

**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. 1:26-cv-01208-BAH

Judge Beryl A. Howell

**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

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**MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S MOTION FOR A
PRELIMINARY INJUNCTION**

Plaintiff submits this Memorandum of Law in support of his Motion for a Preliminary Injunction to remedy a flagrant violation of due process and statutory eligibility.

I. INTRODUCTION

This case presents an abuse of executive authority. Plaintiff was a vulnerable young man residing lawfully in the United States under Special Immigrant Juvenile Status (“SIJS”) deferred action, waiting for his priority date to become current on the visa bulletin. Rather than allowing him to follow the legal framework enacted by Congress, DHS officers unlawfully removed him. They accomplished this by isolating Plaintiff, coercing his signature on a voluntary departure document, denying him access to his legal counsel, denying custody of him at Plaintiff’s counsel’s request, and thereafter ignoring his requests to withdraw his signature and seek relief. Plaintiff was kept in inhumane conditions—denied access to showers and clean water for nearly two weeks—before being flown out of the country.

This Court stepped in on June 23, 2026 by issuing a Temporary Restraining Order (“TRO”), effective for fourteen (14) days, to preserve the status quo. *See* ECF No. 26-27. Since then, Plaintiff’s Counsel, acted in good faith in communications and Joint Status Reports (“JSR”) with Defendants. However, the Defendants have demonstrated they are unwilling to quickly facilitate a speedy return, and as such, a preliminary injunction is warranted. Based on representations from Defendants in the initial joint status reports, and by Counsel for Defendants in conversations with Counsel for Plaintiffs, Plaintiff believed it to be possible that Plaintiff would have been back in the United States before expiration of the TRO and that Defendants fully intended to comply with facilitating Plaintiff’s return to the United States. In the aforementioned emails, Defendants then estimated that facilitating travel letters and airline logistics via the attaché in Honduras may take

more than 30 days, followed by an email on the same day that it would take *up to* 30 days from June 30, 2026. *See* ECF No. 35, Exhibit A. It appears this timeline is not so certain and that unnecessary delays are preserving an unjust situation by placing Plaintiff at great risk in Honduras for an extended time despite this Court's TRO. Consequently, a Preliminary Injunction ("PI") is required to bind Defendants to their legal obligations and return Plaintiff to safety.

II. STATEMENT OF FACTS AND PROCEDURAL HISTORY

Plaintiff incorporates by reference the factual allegations provided in the Amended Compliant for Writ of Mandamus and Declaratory and Injunctive Relief. *See* ECF No. 19 ¶¶ 19-64.

In summary, Plaintiff is a native and citizen of Honduras. He was born on December 19, 2005 in San Pedro Sula, Honduras. Plaintiff is a recipient of approved SIJS findings and was placed in deferred action status by DHS, awaiting final adjustment of status. *See* ECF No. 1-2 at Ex. J, U.S. Dept of Health and Human Service, Verification of Release of Unaccompanied Minor Child.

On or about late March 18, 2026, DHS detained Plaintiff in Montana. Plaintiff spoke with counsel on March 23, 2026, and stated that he did not fully understand the documents he signed but believed that they may be removal paperwork. *See* ECF No. 1-2 at Ex. A, Affidavit; ECF No. 13-1, Plaintiff's Declaration. Plaintiff hired counsel on March 31, 2026. Despite having hired counsel, and counsel entering an appearance with DHS, Plaintiff was unable to access communication with counsel, and counsel was unable to locate the Plaintiff for a period of ten (10) days. *See* ECF No. 2 at Ex. A, Affidavit; ECF No. 13-1, Plaintiff's Declaration. Representatives of Customs and Border Protection ("CBP") and Immigration and Customs Enforcement ("ICE"), separate agencies within DHS, both denied custody of Plaintiff during those 10 days. *See* ECF No. 1-2 at Ex. A, Affidavit.

Plaintiff was removed by DHS officials without the knowledge of counsel the morning of April 10, 2026. On April 10, 2026, counsel for the Defendants made conflicting statements about when Plaintiff was actually removed, which agency actually removed him, and at what point Plaintiff was actually transferred out of U.S. custody. *See* Transcript of Emergency Hearing, 5:18, 8:2, 8:10, April 10, 2026; ECF No. 12, Declaration of Deputy Assistant Director Christopher George, dated 4/13/2026; ECF No. 22, Declaration of Deputy Assistant Director Christopher George, dated 5/20/2026. It was later learned, after Plaintiff returned to Honduras, that during his period of isolation Plaintiff unknowingly and unintelligently signed a voluntary departure form. Plaintiff explicitly requested to rescind his signature once he understood the document, which DHS refused or ignored. *See* ECF No. 13-1, Plaintiff's Declaration. Moreover, prior to his removal, DHS held Plaintiff for nearly two weeks in facilities lacking basic human necessities, including access to functional showers or clean drinking water. *Id.*

Following Plaintiff's removal, this matter proceeded on a briefing schedule as set forth in an April 15, 2025 Minute Order. *See* ECF, Minute Order 04/15/2026.

On June 23, 2026, in a 44-page decision, this Court determined that each of the four factors favors Plaintiff as to the relief sought that Defendants facilitate his return to the United States, and as such, the Court issued a temporary restraining order directing Defendants to do so. *See* ECF No. 27. In its order, Court granted in part, and denied in part the Defendant's Motion to Dismiss. Specifically, the Motion to Dismiss was granted as to dismissing the Acting Attorney General Todd Blanche as named defendant, Count II (APA claim under 5 U.S.C. § 706(1)) and Count III (*Accardi* doctrine) of the Amended Complaint, and otherwise denied. *Id.* Plaintiff's second Motion for TRO was granted in part, and denied in part. *Id.* The Court denied as moot the proposed order seeking information already provided by defendants, provision of plaintiff's access to counsel

during his previous period of detention in the custody of immigration authorities, and that defendants not release plaintiff from U.S. custody and request to parole Plaintiff into the United States. *See* ECF No. 26. The Court granted the Plaintiff's request to order that Defendants facilitate his return to the United States and set forth an order to file status reports every 48-hours thereafter advising the Court of the steps taken by Defendants to facilitate Plaintiff's return to the United States.

Through status reports timely filed every 48 hours in this matter, the Defendants have "met and conferred on the appropriate steps necessary to facilitate return," "begun filling out necessary paperwork to obtain the travel letter," "answered questions posed by Plaintiff's counsel," "held a meeting with DHS personnel in Honduras to discuss Plaintiff's return," "issued" a travel letter for Plaintiff, and "notified DHS personnel in Honduras to coordinate with Plaintiff for the next steps." *See* ECF Nos. 30-36.

Notably, with respect to the timing of Plaintiff's return, on June 30, 2026, Assistant United States Attorney ("AUSA") Brian Levy requested via email from Plaintiffs "an anticipated date of entry, more than 30 days out." Then later that day, Attorney Levy conveyed that the government will pay for the return, processing the paperwork and coordinating with the attaché in Honduras could take "up to 30 days." *See* ECF No. 35, Exhibit A.

During a meet-and-confer on July 7, 2026, AUSA Levy informed Plaintiff's Counsel, Allison Chan and Susan Blumenthal, that the government will oppose any further extension of the TRO past its current July 10, 2026, expiration date. At the same time, AUSA Levy maintained that Defendants cannot immediately return Plaintiff to the United States and that he may have been hasty in quoting up to 30 days.

As of the date of this filing Plaintiff remains in Honduras awaiting facilitation of his return. He alleges that he faces imminent safety threats and the potential permanent loss of his statutory path to lawful permanent residency. Exhibit A, Plaintiff's Declaration, July 10, 2026. Plaintiff alleges his position has been left in an unconscionable and indefinite window of vulnerability as three months have passed since he was removed to Honduras.

This Court's TRO expires on July 10, 2026. *See* ECF, Minute Order 07/08/2026.

III. LEGAL STANDARD

The test for injunctive relief requires the movant to demonstrate: (1) a likelihood of success on the merits; (2) irreparable harm absent issuance of injunctive relief; (3) that the balance of equities tips in the movant's favor; and (4) that an injunction serves the public interest. *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). If genuine disputes of material facts exist, the court may conduct an evidentiary hearing before issuing a PI. *See, e.g., Fengler v. Numismatic Americana, Inc.*, 832 F.2d 745, 747 (2d Cir. 1987); *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009); *Int'l Molders' and Allied Workers' Local Union No. 164 v. Nelson*, 799 F.2d 547, 555 (9th Cir. 1986); *Transcon. Gas Pipe Line Co., LLC v. 6.04 Acres*, 910 F.3d 1130, 1169 (11th Cir. 2018). The court may adjudicate a PI motion without a hearing, including if there is no factual dispute. *See, e.g., Aoude v. Mobil Oil Corp.*, 862 F.2d 890, 894 (1st Cir. 1988); *Charette v. Town of Oyster Bay*, 159 F.3d 749, 755 (2d Cir. 1998); *Anderson v. Jackson*, 556 F.3d 351, 360 (5th Cir. 2009); *McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1313 (11th Cir. 1998); *see also Int'l Molders' and Allied Workers' Local Union No. 164 v. Nelson*, 799 F.2d 547, 554-55 (9th Cir. 1986) (finding court should decline to hold a PI hearing "when the magnitude of the inquiry would make it impractical").

IV. ARGUMENT

A. Plaintiff is Highly Likely to Succeed on the Merits

A movant must show more than a mere possibility of success. *See, e.g., Sindicato Puertorriqueno de Trabajadores v. Fortuno*, 699 F.3d 1, 10 (1st Cir. 2012); *Six Clinics Holding Corp. II v. Cafcomp Sys., Inc.*, 119 F.3d 393, 402 (6th Cir. 1997); *Grubhub Inc. v. Relish Labs LLC*, 80 F.4th 835, 856 n.12 (7th Cir. 2023). Plaintiff has already presented significant probative evidence in the form of sworn statements from Plaintiff and Attorney Allison Chan demonstrating a high likelihood of success on the merits. Defendants violated the core tenets of the Fifth Amendment's Due Process Clause and the Immigration and Nationality Act ("INA"). A preliminary injunction is necessary to preserve the status quo pending a final merits determination. *See U. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981) ("The purpose of a preliminary injunction is merely to preserve the relative positions of the parties until a trial on the merits can be held.")

First, the government violated Plaintiff's right to counsel. It is well-established that interfering with an established attorney-client relationship in the immigration context violates due process. *See United States v. Raya-Vaca*, 771 F.3d 1195, 1199, 1205 (9th Cir. 2014) (finding that the government's total "failure to contest Raya-Vaca's allegations" that the immigration officer did not follow the proper procedure, likely because there was no colorable argument, supported the finding of a due process violation).

By intentionally isolating Plaintiff and denying his requests to speak with his attorney, DHS nullified his procedural rights. Plaintiff's "consent" to depart was entirely involuntary. A waiver of immigration rights must be knowing, intelligent, and voluntary. Coercing a signature from an isolated, protected SIJS youth while simultaneously subjecting him to degrading conditions eliminates any semblance of voluntariness. Because the underlying departure document is legally

void, his physical removal constitutes an unlawful deportation executed outside the bounds of statutory authority against a vulnerable youth in protected deferred action status.

B. Plaintiff Faces Severe, Irreparable Harm Absent an Injunction

Considerations of what constitutes irreparable harm require an analysis of the individualized nature of the irreparable harm inquiry. *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) (citing *Nken v. Holder*, 129 S. Ct. 1749, 1760–61 (2009)). Regular, ongoing violation of constitutional rights constitutes *per se* irreparable harm. *Elrod v. Burns*, 427 U.S. 347, 373–74, (1976) (“The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury. *See New York Times Co. v. United States*, 403 U.S. 713 (1971). Since such injury was both threatened and occurring at the time of respondents’ motion and since respondents sufficiently demonstrated a probability of success on the merits, the Court of Appeals might properly have held that the District Court abused its discretion in denying preliminary injunctive relief. *See Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 67 (1963).”).

An analysis of individualized irreparable harm may also include whether not granting the motion for PI would prevent the party seeking PI from obtaining judicial review or prevent them, even if successful in their legal case, from being afforded effective relief, including restoration of immigration status. *See Leiva-Perez*, 640 F.3d at 969 (citing *Nken*, 129 S. Ct. at 1761; *Desta v. Ashcroft*, 365 F.3d 741, 748 (9th Cir. 2004) (“If Desta or others like him are required to return to their countries of origin while they petition for review by this court, they may not be able to return to this country even if they are eventually successful on the merits of their petitions.”)). Part of the irreparable harm inquiry also should consider whether the moving party is likely to face physical danger or abuse. *See id.* (citing *Kenyeris v. Ashcroft*, 538 U.S. 1301, 1305 (2003) (Kennedy, J., in chambers)). In addition, “[o]ther important [irreparable harm] factors include separation from

family members, medical needs, and potential economic hardship.” *Id.* at 969–70 (quoting *Andreiu v. Ashcroft*, 253 F.3d 477, 484 (9th Cir. 2001) (en banc)).

Here, Plaintiff faces multiple distinct streams of irreparable injury. His constitutional due process rights have been violated and continue to be violated each day that he remains outside the United States. By removing Plaintiff from the United States, the government has disrupted his ability to adjust status under his approved SIJS pathway. If his priority date becomes current while he is unlawfully exiled, he risks losing the opportunity to seek lawful permanent resident status or facing insurmountable ground-of-inadmissibility bars, permanently destroying his statutory right to seek residency.

Furthermore, Plaintiff is currently stranded in a volatile environment in Honduras—the exact environment from which he initially sought protection. He has been there since April 10, 2026, three months now. The physical risks to his safety, combined with the severe mental trauma of being returned to the place he suffered severe child abuse and this following his two-week deprivation of food, clean water, and shelter in DHS custody, cannot be remedied by monetary damages after the fact. In the attached declaration, Plaintiff details the inhumane harms that no money can resolve. *See* Exhibit A.

Plaintiff details, in his attached declaration, the harm daily suffered by he and his 3-year-old United States-citizen child. He explains that he video chats with her every day and misses her laugh. His daughter has been showing signs of emotional distress due to the separation from her father, including crying for him and having increased tantrums. *Id.*

Plaintiff has been living in fear for his life in Honduras these past three months. He recounts that two weeks after returning to Honduras, he was confronted by seemingly armed men at a store demanding his personal information. Another time, he was riding on his bicycle going home and

saw men from the notorious and ruthless Mara 18 gang fleeing from the police near him. Then, at the end of April 2026, dangerous individuals approached him to ask the whereabouts of his sister, who is in the United States. She fled Honduras in 2018 after she suffered significant harm by dangerous people wearing police uniforms. The individuals who approached Plaintiff made it clear to him that they still intend to find her and due to this, Plaintiff's own life is in danger. He fears for his safety and life.

C. The Balance of Equities and Public Interest Favor an Injunction

The balance of equities tips sharply in Plaintiff's favor. The government has minimal legitimate interest in enforcing a removal order obtained through deception, coercion, and the denial of access to counsel. There is a public interest in preventing unlawful deportations, and in turn there is no public interest in continuing unlawful actions by the government. *See, e.g., Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights." (citation modied)). The public interest is always served when federal agencies are compelled to follow the law and respect constitutional boundaries. *Leiva-Perez v. Holder*, 640 F.3d at 970.

Here, Plaintiff faces substantial hardships, including the stripping of his Deferred Action status, deprivation of his lawful status in the United States, revocation of his employment authorization, separation from his U.S. citizen child, loss of gainful employment which possessed while he resided in the United States, and the denial of freedoms of mobility after escaping a life of violence and insecurity in Honduras.

The Defendants, by contrast, face minimal hardship. Though his court has ordered the Defendants to facilitate and pay for Plaintiff's return, this hardship is outweighed by public interest and avoidance of hardships already ensued after a grave miscarriage of justice.

D. An Injunction Serves the Public Interest.

Here, the balance of hardship tips decidedly in the Plaintiff's favor. *Hernandez v. Sessions*, 872 F.3d 976, 996 (9th Cir. 2017) (quoting *Lopez v. Heckler*, 713 F.2d 1432, 1437 (9th Cir. 1983)). The public interest is served by the faithful execution of the immigration laws, and that interest includes respect for protections Congress has enacted and to which the United States has committed itself by treaty. *Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (recognizing "the public interest in having the immigration laws applied correctly and evenhandedly"); *Leiva-Perez v. Holder*, 640 F.3d 962, 971 (9th Cir. 2011) (noting "the public's interest in ensuring that we do not deliver [noncitizens] into the hands of their persecutors"); *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 576 (1992) (discussing "the public interest in Government observance of the Constitution and laws").

An injunction returning a wrongfully removed individual to the United States from a country where he faces harm so that he can properly litigate his claims maintains the integrity of the nation's immigration infrastructure. *See id.* (citing *Nken*, 129 S. Ct. at 1762 ("While we consider the 'public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm,' we are also mindful of the fact that there is also a public interest 'in prompt execution of removal orders,' which 'may be heightened' in certain circumstances, such as those involving 'particularly dangerous' noncitizens.")). The public interest is served in Plaintiff's case by returning him from a country where he faces substantial

harm after his wrongful removal, particularly given his lack of criminal record and family in the United States.

V. CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests that this Court grant his Motion for a Preliminary Injunction, order Defendants to immediately, or by July 31, 2026, finalize travel logistics with the attaché in Honduras, and compel Plaintiff's return to the United States at the government's expense.

Dated: July 10, 2026

Respectfully submitted,

/s/ Allison T. Chan

Allison Chan (New York 5135694)
Margaret W. Wong & Associates LLC
3150 Chester Avenue
Cleveland, Ohio 44114
(216) 566-9908
allison@imwong.com
Pro Hac Vice Attorney for Plaintiff

/s/ Susan Blumenthal

Susan Blumenthal (Ohio 0089586)
Margaret W. Wong & Associates LLC
3150 Chester Avenue
Cleveland, Ohio 44114
(216) 566-9908
ayla@imwong.com
Pro Hac Vice Attorney for Plaintiff

/s/ Derrick J. Hensley

Derrick J. Hensley, Esq.
THE LAW OFFICE OF DERRICK J. HENSLEY, PLLC
401 Meadowland Drive, Suite 201
Hillsborough, NC 27278
t. (919) 480-1999 | f. (919) 636-6018
DCD # NC015 | DC Bar # 90002976
Staff@LODJH.com
Counsel for Plaintiff