standard of review). Plaintiff simply does not show that subject-matter jurisdiction exists for his causes of action and the relief sought.

II. Plaintiff’s Description of the Facts Is Erroneous

A. Plaintiff’s Narrative About Facts Is Wrong

Plaintiff continues to imply that Defendants’ descriptions of the facts before this Court is incoherent and in bad faith. *See* Pl.’s Opp’n at 2 (“Defendants lean on a convenient narrative.”); *id.* at 1 (asserting that Defendants “short-circuit[ed] judicial review by . . . presenting shifting and inaccurate factual timelines to a federal judge during an emergency hearing”); *id.* at 2 (“systemic contradictions”); *id.* at 5 (“cascading contradictions”); *id.* at 5 (“own sworn evidence is in profound

internal conflict[]"); *id.* ("doubt on the structural reliability"); *id.* ("material misrepresentations"); *id.* at 10 ("structurally implausible").

Though Plaintiff points to two facts about which Defendants' answer has evolved, he ignores Defendants' prompt correction and clear explanation for their correction.

First, Plaintiff points to the timing of when Plaintiff was handed over to the Honduran government's Instituto Nacional de Migración. *See* Pl.'s Opp'n at 3–5. Defendants initially stated that Plaintiff landed in Honduras at 12:50PM. *See* Am. Compl. Ex. 1, ECF No. 19-1 at 1 ("His plane departed at 5AM local time and landed in Honduras at 10:50AM local time. We are working on putting together more information."); 1st George Decl. ¶ 6, ECF No. 12 ("[A]t approximately 12:50 PM EST, Martinez-Andino, along with other Honduran nationals, landed at the Ramón Villeda Morales International Airport in San Pedro Sula, Honduras[.]").

As Defendants forthrightly admitted, they did not take into account the different time zones when they were initially providing information to the Court. 2d George Decl. ¶ 5, ECF No. 23-3 at 2 ("Upon further inquiry, I discovered that the times as reported in the records I used to prepare for the declaration were reported in the local time in Honduras, not Eastern Standard Time as I originally believed."); Def.'s Mot. at 7 n.4 ("Previous discussions of timing were based on a misunderstanding of the time zones that applied to records."). Plaintiff acknowledges that Defendants have corrected their mistake, but he nevertheless insists that these are "[c]ontradictory timelines" and implies that Defendants' correction renders all of their discussion untrustworthy. Pl.'s Opp'n at 4–5. But these sorts of inadvertent actions followed by timely corrections do not indicate untrustworthiness. *Cf. Am. Oversight v. Dep't of Just.*, 401 F. Supp. 3d 16, 28 (D.D.C. 2019) ("[A]n agency's declarations will almost always remain entitled to a presumption of good faith so long as the agency acknowledges error and corrects for it—which is what [Department of

Justice] did in this case.”). Moreover, as discussed below, this dispute has no real legal significance.

Second, Plaintiff complains that Defendants mistakenly asserted that Plaintiff was last in Customs and Border Protection custody when, in fact, Plaintiff was last in ICE custody. As quoted at length in Defendants’ motion, Government counsel emphasized that he was not sure which agency last had control over Plaintiff. *See* Hr’g Tr. 7:15–8:14 (“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.”); Defs.’ Mot. at 7. Plaintiff conflates two different issues at the hearing and states that Government’s counsel “told this Court he was ‘very confident’ Plaintiff was out of U.S. custody and had last been held by CBP.” Pl.’s Mot. at 5.

In addition to Plaintiff’s bizarre characterization of the hearing, Plaintiff also takes issue with Government counsel’s correction of that mistake immediately after the hearing ended. *See* Defs.’ Resp. at 2, ECF No. 10 (quoting Pl.’s 2d Mot. at 2, ECF No. 8); Am. Compl. Ex. 2, ECF No. 19-2 at 2 (“I learned that he was in ICE custody last—not CBP. I am sorry for my misunderstanding.”). In another unconventional choice, Plaintiff treats this good-faith correction as evidence of bad faith. *See* Pl.’s Opp’n at 5. That cannot be right. *Cf. Dillon v. Dep’t of Just.*, 444 F. Supp. 3d 67, 92 (D.D.C. 2020) (“Where, as here, the agency corrects its error, it has complied with FOIA’s demands.”).

To the extent that the Court elects to lend any credence to Plaintiff’s arguments, and it should not, the identity of the agency that had custody of Plaintiff on the flight is no longer of any material significance to this litigation. Even though Plaintiff has made the effort to draw attention on an uncertain answer that was immediately corrected, he never explains why it matters. Instead,

Plaintiff argues that it “cast[s] immediate doubt on the structural reliability” of other representations. Pl.’s Opp’n at 5. Respectfully, it does not. With respect to these two facts, Plaintiff claims that the government’s “narrative . . . has already shifted four times under oath” (Opp’n at 2–3), but that is an untenable characterization even if Plaintiff’s descriptions were otherwise correct.

Elsewhere, Plaintiff raises purported factual disputes that also have no bearing on the issues before this court. For instance, Plaintiff complains about “a heavily disputed, blacked-out signature.” Pl.’s Opp’n at 1. Plaintiff’s signature is not blacked out, and Plaintiff has not disputed that he signed the I-826, which was written in Spanish, or the Form I-210 or the addendum to Form I-210. Ex. A at 1; Ex. B at 3–4. Additionally, Plaintiff argues that “th[e] waiver is a legal nullity” because he “does not speak or read English” even though, again, one of the key documents he signed is in Spanish and another was “interpreted in [his] preferred language.” Ex. A 1 at 1; Ex. B at 4.

Because, as discussed here and below, Plaintiff’s disputes about facts do not affect this Court’s jurisdiction or show that Plaintiff stated a claim, the Court need not accept Plaintiff’s characterization of Defendants’ prior representations and corrections to the record.

B. There Was No Conspiracy to Deprive the Court of Jurisdiction.

From Plaintiff’s retelling of the facts, Plaintiff spins a conspiracy theory: that Plaintiff was spirited out of the country to defeat jurisdiction. See Pl.’s Opp’n at 7 (“It was a systematic isolation engineered to enable the removal that Defendants now claim moots this entire proceeding.”); *id.* at 11 (“By completing Plaintiff’s removal during the pendency of this action—while counsel was searching for him, while this Court’s jurisdiction had been invoked, and while the April 10 hearing was underway—Defendants engineered their own mootness defense.”).

Plaintiff's narrative relies entirely on the coincidence that one or more of Defendants may have had control over Plaintiff for the first three minutes of the emergency hearing on April 10, 2026. *See* Def.'s Mot at 7 (hearing started at 4:07PM (citing Hr'g Tr. at 1)); 2d George Decl. ¶ 7 (last noncitizen on the flight was "confirmed as handed over to the custody of the Government of Honduras' Instituto Nacional de Migración by 4:10 PM EST").

Contrary to Plaintiff's insistence that the possible overlap is a scheme by Defendants, Pl.'s Opp'n at 12 (describing Plaintiff's voluntary departure as an "emergency removal[]"); *id.* at 11 ("By completing Plaintiff's removal . . . while the April 10 hearing was underway—Defendants engineered their own mootness defense."), Plaintiff's own description of the facts show that it was just a coincidence.

Plaintiff's counsel alleged that Plaintiff "was apprehended . . . on or about Wednesday, March 18, 2026." Plaintiff was in contact with counsel on March 23, 2026. Am. Compl. ¶ 25; Compl. ¶ 25. Plaintiff contacted his family on March 30, 2026. Am. Compl. ¶ 25; Compl. ¶ 26. Counsel was "hired" on March 31 but was unable to contact Plaintiff. Am. Compl. ¶ 29. Plaintiff accepted voluntary departure and was removed pursuant to his own actions from the United States on April 10. *See* 2d Green Decl. ¶ 6 ("On April 10, 2026, approximately 10:00 AM EST, Martinez-Andino departed the United States via Mesa, Arizona, on a chartered removal flight to Honduras."). That Plaintiff was in custody for almost a month undermines any argument that Defendants conspired to spirit him away in order to deprive this Court of jurisdiction. Indeed, this hardly reflects an "emergency" effort to "remov[e]" Plaintiff. *See also* Pl.'s Opp'n at 1 "they successfully rushed Plaintiff onto a plane to Honduras").

Nor is there any apparent relationship between the 10AM flight and the lawsuit Plaintiff served shortly thereafter. Plaintiff's counsel finally filed suit—twenty-three days after Plaintiff

was apprehended and eighteen days after counsel last had direct contact with Plaintiff—on April 10, 2026. *See* Am. Compl. ¶ 30. By the time Defendants received notice of Plaintiff’s suit shortly before noon on April 10, 2026, Plaintiff was already on his flight to Honduras. *See* 2d Green Decl. ¶ 6. Nothing about Defendants’ handling of Plaintiff was in response to this lawsuit.

Even the purported three-minute overlap is speculative. More likely than not, Plaintiff was not the last noncitizen to leave the plane and had been turned over before the hearing began. Therefore, Plaintiff’s injury almost certainly was not redressable when the hearing began. In all events, those three minutes of alleged redressability say nothing about whether the Court has subject-matter jurisdiction now. *See Force v. Islamic Republic of Iran*, 610 F. Supp. 3d 216, 221 (D.D.C. 2022) (“As in every case, the Court must first satisfy itself that it has subject-matter jurisdiction over the plaintiff’s claims—and that duty persists throughout the proceeding.”).

Seemingly recognizing that there no longer remains jurisdiction, Plaintiff argues that there was something wrongful in completing the transfer of Plaintiff to Honduras if the handoff was completed during the April 10 hearing. *See* Pl.’s Opp’n at 11 (criticizing Defendants for “completing Plaintiff’s removal during the pendency of this action . . . and while the April 10 hearing was underway”). But there was no obligation for Defendants to reverse course and refuse to complete the handoff to the Honduran government merely because Plaintiff filed a lawsuit. In so doing, Plaintiff assumes, without so stating let alone supplying any authority in support of that assumption, that Defendants were required to act as though the Court had entered an injunction that Plaintiff had not yet sought. Filing a lawsuit does not create an automatic grant of injunctive relief merely because it would be useful to Plaintiff later. *Cf. Winter v. Nat’l Res. Def. Council, Inc.*, 555 U.S. 7, 24 (2008) (“A preliminary injunction is an extraordinary remedy never awarded

as of right.”). Indeed, such a proposition would render the purpose of adversarial proceedings meaningless: a party need only file a lawsuit to obtain final relief on its complaint.

Moreover, as Defendants noted, Plaintiff expressly sought this relief near the end of the hearing. *See* Def.’s Mot. at 22 (citing Hr’g Tr. 11:14–19). At that point, Plaintiff was definitively out of United States custody. The Court declined to order that relief. *See* Def.’s Mot. at 22; Hr’g Tr. at 12:15–13:29; Apr. 10, 2026, Min. Order. Thus, at bottom, Plaintiff’s arguments about Defendants “subvert[ing]” “judicial process” boil down to an argument that Defendants were somehow required to act as though Plaintiff had prevailed on an oral motion made after Defendants no longer had custody of Plaintiff, even though the Court did not grant that relief. Such a position is untenable and cannot be squared with the law.

It is Plaintiff’s burden to establish subject-matter jurisdiction. *See, e.g., Tanner-Brown v. Haaland*, 105 F.4th 437, 443 (D.C. Cir. 2024) (“The plaintiff bears the burden of invoking the court’s subject matter jurisdiction, including establishing the elements of standing.” (quoting *Arpaio v. Obama*, 797 F.3d 11, 19 (D.C. Cir. 2015))). Plaintiff’s argument that the Court had jurisdiction briefly—and then lost it—does not meet his burden.

C. The Court Can Consider Defendant’s Arguments Outside the Pleading with Respect to Subject-Matter Jurisdiction

In addition to retelling the facts in implausible and immaterial ways, Plaintiff also relies on the standard for assessing that most benefits him—the standard under Rule 12(b)(6), *see* Pl.’s Opp’n at 6–7, 9—rather than the standard of the review of facts that is most applicable. Plaintiff argues that the Court must ignore plain facts under the Rule 12(b)(6) standard. *Id.*

Most of Defendants’ arguments, however, articulate why the Court lacks jurisdiction over this case, the claims, and the forms of relief sought. It is blackletter law that, under Rule 12(b)(1), this Court can hear consider matters outside the record when assessing its subject-matter

jurisdiction. *See Ballard v. Kendall*, 640 F. Supp. 3d 41, 48 (D.D.C. 2022) (“As part of its inquiry into of subject matter jurisdiction, the court may consider documents outside the pleadings to assure itself that it has jurisdiction.”); *see also Ebrahimi v. Trump*, Civ. A. No. 25-1593 (CJN), 2026 WL 809770, at *1 (D.D.C. Mar. 24, 2026) (“The factual allegations in a plaintiff’s complaint, however, ‘will bear closer scrutiny in resolving a 12(b)(1) motion than in resolving a 12(b)(6) motion for failure to state a claim.’” (quoting *Grand Lodge of the Fraternal Ord. of Police v. Ashcroft*, 185 F. Supp. 2d 9, 13–14 (D.D.C. 2001)) (internal quotation marks omitted)).

Thus, to the extent that the Court’s ruling on jurisdiction hinged on a factual question, “the court may not deny the motion to dismiss merely by assuming the truth of the facts alleged by the plaintiff and disputed by the defendant. Instead, the court must go beyond the pleadings and resolve any disputed issues of fact the resolution of which is necessary to a ruling upon the motion to dismiss.” *Feldman v. Fed. Deposit Ins. Corp.*, 879 F.3d 347, 351 (D.C. Cir. 2018) (quoting *Phoenix Consulting v. Republic of Angola*, 216 F.3d 36, 40 (D.C. Cir. 2000)) (citation omitted).

Similarly, when assessing a preliminary injunction, a court should consider matters outside the pleadings. *See Mary Kay Kane & Alexandra D. Lahav*, 11A *Federal Practice & Procedure* § 2949 (3d ed. Westlaw) (“Evidence that goes beyond the unverified allegations of the pleadings and motion papers must be presented to support or oppose a motion for a preliminary injunction.”).

III. This Court Lacks Subject-Matter Jurisdiction

A. Plaintiff’s Allegations About Wrongdoing Do Not Create Jurisdiction

As noted above, Plaintiff starts from the unsupported premise that there was a malicious conspiracy to remove him from the Court’s jurisdiction. *See* Pl.’s Opp’n at 1–5, 11–12. Without citation, Plaintiff first argues that the law cannot permit Defendants’ alleged substantive wrong to defeat subject-matter jurisdiction. *Id.* at 1–2. Plaintiff then concludes that “[t]he Supreme Court

has been unequivocal: a defendant cannot defeat a court's jurisdiction by completing the very wrong it was brought to court to address," citing *Already, LLC v. Nike, Inc.*, 568 U.S. 85, 91 (2013).

Already does not make the point that Plaintiff wishes it made—and certainly not “unequivocal[ly].” *Already* dealt with the opposite situation from the one that Plaintiff claims he is in now, voluntary cessation. Plaintiff's complaint is that he now does not like that Defendants completed his voluntary departure, which leaves him without a judicial remedy, largely because many of the alleged harms (e.g., counsel cannot contact Plaintiff) have been resolved. In *Already*, the Court determined that defendants cannot defeat jurisdiction simply by ceasing to engage in the challenged conduct; “[A] defendant cannot automatically moot a case simply by ending its unlawful conduct once sued.” *Already*, 568 U.S. 91; see also *id.* at 93 (moving on to the merits after “[h]aving determined that the voluntary cessation doctrine applies”). Later in its brief, Plaintiff again relies on voluntary cessation again. See Pl.'s Opp'n at at 11 (quoting *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc.*, 528 U.S. 167, 190 (2000), with respect to voluntary compliance). This is plainly not a voluntary cessation case.

Thus, Plaintiff has no citation for his principle that subject-matter jurisdiction must attach merely because Plaintiff alleges that Defendant's conduct was wrongful and resulted in a change of circumstances. See, e.g., *Rezqallah v. R.I. Dep't of Lab. & Training*, Civ. A. No. 25-0141, 2025 WL 1170449, at *1 (D.R.I. Apr. 22, 2025) (“A federal court is a court of limited jurisdiction and not every wrong can be remedied here.”); *Burke v. State of Connecticut Judge Patchen*, Misc. No. 08-0118, 2008 WL 1883923, at *2 (D. Conn. Apr. 28, 2008) (“The federal courts, as noted, have limited jurisdiction, and every wrong that may occur does not necessarily result in a viable federal law suit.”). Were it so, there would be no need for subject-matter jurisdiction analysis because it would always be coextensive with whether Defendant committed a wrong on the merits.

B. Plaintiff Cannot Use the All Writs Act to Create Jurisdiction

As Defendant showed, the All Writs Act cannot create subject-matter jurisdiction. *See* Defs.’ Mot. at 21–23. Plaintiff does not contest that principle. *See* Pl.’s Opp’n at 12 (“Plaintiff does not seek to create jurisdiction.”). But Plaintiff’s argument nonetheless would require the Court to use the All Writs Act to create jurisdiction.

Plaintiff argues that he is “invok[ing] the Act to protect the jurisdiction this Court already possessed when the initial emergency filing was docketed on April 10.” Pl.’s Opp’n at 12. The Court has recognized that it should not grant injunctive relief when Plaintiff no longer is in custody. Apr. 10, 2026, Min. Order (“Plaintiff’s motion is DENIED insofar as plaintiff is no longer in the custody of any agency of the U.S. Government.”). Plaintiff himself has impliedly admitted that, beyond his unsupported belief that a Court can exceed its jurisdiction to “protect” jurisdiction that it lost, jurisdiction now is gone. *See* Pl.’s Opp’n at 12 (admitting that the Court lost “judicial power” if Plaintiff was handed over to Honduran officials); *id.* at 1 (arguing that releasing custody of Plaintiff is “manufactured mootness”).

In an attempt to square the Court’s loss of jurisdiction and the blackletter law that the Court cannot use the All Writs Act to create jurisdiction, Plaintiff essentially argues that re-creating jurisdiction is not creating jurisdiction. Under Plaintiff’s theory, whenever an injury was ever redressable, a federal court should unscramble as many eggs as possible as a preliminary matter, so that the court could further arrogate to itself the power to assess the merits. Plaintiff has no support for this claim. *But see Aleman Gonzalez*, 596 U.S. at 554 (rejecting argument that “would make a court’s jurisdiction . . . dependent upon the merits of the claim”); *Cause of Action Inst. v. IRS*, 390 F. Supp. 3d 84, 98–99 (D.D.C. 2019) (“[I]t is common practice for federal courts to evaluate their subject-matter jurisdiction (or lack thereof) as a threshold matter, separate and apart from the merits of the plaintiff’s claims.” (citing sources)). Instead, Plaintiff cites plainly

inapposite cases. See Pl.’s Opp’n at 12. In *FTC v. Dean Foods Co.*, 384 U.S. 597, 605 (1966), the Supreme Court upheld a court of appeal’s decision to “issue a preliminary injunction preventing the consummation of [a merger] agreement upon a showing that an effective remedial order, once the merger was implemented, would otherwise be virtually impossible.” As Plaintiff admits, the Supreme Court explained that this was pursuant to courts’ “limited judicial power to preserve the court’s jurisdiction or maintain the status quo.” *Dean Foods*, 384 U.S. at 604. Plaintiff seeks to transform this “limited power to . . . maintain the status quo” to a sweeping power to create new circumstances or what Plaintiff creatively calls the “*status quo ante*,” Pl.’s Opp’n at 2, 15.

Similarly, Plaintiff seems to cite *Pennsylvania Bureau of Correction v. Marshals Service*, 474 U.S. 34, 40-41 (1985), for the proposition that the All Writs Act can remedy any alleged “frustration of this Court’s judicial power.” Pl.’s Opp’n at 12. But *Pennsylvania Bureau* rejects an overly broad application of the All Writs Act and states that the All Writs Act authorizes a court to “to effectuate and prevent the frustration of orders it has previously issued in its exercise of jurisdiction otherwise obtained.” *Pa. Bureau*, 474 U.S. at 40. Plaintiff identifies no existing order that is being frustrated. The Court declined to enter the order that Plaintiff sought preventing the turnover of Plaintiff to Honduras, which was untimely in all events.

Finally, Plaintiff oddly claims that “Defendants’ citation to *D.A. v. Noem*, 800 F. Supp. 3d 43, 52 (D.D.C. 2025), carries little weight” because *D.A.* “predates the Supreme Court’s unanimous ruling in *Noem v. Garcia*, 145 S. Ct. 1017 (2025)[.]” Pl.’s Opp’n at 13. To the contrary, *D.A.* was issued four months after *Abrego Garcia* was and, indeed, *D.A.* expressly discusses the relationship between *Abrego Garcia* and the All Writs Act. *E.g.*, 800 F. Supp. 3d at 52 (noting that *Abrego Garcia* relied on more than the All Writs Act).

C. Section 1252(g) Strips Jurisdiction Over Plaintiff's Claim that He Was Improperly Removed or Should Be Put into Removal Proceedings

Even though he agreed to a voluntary departure, Plaintiff insists he has been improperly removed. *See* Pl.'s Opp'n at 2 ("wrongfully removed noncitizen"); *id.* at 3 ("removal on April 10, 2026"); *id.* at 4 ("the removal flight"); *id.* at 11 ("[b]y completing Plaintiff's removal during the pendency of this action"); *id.* at 12 ("emergency removals accomplished through communications blackouts"); *id.* at 14 ("removing an SIJ beneficiary"). Moreover, Defendants argued, *see* Defs.' Mot. at 25, the relief that Plaintiff wants is to be put into removal proceedings. Thus, Plaintiff's claim is that the Secretary of Homeland Security failed "to commence proceedings" against him under the INA. That is precisely what 8 U.S.C. § 1252(g) prevents a court from reviewing. 8 U.S.C. § 1252(g) ("[N]o 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 Attorney General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.").

Plaintiff's response misunderstands Defendants' argument. *See* Pl.'s Opp'n at 7–8. Plaintiff mistakenly argues that Defendants said that Section 1252(g) applies "because the dispute arises from the execution of a removal order." *Id.* But that is not what Defendants argue in support of their § 1252(g) argument. Again, Defendants argued that Section 1252(g) applied because Plaintiff wanted to challenge the failure to put him into a removal proceedings. Defs.' Mot. at 25, 28–29.

Plaintiff also argues that he "does not question the government's discretion to commence . . . the proceedings[.]" Pl.'s Opp'n at 8. But that is not true. His argument is that the Defendants could not fly him to Honduras pursuant to his agreement to voluntarily depart without giving him the full panoply of procedural protections given to someone who challenges removal. *See, e.g.,* Am. Compl. ¶ 79 (relying on a regulation that applies in removal proceedings); Pl.'s

Opp'n at 8 (explaining that he challenges his removal "when his removal proceedings no longer exist"). What he demands is that the Government commence removal proceedings against him. And that claim is squarely barred under § 1252(g).

Thus, Plaintiff's cases are inapposite. In *Enriquez-Perdomo v. Newman*, 54 F.4th 855, 865 (6th Cir. 2022), the Court considered whether the Plaintiff was challenging the government's decision to "execute removal orders"—not whether to commence removal proceedings. The subsequent opinion in that case does not further develop that analysis. *Enriquez-Perdomo v. Newman*, 149 F.4th 623, 629 (6th Cir. 2025). In *Ozturk v. Hyde*, 136 F.4th 382, 397 (2d Cir. 2025), the plaintiff's "petition challenges her unlawful detention, pending those proceedings, and she seeks her release from detention in the interim based on the violations of her First and Fifth Amendment rights that she has identified."² While Defendants disagree with the Second Circuit's decision, which stems from the denial of a stay of a transfer motion, Plaintiff's challenge here cannot be reasonably separated from the decision to not commence removal proceedings. *See, e.g.*, Pl.'s Opp'n at 12 (claiming that the issue is "emergency removals accomplished through communications blackouts").

Moreover, § 1252(g) also confirms that Plaintiff cannot ask this Court to utilize the All Writs Act to establish jurisdiction or create a remedy. Congress expressly mentioned the All Writs Act in 8 U.S.C. § 1252(g): "Except as provided in this section and notwithstanding any other provision of law (statutory or nonstatutory), including section 2241 of Title 28, or any other habeas corpus provision, and sections 1361 and 1651 of such title, 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 Attorney

² Plaintiff mistakenly claims that *Ozturk* was decided by "[a] D.C. Circuit panel." Pl.'s Opp'n at 8.

General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.”

In a brief paragraph, Plaintiff argues that Defendants’ completion of Plaintiff’s voluntary departure is ultra vires under 8 U.S.C. § 1227(c). *See* Pl.’s Opp’n at 8–9. This argument does not apply to Plaintiff’s circumstances for two reasons. First, Plaintiff took a voluntary departure and therefore his “deportability” was never an issue.

Second, the test for removing Plaintiff would not have been about his “deportability.” Plaintiff did not lawfully enter the United States in September 2020. *See* Am. Compl. ¶ 19; 8 U.S.C. § 1101(a)(13)(A) (“admission” under the INA requires “lawful entry of the alien into the United States after inspection and authorization by an immigration officer”). Because Plaintiff has never properly admitted to the United States, his removal would be determined by the inadmissibility criteria of 8 U.S.C. § 1182. By contrast, Section 1227(c), which waives certain grounds of “deportation,” applies only to aliens “in and admitted to the United States.” 8 U.S.C. § 1227(a). As noticed above, Plaintiff did not enter lawfully, much less after inspection and authorization. Accordingly, he was never “admitted” to the United States and therefore does not fall under 8 U.S.C. § 1227, including the waiver under Section 1227(c). *See e.g., Buenrostro-Mendez v. Bondi*, 166 F.4th 494, 506–07 (5th Cir. 2026) (ruling that noncitizens who entered without inspection are considered applicants for admission); *Avila v. Bondi*, 170 F.4th 1128, 1137–38 (8th Cir. 2026) (same). By contrast, Section 1227(c) would apply to other individuals with Special Immigrant Juvenile classification (“SIJ”) who were lawfully admitted, but, for instance, overstayed their visas.

To be clear, an alien whose SIJ petition was approved by the U.S. Citizenship and Immigration Services (“USCIS”) is “deemed, for purposes of [adjustment of status under]

subsection (a), to have been paroled into the United States.” *See* 8 U.S.C. § 1255(h)(1). But Section 1255(h)(1) does not help Plaintiff either. “Parole” is not an “admission.” *See* 8 U.S.C. § 1101(a)(13)(B). And “[n]othing in [section 1255(h)] or section 1101(a)(27)(J) of this title shall be construed as authorizing an alien to apply for admission or be admitted to the United States in order to obtain special immigrant status described in such section.” 8 U.S.C. § 1255(h). Thus, USCIS’s approval of Plaintiff’s SIJ petition was not an “admission” into the United States.

The phrase “deem . . . to have been paroled into the United States” in Section 1255(h)(1) has limited effect because it applies only “for purposes of” adjustment of status. *See* 8 U.S.C. § 1255(a). It does not affect the alien’s removability from the United States. Indeed, individuals with SIJ status are not categorically exempt from removal. *See Cortez-Amador v. Att’y Gen.*, 66 F.4th 429, 433 (3d Cir. 2023) (“Petitioner is removable despite his SIJS[.]”); *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.”); *Matter of Cahuec Tzalam*, 29 I. & N. Dec. 300, 305 n.3 (BIA 2025) (“Being classified as a special immigrant juvenile by USCIS would not by itself confer any lawful status on the respondent or affect his removability.”).

Finally, as argued above, Plaintiff does not show there is a “two wrongs make a right” exception to subject-matter jurisdiction. Even if Plaintiff showed that Defendant’s act were ultra vires—and he did not—that does not create subject-matter jurisdiction.

Plaintiff’s citation to the nonbinding *Lopez v. Raycraft*, Civ. A. No. 26-10784, 2026 WL 1370583 (E.D. Mich. May 15, 2026), also is inapposite. *See* Pl.’s Opp’n at 8. In that case, the court held that Section 1252(g) did not bar a habeas corpus petition by an immigrant in detention. *See Lopez*, 2026 WL 1370583, at *5 (“Section 1252(g) is not a ‘zipper’ clause that precludes

judicial review of all habeas corpus cases involving removal.”).³ But it does not, as Plaintiff argues, create subject-matter jurisdiction for a plaintiff with a non-redressable injury.

D. *Abrego Garcia* Is Distinguishable.

Defendants explained that Plaintiff appeared to rely on *Abrego Garcia*. Defs.’ Mot. at 26 (“Plaintiff’s only substantive response . . . has been reliance on *Noem v. [Abrego] Garcia*[.]”). Defendant then distinguished *Abrego Garcia* because, there, “the court found that “an administrative error” led to his removal to El Salvador” and Defendants “confessed grievous error.” Def.’s Opp’n at 26 (quoting *Abrego Garcia*, 777 F. Supp. 3d 501, 507 & n.3 (D. Md. 2025)); accord *D.A. v. Noem*, 800 F. Supp. 3d 43, 53 (D.D.C. 2025) (“Here, unlike *Abrego Garcia*’s case, Defendants do not concede that Plaintiffs were improperly removed to Ghana—to the contrary, they argue that Plaintiffs were properly sent there pursuant to an agreement with Ghana, which agreed to take them.”); *Mourtaga v. Trump*, 820 F. Supp. 3d 740, 749 (N.D. Ill. 2026) (“Indeed, the government had even conceded that the removal was illegal. All that remained was the discussion of remedy. Here, by contrast, there have been no concessions on the legality of the U.S. government’s action or inaction[.]” (citation omitted) (seeking an order for evacuation from Gaza))).

Despite Defendants’ explanation that this case “is readily distinguishable” from *Abrego Garcia*, Plaintiff confusingly refers to *Abrego Garcia* case as “[t]he government’s own lead authority.” Pl.’s Opp’n at 1. Plaintiff fails to respond in any way to the key distinction—that the

³ The decision is also likely incorrect because Congress went out of its way to cover habeas corpus proceedings when it amended § 1252(g) and explicitly divested district courts of habeas jurisdiction. See 8 U.S.C. § 1252(g) (explicitly mentioning that courts could not review matters under 28 U.S.C. § 2241 if the action sought review of one of the three covered actions).

court relied on a finding of error in *Abrego Garcia*—presumably because he has no response. *D.A.*, 800 F. Supp. 3d at 53.

Instead, Plaintiff insists that *Abrego Garcia* and an unpublished decision out of the Central District of California represent a notable change: “The legal landscape has shifted decisively in Plaintiff’s favor.” *See* Pl.’s Opp’n at 13. The California case is not binding here, and in any event, did not provide the relief that Plaintiff seeks here. Here, Plaintiff wants the Court to order a wide assortment of mandatory relief. For example, Plaintiff seeks an order for Defendants to “[a]pprov[e] and issu[e] humanitarian parole travel documents,” “[c]oordinat[e] with the U.S. Department of State to facilitate return, if appropriate,” “[p]rovid[e] for the cost of Plaintiff’s return flight to the United States,” “vacat[e] the execution of the removal [sic],” and “reinstat[e] Plaintiff’s grant of Deferred Action and his prior immigration status.” Am. Compl. at 18–19, ECF No. 19. By contrast, in *Immigration Center for Women and Children v. Noem*, --- F.R.D. ---, Civ. A. No. 25-9848, at *45, *47 (C.D. Cal. May 20, 2026), the court only “[r]equir[ed] Defendants to permit [certain removed individuals] to re-enter.” Moreover, the California court relied on a 1977 Ninth Circuit case that the D.C. Circuit has held does not apply when the noncitizen voluntarily departed from the country. *See Joehar v. INS*, 957 F.2d 887, 889–90 (D.C. Cir. 1992) (“Having departed the country voluntarily, however, [the noncitizen] cannot assert such a claim here, and we venture no opinion upon the validity of that putative exception.”). Because *Abrego Garcia* is inapposite and the California case is not binding, the “legal landscape” remains the one that had not “shifted . . . in Plaintiff’s favor.”

E. Parole Is Not a Judicial Remedy

Citing nothing, Plaintiff asserts, “This Court has the clear statutory and equitable authority to fashion an effective remedy.” But Plaintiff does not point to a judicial remedy. Instead, he notes that the Secretary of Homeland Security has “authority to parole individuals into the United

States for urgent humanitarian reasons or significant public benefit.” Pl.’s Opp’n at 11 (citing 8 C.F.R. § 212.5). But as another judge in this district recently recognized, that authority is left to the Executive Branch alone. *See Coal. for Humane Immigrant Rts. v. Noem*, Civ. A. No. 25-872 (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)). The reason 8 C.F.R. § 212.5 exists is because Congress has delegated the power to parole the Secretary of Homeland Security “in his discretion,” 8 U.S.C. § 1182(d)(5)(A), and the Secretary has promulgated regulations allowing “[t]he Secretary or his designees [to] invoke, in the exercise of discretion, the authority under section 212(d)(5)(A) of the Act.” 8 C.F.R. § 212.5(a). The regulation thus recognizes the discretionary nature of this authority that was delegated to the Secretary by Congress.

Plaintiff’s reliance on this regulation is puzzling. The fact that the Executive Branch has the discretionary authority to take an action by no means gives the Judiciary the power to order it to do so. Indeed, Defendant expressly argued as much, *see* Def.’s Mot. at 23 (“[T]he injunctive relief requested is reserved to the political branches.” (emphasis omitted and capitalization)). And Plaintiff offers no response.

No one disputes that the President has “Power to grant Reprieves and Pardons for Offenses against the United States,” U.S. Const. Art. II § 2, but none would contend that courts have the power to order the President pardon someone.

A judicial order requiring the Secretary of Homeland Security to parole Plaintiff falls along similar lines. The Secretary’s parole power is reserved to “his discretion.” 8 U.S.C. § 1182(d)(5)(A). Indeed, Section 1182(d)(5)(A) “radiates with words of discretion. It contains

not one, not two, but three discretionary terms,’ ‘may,’ ‘in h[er] discretion’ and ‘under such conditions as [s]he may prescribe,’ 8 U.S.C. § 1182(d)(5)(A).” *A.M.S. v. Edlow*, Civ. A. No. 25-0476 (RDM), 2026 WL 850779, at *11 (D.D.C. Mar. 27, 2026) (quoting *Karakenyan v. USCIS*, 468 F. Supp. 3d 50, 56 (D.D.C. 2020)). “[I]t is clear on the face of [Section 1182(d)(5)(A)] that [it] is a quintessential grant of discretion to the Secretary.” *Id.* (quoting *Bouarfa v. Mayorkas*, 604 U.S. 6, 13 (2024)).

Thus, courts cannot review the Secretary’s decisions to parole noncitizens. *See* 8 U.S.C. § 1252(a)(2)(B)(ii) (no judicial review of decisions by the Secretary of Homeland Security when “the authority for which is specified under this subchapter to be in the discretion of the Attorney General or the Secretary of Homeland Security”); *A.M.S.*, 2026 WL 850779, at *12 (“The Court, accordingly, concludes that the 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)); *cf. Ashraf v. ICE*, Civ. A. No. 10-2482, 2011 WL 1059712, at *2 (N.D. Ohio Mar. 21, 2011) (“This Court cannot . . . order DHS to release him because this court lacks jurisdiction to review DHS’s decision to deny an arriving alien parole.”). Defendants made that point in their motion, *see* Defs.’ Mot. at 25, and Plaintiff offers no response. Given that, Plaintiff’s bare assumption that courts have the power to order parole, merely because the Secretary or Homeland Security has discretionary authority to parole, has no basis.

Plaintiff suggests false modesty. The Court would not be “step[ping] into the shoes of the agency and adjudicat[ing Plaintiff’s] final visa.” Pl.’s Opp’n at 11. But it would be stepping into the Secretary’s shoes and exercising parole authority, which entrenches on the Secretary’s

discretion in the same way. This is just another attempt to invoke the merits of a claim to sidestep clear jurisdictional bars.

The only other argument Plaintiff makes in favor of parole is Plaintiff's misstatement that *Abrego Garcia* ordered "precisely" the same remedy when it ordered the government to "facilitate" Abrego Garcia's return. Pl.'s Opp'n at 2, 11. Notably, this order specifically did not state that the government was required to parole Abrego Garcia, and Plaintiff offers no support for the proposition that the Supreme Court's ruling was tantamount to any such order. *Abrego Garcia* "provided little reasoning or instruction regarding the district court's jurisdiction over the relief it had ordered . . . [a]nd the Court cautioned against district courts encroaching upon 'the deference owed to the Executive Branch in the conduct of foreign affairs.'" *D.A.*, 800 F. Supp. 3d at 53 (quoting *Abrego Garcia*, 145 S. Ct. at 1018).

F. Plaintiff Misunderstands Mootness.

Defendants explained that most of Plaintiff's requested relief has already been granted by the passage of time. Specifically, it would be fruitless to order Defendants to disclose Plaintiff's location and order access to counsel. *See* Defs.' Mot. at 17. Plaintiff's undue delay claim is moot now that he has been released from custody and has access to counsel. *See id.* (citing *Mehneh v. Rubio*, 164 F.4th 928, 931–32 (D.C. Cir. 2026)). Plaintiff's *Accardi* claim is identical to his APA claim and is moot for the same reasons. *See id.* at 17–18. Plaintiff's Fifth Amendment claim also is moot now that Plaintiff has access to counsel and has taken a voluntary departure. *See id.* at 19–20.

Plaintiff argues that "an [e]ffective [r]emedy exists." Pl.'s Opp'n at 12. But not for those claims. Plaintiff is released from custody and has access to counsel.

Citing *American Forest Resource Council v. Williams*, 96 F.4th 417, 421 (D.C. Cir. 2024), Plaintiff argues his claims are not moot because of "the exception to mootness for matters 'capable

of repetition yet evading review.’” Pl.’s Opp’n at 12. The very next sentence in *American Forest Resource Council* states, “[t]hat exception applies if two conditions are met: ‘(1) the challenged action is too short to be fully litigated prior to cessation or expiration; and (2) there is a reasonable expectation that the same complaining party would be subjected to the same action again.’” *Am. Forest Res. Council*, 96 F.4th at 421 (quoting *In re Sealed Case*, 77 F.4th 815, 826 (D.C. Cir. 2023)). Plaintiff has not even suggested that he has “a reasonable expectation that” he “would be subjected to the same action again.” Indeed, Defendants argued, “[n]ow that he has been removed from the United States, he is not subject to any Department of Homeland Security policy.” Defs.’ Mot. at 21. Plaintiff has offered no response.

IV. Plaintiffs’ Claims Also Fail on the Merits

Beyond Plaintiff’s argument that he has created a factual dispute as to whether Plaintiff’s voluntary departure was, as Plaintiff alleges, “coerced,” Plaintiff offers little response to Defendants’ arguments about the merits. Pl.’s Opp’n at 2–3, 9.

Defendants argued that 8 C.F.R. §292.5(b) does not apply to Plaintiff because it applies only to an “examination . . . provided for in this chapter.” Defs.’ Mot. at 18; 8 C.F.R. § 292.5(b). Without authority, Plaintiff claims that “the presentation of a form waiving the right to a hearing” is an examination. Pl.’s Opp’n at 7. The “presentation of a form” neither appears to be an “examination,” nor does it appear to be “provided for” in that chapter of the Code of Federal Regulations. 8 C.F.R. § 292.5(b).

Beyond that, Plaintiff has little to say and has thus conceded numerous points. Defendants argued that Plaintiff “failed to identify ‘a crystal-clear legal duty’ for which mandamus would provide relief.” Defs.’ Mot. at 17. Plaintiff offers no response. Plaintiff’s opposition does not even mention “mandamus” or “duty.” Defendants argued that there is no longer a live undue delay

claim. *See* Defs.’ Mot. at 17. Plaintiff does not respond. Notably, the opposition does not even mention the word “delay.”

Defendants argued that *Accardi* did not apply because Plaintiff failed to show that the standards were equivalent to legislative rules, Plaintiff failed to identify the particular standard that was violated, and there was no discrete final agency action not to implement the standards. *See* Defs.’ Mot. at 18–19. Plaintiff cites *Accardi* only for an unrelated point, *see* Pl.’s Opp’n at 5; and Plaintiff only repeats the legal conclusion that the standards were violated, *see* Pl.’s Opp’n at 7, 14. Because Plaintiff failed to respond to these arguments, it has conceded them, and the Court may dismiss for that reason.

V. Plaintiff Conceded Additional Arguments

As noted above, Plaintiff failed to engage in a claim-by-claim, relief-by-relief analysis. In addition, Plaintiff conceded several other arguments.

A. Declaratory Judgment Cannot Unmoot His Claim

Plaintiff also cannot save the above-discussed claims by seeking a declaratory judgment that what Defendants did was illegal. *See* Defs.’ Mot. at 21. Plaintiff does not respond to this argument and, indeed, the opposition never once mentions his request for declaratory relief or responds to Defendants’ arguments seeking dismissal on these grounds.

B. Plaintiff’s “Fear” Is Not Relevant to His Removability.

Plaintiff complains that immigration officials did not listen to his fear of returning to Honduras. *See* Pl.’s Opp’n at 6, 9–10, 13. Defendants explained that Plaintiffs’ fear might be relevant to standing only if it could support withholding removal or asylum. Defs.’ Mot. at 27–28. But Plaintiff’s alleged 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. Defendants explained that such claim would be insufficient for

asylum or withholding purposes. *See* Defs.’ Mot. at 27–28. Plaintiff has no response to this argument.

C. Reinstatement of SIJ or “Deferred Action” Does Not Create Jurisdiction

Defendants explained that relief that sought to reinstate Plaintiff’s Deferred Action and special immigrant classification would encroach on the Executive’s discretion. *See* Defs.’ Mot. at 28–30; *see also United States v. Vo*, 53 F. Supp. 3d 77, 85 (D.D.C. 2014) (“Deferred Actions are discretionary decisions made by ICE.”). Plaintiff did not respond to this argument.

Moreover, his voluntary departure is not a ground for automatic “revocation” of his SIJ status, *see* 8 C.F.R. § 204.11(j)(1) (providing grounds for automatic revocation);⁴ nor does it prevent him from seeking advance parole into the United States, *see* 8 C.F.R. § 212.5(f), to adjust his status to that of a lawful permanent resident when his SIJ visa becomes current and available, *see* 8 U.S.C. § 1255(a); 8 C.F.R. § 245.1(a) (“A special immigrant described under section 101(a)(27)(J) of the Act shall be deemed, for the purpose of applying the adjustment to status provisions of section 245(a) of the Act, to have been paroled into the United States, regardless of the actual method of entry into the United States.”). Nothing in these statutes or regulations expressly requires that Plaintiff be in the United States to adjust his status. Plaintiff is not foreclosed from seeking to become a lawful permanent resident based on his SIJ while he is out of the country.

⁴ The Secretary of Homeland Security nonetheless retains discretionary authority to revoke, at any time, the grant of SIJ status for “good and sufficient cause.” 8 U.S.C. § 1155; 8 C.F.R. § 204.11(j)(2); *see Bouarfa*, 604 U.S. at 13 (“It is clear on the face of § 1155 that the revocation provision is a quintessential grant of discretion to the Secretary.”).

D. The Acting Attorney General Is Not a Proper Party

Defendants argued that the Attorney General is not a proper party. Def.'s Mot. at 13–14. Plaintiff does not respond and therefore concedes the argument.

E. Rule 7(n) relief

The Government requested that the Court excuse it from filing a certified list of the contents of the administrative record. *See* Def.s' Mot. at 1 n.2. Plaintiff did not object.

CONCLUSION

For the reasons stated above and in Defendants' motion, the Court should dismiss Plaintiff's amended complaint for lack of subject-matter jurisdiction or failure to state a claim.

Dated: June 17, 2026

Respectfully submitted,

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