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

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

Plaintiff Jose Eliezer Martinez-Andino respectfully submits this Reply in Support of his Motion for a Preliminary Injunction, ECF. No. 37.

INTRODUCTION

Defendants concede that they cannot guarantee Plaintiff's return within a reasonable timeframe—reversing earlier estimations of 30 days and now refusing to commit to any concrete timeline—while simultaneously asserting that Plaintiff must remain in Honduras while litigating his Fifth Amendment due process violation claims. Because Plaintiff faces irreparable harm every day he remains outside the United States and has satisfied all four *Winter* factors, a preliminary injunction ordering Defendants to facilitate and pay for his prompt return, by July 31, 2026, is necessary and appropriate.

There has been no action by the Defendant on Plaintiff's return since the TRO expired; the last update received by Plaintiff on July 10, 2026 was that a travel letter was issued and DHS personnel in Honduras was to coordinate with Plaintiff for next steps, however Plaintiff has not received any Honduras in twelve (12) days. Defendants now propose that Plaintiff seek advance parole, rather than requesting a court-ordered facilitation of return.

ARGUMENT

I. Plaintiff Has Demonstrated a High Likelihood of Success on the Merits

Plaintiff and Counsel for Plaintiff have filed evidence of unrefuted facts showing Plaintiff's due process rights were violated, resulting in his wrongful removal.

> . . . "[C]ourts indulge every reasonable presumption against waiver" of fundamental constitutional rights and that we "do not presume acquiescence in the loss of fundamental rights." A waiver is ordinarily an intentional relinquishment or abandonment of a known right or privilege. The determination of whether there has been an intelligent waiver of the right to counsel must depend, in each case, upon the particular facts and circumstances surrounding that case, including the background, experience, and conduct of the accused.

Johnson v. Zerbst, 304 U.S. 458, 464 (1938). Determination of whether constitutional rights have been waived depends on a "totality approach" that mandates inquiry into all the circumstances, age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights. *See Fare v. Michael C.*, 442 U.S. 707, 725 (1979); *see also Miranda v. Arizona*, 384 U.S. 436, 476, 86 S. Ct. 1602, 1629 (1966) ("[A]ny evidence that the accused was threatened, tricked, or cajoled into a waiver will, of course, show that the defendant did not voluntarily waive his privilege.").

Defendants argue that Plaintiff's declaration at ECF. No. 13-1 is contradicted by his purported signature on Forms I-826 and I-210. This argument ignores the core of Plaintiff's Fifth Amendment due process claim that a waiver of rights obtained while he, a vulnerable young adult, was isolated from counsel and held in degrading and inhumane conditions cannot be knowing, intelligent, or voluntary. Plaintiff held lawful status in the form of Special Immigrant Juvenile Status and previously had removal proceedings dismissed against him based on such status; this circumstance should, or at the very least could, have been recognized when Defendants apprehended Plaintiff and took his biometrics. The FOIA Results, returned to Plaintiff's counsel's office on July 16, 2026 reflect that the Defendants "immigration violation" notes are inaccurate or incomplete. The Form I-831 Record of Deportable/Inadmissible Alien states that the Plaintiff "does not have legal sufficiency to be, or remain in the United States . . ." *See* Exh 1., Form I-831, pg. 3 of 4. The Form I-831 is Defendants written justification for continued detention after a noncitizens has been apprehended or detained in their custody; it contains the government's allegations and background check records as it related to the noncitizen's immigration status. Respondent was in fact granted Deferred Action through his SIJ status, and thereby permitted to remain in the United States. *See* ECF No. 1-1, Exh. C, I-360 Approval Notice and Grant of Deferred Action Status. The record supports a finding that Defendants failed to complete or improperly completed background checks. Plaintiff's signature to "voluntarily return" to his home country was not, and could not have been, knowing, intelligent nor voluntary as he was granted Deferred Action status and as such, on the pathway for lawful permanent status.

Defendants also fail to address that the evidence of the violations of Plaintiff's rights do not arise only from Plaintiff's own words but from documented communications preceding this lawsuit and the declaration of counsel for Plaintiff. *See* ECF. No. 1-2 at 2 ("He responded that he was not exactly sure what he signed and he couldn't understand what he was signing but felt pressured to do so because he was told by immigration officials there was no other option for him. He expressed a fear of returning to Honduras. I advised that he should request to speak with the

ICE or CBP officer in charge, or any immigration official, and ask that he be placed in removal proceedings, or request a credible fear interview from the Asylum Office").

A. Coerced/Involuntary Waivers in Immigration Proceedings

In the immigration and administrative detention context, courts specifically recognize that a waiver of due process rights or an agreement to voluntary departure executed without access to counsel or while subjected to coercive conditions is legally void. *See Reyes-Sanchez v. Holder*, 646 F.3d 493, 496 (7th Cir. 2011) ("The BIA quoted approvingly *Romalez*'s description of a 'voluntary departure' as 'like a plea bargain.' *Id.* The BIA continued: 'The alien leaves with the knowledge that he does so in lieu of being placed in proceedings. The clear objective of an enforced departure is to remove an illegal alien from the United States. There is no legitimate expectation by either of the parties that an alien could illegally reenter and resume a period of continuous physical presence.' *Id.*"). *See also United States v. Raya-Vaca*, 771 F.3d 1195, 1204–05 (9th Cir. 2014) (holding that non-citizens in removal proceedings are protected by the Due Process Clause). A noncitizen has a right to be represented by immigration counsel of their choice. *See Baltazar-Alcazar v. INS*, 386 F.3d 940, 945–46 (9th Cir. 2004) ("We have repeatedly explained that for an applicant to appear *pro se*, there must be a knowing and voluntary waiver of the right to counsel. . . . What occurred here does not pass muster under the well established principles for waiver of counsel in immigration cases: In order for a waiver to be valid, an IJ must generally: (1) inquire specifically as to whether petitioner wishes to continue without a lawyer; and (2) receive a knowing and voluntary affirmative response.") (internal citations and quotation marks omitted).

Defendants have not at any point contested the conditions of the coerced waiver and denial of counsel. Defendants do not refute that Plaintiff's retained counsel repeatedly attempted to locate him for ten days while Customs and Border Protection ("CBP") and Immigration and Customs

Enforcement ("ICE") denied custody. Defendants' reliance on contract principles and the "presumption of regularity" cannot validate a waiver obtained in total isolation from established legal counsel. The Honorable Court has judicial authority to order facilitation of return where Plaintiff was wrongfully removed to Honduras after a denial of due process rights, including access to counsel. *See, e.g., Noem v. Garcia*, 145 S. Ct. 1017, 1019 (2025) (Sotomayor, J., concurring) ("I agree with the Court's order that the proper remedy is to provide Abrego Garcia with all the process to which he would have been entitled had he not been unlawfully removed to El Salvador. . . . Moreover, it has been the Government's own well-established policy to 'facilitate [an] alien's return to the United States if . . . the alien's presence is necessary for continued administrative removal proceedings' in cases where a noncitizen has been removed pending immigration proceedings."); *D.V.D. v. Dep't of Homeland Sec.*, 784 F. Supp. 3d 401, 406 (D. Mass. 2025) ("Courts, including district courts, regularly find that return is the appropriate remedy when a removal is found to be unlawful. *See, e.g., Grace v. Whitaker*, 344 F. Supp. 3d 96, 144-45 (D.D.C. 2018) (ordering return of non-citizen plaintiffs entitled to further process prior to removal), *aff'd in relevant part, rev'd in part and remanded sub nom. Grace v. Barr*, 965 F.3d 883, 448 U.S. App. D.C. 243 (D.C. Cir. 2020); *L. v. U.S. Immigr. & Customs Enf't*, 403 F. Supp. 3d 853, 860–61, 863–68 (S.D. Cal. 2019) (ordering government to allow return of parents wrongfully prevented from petitioning for asylum); *see also Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018, 221 L. Ed. 2d 655 (2025) (denying stay of district court order to facilitate return of non-citizen wrongfully removed); *J.O.P. v. United States Dep't of Homeland Sec.*, 2025 U.S. App. LEXIS 12076, 2025 WL 1431263, at *1 (4th Cir. May 19, 2025) (denying stay of district court order to facilitate return of non-citizens removed in violation of a settlement agreement).

The appropriate remedy here is to return Plaintiff to the position he was in before the controversy arose—in the United States receiving the protections of the due process of law. *Cf. D.V.D v. United States Dep't of Homeland Sec.*, 784 F. Supp. 3d 401, 408 (D. Mass. 2025) ("Here, the 'status quo' is properly viewed as the pre-February 21, 2025 status, before O.C.G.'s removal, *i.e.*, 'the last uncontested status . . . preced[ing] the pending controversy.'").

> "[A] preliminary injunction preserve[s] the status quo during the pendency of trial-court proceedings." *Berge v. Sch. Comm. of Gloucester*, 107 F.4th 33, 37 (1st Cir. 2024). The "status quo" refers to "the last uncontested status which preceded the pending controversy." *Baillargeon v. CSX Transportation Corp.*, 463 F. Supp. 3d 76, 82–83 (D. Mass. 2020) (quoting *United Steelworkers of Am., ALF-CIO v. Textron, Inc.*, 836 F.2d 6, 10 (1st Cir. 1987)).

The Defendants' position that Plaintiff can merely remain in Honduras pending the outcome of litigation would force him to remain in the very environment from which the grant of deferred action Special Immigrant Juvenile Status was meant to protect him. *Cf. D.V.D v. United States Dep't of Homeland Sec.*, 784 F. Supp. 3d 401, 407 (D. Mass. 2025) ("In Mexico, O.C.G. was given the option of being detained indefinitely while trying to obtain asylum there—a country where he has consistently maintained that he faces a significant risk of violence—or of being sent back to Guatemala—the very country from which an immigration judge awarded him withholding from removal due to the risk of persecution that he faced.").

Here, like in *D.V.D.*, Defendants acknowledge that there are procedures in place for facilitating return upon a court's order, and no one has ever suggested that Plaintiff poses any sort of security threat. *See id.* at 406 ("In general, this case presents no special facts or legal circumstances, only the banal horror of a man being wrongfully loaded onto a bus and sent back to a country where he was allegedly just raped and kidnapped."). Defendants' attempt to distinguish the cases above by claiming they involved formal removal orders rather than voluntary departure willfully ignores the violations alleged in declarations of Counsel and Plaintiff.

Defendants assertion that Plaintiff is performing a "post hoc end run around" to challenge access to counsel failures is misplaced. *See* Defendant's Opposition, pg. 7. Defendants ignore their own acknowledgment that Plaintiff was represented by counsel and yet actively and continuously denied custody of Plaintiff from March 31 to April 10 in various email correspondences. ECF. No. 1, Exh. E-H. In one email on April 1, ICE writes: "ICE Has no jurisdiction in this case and does not have any information." In another email on April 6, ICE writes: "[Plaintiff] has not been in ICE custody since he was encountered by [C]BP. CBP may have just returned him to his country of citizenship, without transferring him to ICE custody."

Where a voluntary departure is executed through a due process violation, the departure is legally void, leaving physical removal as an unlawful deportation. This Honorable Court possesses inherent equitable authority to remediate constitutional violations by compelling the Executive Branch to facilitate Plaintiff's return.

II. Plaintiff Faces Severe, Irreparable Harm Absent Preliminary Relief

Plaintiff has presented specific, uncontradicted evidence of concrete, ongoing irreparable harm. Defendants erroneously assert that Plaintiff's injuries consist merely of lawful removal or subjective fear. To the contrary, Plaintiff has presented evidence of an imminent threat to his physical safety by detailing specific, credible threats since his return to Honduras, including being confronted by armed individuals, encountering Mara 18 gang activity, and being targeted by dangerous actors seeking his sister. Declaration in Support of Motion for Preliminary Injunction, ECF. No. 37-2 at 1. Defendants mask Plaintiffs assertions that he is not safe in Honduras as an attempt to "litigate an asylum claim belatedly" and proceeds to argue that his claim is insufficient. ECF. No. 38, pg. 18. However, Plaintiff is merely providing the Court with an understanding of the severe and irreparable harm that he currently faces. He faces permanent statutory deprivation where he is an approved Special Immigrant Juvenile Status (SIJS) beneficiary. If his priority date becomes current while he is unlawfully exiled in Honduras, he risks losing his statutory eligibility to adjust status to lawful permanent resident—a permanent injury that monetary damages or post-hoc litigation cannot remediate. Plaintiff and his young child, a 3-year-old U.S.-citizen daughter remain forcibly separated while the young girl is experiencing severe emotional distress. *Id.*

The Defendants also assert that Plaintiff may seek to be paroled into the United States under 8 C.F.R. § 212.5(f), thereby allowing him to adjust status to lawful permanent resident status when his SIJ visa becomes available. DCF. No. 38, pg. 20. But Plaintiff must be granted advanced parole, by the Defendants, in order to actually be paroled into the United States and physically return to this country. To suggest that Plaintiff has an alternative method of returning to this country and abandon his claim under federal action unreasonable. Advance parole is a discretionary form of relief adjudicated by the Defendants themselves. Defendant's opposition to facilitating Plaintiff's return is indicative of their likely opposition to grant advance parole.

III. The Balance of Equities and Public Interest Strongly Favor Injunctive Relief

Defendants assert that compelling Plaintiff's return opens floodgates and burdens the Executive Branch. To the contrary, the public interest is always served when federal agencies are required to observe constitutional boundaries and respect statutory protections created by Congress. Defendants face no legitimate hardship in being ordered to process travel logistics and fund commercial air travel to remedy an unlawful removal executed under their custody.

IV. The Requested Relief is Tailored and Necessary

Defendants argue that ordering return by July 31, 2026, is "too broad" and intrudes on executive discretion. However, preliminary injunctive relief must be effective. Given Defendants' sliding timelines and explicit refusal to consent to an extension of the TRO, and silence in Honduras for eleven (11) days with respect to contacting Plaintiff directly as stated in the most recent status report, a binding court deadline is the only mechanism that ensures Plaintiff is not left in indefinite peril, suffering daily harm and separation from his family.

CONCLUSION

For the foregoing reasons, and those set forth in Plaintiff's Motion, Plaintiff respectfully requests that the Court **GRANT** the Motion for Preliminary Injunction at ECF. No. 37 and enter the Proposed Order.

Dated: July 22, 2026

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that concurrently with the filing hereof, I caused a true and correct copy of the foregoing Amended Complaint and all supporting documents, exhibits, and proposed orders, upon:

Attn: Civil Chief
U.S. Attorney's Office for the District of Columbia
601 D Street NW
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Copy to
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Dated: 07/22/2026

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