Prince George's County Police Department
Gang Field Interview Sheet
5091

Date Entered: 3/28/2019 6:47:57 PM	**Location of Incident:**
Interview Date: 3/28/2019 **Time:** 0:00	301 East West Highway
Officer: [redacted]	Hyattsville MD
ID#: [redacted]	20782
CaseNumber HCPD 19-0963	☐ GangNet? ☐ File Created?

Last: ABREGO-GARCIA **ADDRESS:** 4505 Birchtree Ln **City:** Temple Hills
First: Kilmar **State:** MD **Zip:** 20748
Middle: Armando **PHONE:** N/A

DOB:	7/26/1995	HtFt:	5.07	Wt:	200	Race:	H	Sex:	M	Eyes:	Brn	Hair:	Blk

Place Of Birth: El Salvador/ San Salvador
Father Name: [redacted]
Mother Name: [redacted]

EMPLOYER/SCHOOL: Unemployed

SOC #:		ALN #:		LIC #:		FBI #:	
SID #:		ICE AR#:		ICE Status:			

Hair Length	Hair Style	Facial Hair
☐ Collar	☐ Afro	☑ Beard
☐ Long	☐ Braided	☐ Clean
☑ Short	☐ Curly	☐ Fuzz
☐ Shoulder	☐ Greasy	☑ Goatee
☐ Other Length	☑ Straight	☑ Moustache
	☐ Bald	☐ Unshaven
	☐ OtherStyle	☐ Sideburns

Complexion	Teeth	
☐ Acne/Pock	☑ Normal	☐ Buck
☐ Dark	☐ Gold	☐ Missing
☐ freckled	☐ Broken	☐ Crooked
☐ Light/Fair	☐ FalseTeeth	☐ Spaces
☑ Medium	☐ Braces	☐ Decayed
☐ Pale	☐ Silver	

A (cont'd)

Exhibit No. ... Identification ... Elizabeth A. Kessler

Admitted: Exh. B4

Gang:	Mara Salvatrucha 13	Member/Associate:	Member
Clique:	Westerns	MemberStatus:	Active
Moniker:	Chele		

Scars/Marks/Tattoos:

Vehicle Year:	Make:	Model:
	Color:	TAG #:

Gang Criteria:

☐ ClassificationAdmit	☐ SelfAdmit
☑ ArrestedAloneOr	☑ ReliableSource
☐ UntestedInformant	☑ AffiliatesGang
☐ HandSigns	☑ FrequentsGangArea
☑ Dress	☐ Other
☐ Tattoos	

Narrative:

On 03/28/2019 at approximately 1427 hours, Detective [redacted] with the Hyattsville City Police observed four individuals loitering in the parking lot of the Home Depot located at 3301 East West Highway in Hyattsville, MD 20782. As Det. [redacted] approached the individuals, two of the individuals reached into their waistbands and discarded several unknown items under a parked vehicle. All four individuals were stopped by Hyattsville officers. Det. [redacted] immediately recognized Christhyan HERNANDEZ-ROMERO aka "Bimbo" as a member of the MS-13 Sailors Clique. Two small plastic bottles containing marijuana was located on scene. All four individuals were transported back to District I for interviews.

Member of the Prince George's County Gang Unit MS-13 Intelligence Squad have encounter Christhyan HERNANDEZ-ROMERO on multiple occasions. He has an extensive criminal history for multiple assault, concealing dangerous weapon, burglary and many other criminal offences. He has also been found guilty of gang participation in the Circuit Court for Prince George's County in December of 2018. Officers know HERNANDEZ-ROMERO to be an active MS-13 gang member with the Sailor's Clique with the rank of "Observacion" and moniker of "Bimbo".

Officers also interview Jose Guillermo DOMINGUEZ. During the interview officers observed tattoos of skulls covering their eyes, ears and mouth. Officers know these kind of tattoos are indicative of the Hispanic gang culture. The tattoos is meant to represent "ver, oir y callar" or "see no evil, hear no evil and say no evil". He also had a tattoo of a devil on his left leg which officers know only higher ranking MS-13 gang members are allow to get a tattoo with the horns. This represents power within MS-13. Officers made contact with a past proven and reliable source of information, who advised Jose Guillermo DOMINGUEZ is an active MS-13 gang member with the Sailor's clique, the rank of "Chequeo" with the moniker "Maniaco".

Officers then interviewed Kilmar Armando ABREGO-GARCIA. During the interview officers

Admitted: Exh. B4

observed he was wearing a Chicago Bulls hat and a hoodie with rolls of money covering the eyes, ears and mouth of the presidents on the separate denominations. Officers know such clothing to be indicative of the Hispanic gang culture. The meaning of the clothing is to represent "ver, oir y callar" or "see no evil, hear no evil and say no evil". Wearing the Chicago Bulls hat represents thay they are a member in good standing with the MS-13. Officers contacted a past proven and reliable source of information, who advised Kilmar Armando ABREGO-GARCIA is an active member of MS-13 with the Westerns clique. The confidential source further advised that he is the rank of "Chequeo" with the moniker of "Chele".

Officers interview Jasson Josue RAMIREZ-HERRERA. During the interview officers were unable to determine his gang affiliation. Officers know MS-13 gang members are only allowed to hang around other members or prospects for the gang. Officers will continue to monitor Jasson Josue, RAMIREZ-HERRERA for further gang activity. He was sent on his way without further incident.

Associates:

Last: Hernandez-Romero	First: Cristian	Middle: Fernando
Last: Ramirez-Herrera	First: Jasson	Middle: Josue
Last: Dominguez-Espinoza	First: Jose	Middle: Guillermo

Admitted: Exh. B4

U.S. Department of Homeland Security Subject ID : [redacted]

Record of Deportable/Inadmissible Alien

Family Name (CAPS)	First	Middle
ABREGO-GARCIA,, KILMER ARMADO		

Sex	Hair	Eyes	Cmplxn
M	BLK	BRO	LBR

Country of Citizenship	Passport Number and Country of Issue	File Number
EL SALVADOR		[redacted]

Height	Weight	Occupation
67	150	Laborer

U.S. Address: [redacted] LN Temple Hills, MARYLAND, 20748

Scars and Marks

Date, Place, Time, and Manner of Last Entry | Passenger Boarded at

[redacted] ☒ Single ☐ Divorced ☐ Married ☐ Widower ☐ Separated

Number, Street, City, Province (State) and Country of Permanent Residence: San Marco San Salvador, EL SALVADOR

Method of Location/Apprehension: NCA NA

Date of Birth	Date of Action	Location Code	At/Near	Date/Hour
07/26/1995 Age: 23	03/29/2019	BAL/BAL	See I-831	03/28/2019 19:13

City, Province (State) and Country of Birth: San Salvador, EL SALVADOR

AR ☒ | Form : (Type and No.) Lifted ☐ Not Lifted ☐

By: [redacted]

NIV Issuing Post and NIV Number | Social Security Account Name | Status at Entry | Status When Found

Date Visa Issued | Social Security Number | Length of Time Illegally in U.S.

Immigration Record: NEGATIVE

Criminal Record: None Known

Name , Address, and Nationality of Spouse (Maiden Name, if Appropriate)

Number and Nationality of Minor Children: None

Father's Name, Nationality, and Address, if Known: [redacted] NATIONALITY: EL SALVADOR

Mother's Present and Maiden Names, Nationality, and Address, if Known: [redacted] NATIONALITY: EL SALVADOR

Monies Due/Property in U.S. Not in Immediate Possession	Fingerprinted? ☒ Yes ☐ No	Systems Checks	Charge Code Words(s)
None Claimed		See Narrative	See Narrative

Name and Address of (Last)(Current) U.S. Employer	Type of Employment	Salary	Employed from/to
		Hr	

Narrative (Outline particulars under which alien was located/apprehended. Include details not shown above regarding time, place and manner of last entry, attempted entry, or any other entry, and elements which establish administrative and/or criminal violation. Indicate means and route of travel to interior.)

FIN: 1274054602

Left Index fingerprint

Right Index fingerprint

[redacted]

Subject Health Status

The subject claims good health.

Current Administrative Charges

03/28/2019 - 212a6Ai - ALIEN PRESENT WITHOUT ADMISSION OR PAROLE - (PWAs)

...(CONTINUED ON I-831)

Alien has been advised of communication privileges 03/29/19 (Date/Initials)

[redacted] Deportation Officer (Signature and Title of Immigration Officer)

Distribution:

A-File

CIS

DET

Received: (Subject and Documents) (Report of Interview)

Officer: S. 1004 MATEO

on: March 29, 2019 [redacted] (time)

Disposition: Warrant of Arrest/No [redacted] pear

Examining Officer: [redacted]

Form I-213 (Rev. 08/01/07)

Admitted: Exh. B 4

Alien's Name	File Number	Date
ABREGO-GARCIA,, KILMER ARMADO	[redacted] Event No: [redacted]3	03/28/2019

Previous Criminal History

Subject has no criminal history

CRIMINAL AFFILIATIONS

Subject has been identified as a Member/Active of M.S.13

Records Checked

[redacted] Neg
Neg
Neg
eg
Neg
Neg
Neg
Neg
Neg

FUNDS IN POSSESSION

United States Dollar 1,178.00

At/Near

Hyattsville, Maryland

Record of Deportable/Excludable Alien:
ENCOUNTER / ARREST:
On March 28, 2019, the Prince Georges County Police Gang Unit made contact with two suspected illegal aliens whom they had validated as an active MS13 gang members. ICE ERO officers [redacted] and [redacted] responded to 5600 Rhode Island Ave., Hyattsville, MD 20783.

Upon arrival, [redacted] met with Task Force Officer Detective [redacted] and he stated, that a subject later identified as Abrego-Garcia, Kilmer Armando (A# 201 577 119 (DOB: 07/26/1995) and Dominguez, Jose Guillermo (A# [redacted] (DOB: [redacted] was detained in connection to a murder investigation. [redacted] and W. Allen then approached the subjects identified themselves as Immigration and Custom Enforcement Officer and questioned the subject as to their citizenships.

The subjects freely admitted being citizens and national of El Salvador by birth and that they were present in the United States illegally. The subjects were not in possession of any immigration documents that would allow them to be in or remain in the United States legally.

At approximately 1930, the subjects were arrested and transported to the Howard County Detention center for overnight placement. On March 29, 2019, the subject was transported to the Baltimore Field Office for processing without incident.

ALIENAGE AND REMOVABILITY:

Signature	Title
[redacted]	Deportation Officer

Admitted: Exh. B 4

U.S. Department of Homeland Security

Continuation Page for Form I-213

Alien's Name	File Number	Date
ABREGO-GARCIA,, KILMER ARMADO	[redacted] Event No: [redacted]	03/28/2019

Abrego-Garcia is a citizen and national of EL Salvador. Abrego-Garcia claimed to have walked across the desert for many days entering illegally into the United States near McAllen, Texas on or about March 25, 2012.

PROCESSING INFORMATION:
Abrego-Garcia' fingerprints and photograph were entered into the IDENT/IAFIS database and returned with the immigration and criminal history listed below.

IMMIGRATION HISTORY:
Record checks showed that Abrego-Garcia has no immigration history and received A# 201 577 119 as a result of today's apprehension.

IMMIGRATION CHARGE:
Abrego-Garcia has made no claims to USC or LPR and is amenable to removal under 212(a)(6)(A)(i) of the Immigration and Nationality Act, as amended, in that Abrego-Garcia is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.

HUMANITARIAN ISSUES:
Abrego-Garcia claims to be in good health. Abrego-Garcia was given the opportunity to make one free phone call. Abrego-Garcia made a call to [redacted] at [redacted] and remained for 5 minutes. Abrego-Garcia is not claiming fear of returning to his country.

GANG VALIDATION:
Per Prince Georges County Police Gang Unit
Abrego-Garcia was validated as a member of the Mara Salvatrucha (MS13) Gang. Subject was identified as a member of the Mara Salvatrucha MS-13, "Chequeo" from the Western Clique a transnational criminal street gang. This information was provided by [redacted] who has provided truthful accurate information in the past. See Prince Georges County Police Department (Gang Sheet).

INTELLIGENCE INFORMATION:
Abrego-Garcia has gang affiliation and subject states that he has no information about gangs or human/drug smuggling.

Abrego-Garcia was advised of his right to speak with a consular officer of his native country of EL Salvador which he declined. Abrego-Garcia is claiming fear of returning to his home country of EL Salvador.

DISPOSITION:
A Notice to Appear is being executed on Abrego-Garcia as per Section 212(a)(6) A)(i) of the Immigration and Nationality Act.

Other Identifying Numbers

ALIEN-201577119

Signature	Title
[redacted]	Deportation Officer

Admitted: Exh. B 4

UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND

IN THE MATTER OF:	)	**IN REMOVAL PROCEEDINGS**
Kilmar Armando ABREGO-GARCIA	)	**File #A 201-577-119**
RESPONDENT	)	

INDIVIDUAL HEARING DATE:	August 9 and September 27, 2019
CHARGE:	Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or the "Act"), as amended, in that the Respondent is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.
APPLICATIONS:	INA § 208, Asylum; INA § 241(b)(3), Withholding of Removal; Protection Under Article 3 of the Convention Against Torture.

APPEARANCES

ON BEHALF OF RESPONDENT
Lucia Curiel
Khatia Mikadze

ON BEHALF OF THE DHS
Amy Donze-Sanchez

MEMORANDUM OF DECISION AND ORDER

I. Procedural History

The Respondent is a native and citizen of El Salvador. The Department of Homeland Security ("DHS") issued the Respondent a Notice to Appear ("NTA") on March 29, 2019 which alleged that the Respondent: (1) is not a citizen or national of the United States; (2) is a native and citizen of El Salvador; (3) entered the United States at or near an unknown place on or about an

unknown date; and (4) was not then admitted or paroled after inspection by an immigration officer.

At a Master Calendar Hearing the Respondent, through counsel, admitted the factual allegations contained in the NTA and conceded removability as charged. Based on the Respondent's admissions and concessions, the Court found his removability to be established by clear and convincing evidence as required by INA § 240(c)(3). *See also Woodby v. INS*, 385 U.S. 276 (1966). As relief from removal, the Respondent filed a Form I-589, Application for Asylum, Withholding of Removal, and Relief under Article 3 of the Convention Against Torture ("CAT"). The Respondent and his wife both testified in support of the applications. The Court reserved the matter for the issuance of a written decision.

The Court has considered the arguments of both parties and the entire record carefully. The following documentary evidence was considered by the Court and admitted into the record: Exhibit 1, the Notice to Appear; Exhibit 2, the I-213; Exhibit 3, the Respondent's application with all supporting documents; and Exhibit 5, Part A, explanation of the wife's pregnant condition while testifying.[1] All evidence and testimony admitted has been considered, even if not specifically addressed in the decision. Having reviewed the evidence of record and the applicable law, the Court's written decision and order now follow.

II. Testimonial Evidence Presented

A. Respondent

The Respondent is a 24-year old native of El Salvador. He was born in 1995 in Los Nogales neighborhood, San Salvador, El Salvador. The Respondent testified that he fears returning to his country because the Barrio 18 gang was targeting him and threatening him with death because of his family's pupusa[2] business. The Respondent's mother, Cecilia, ran the business out of her home. Although the business had no formal storefront, everyone in the town knew to get their pupusas from "Pupuseria Cecilia." The Respondent's father, brother and two sisters all helped run the family business. The Respondent's job was to go to the grocery store to buy the supplies needed for the pupusas, and then he and his brother would do deliveries four days a week to the people in

[1] Exhibit 4 is a Prince George's County Police Department Gang Field Interview Sheet. It was admitted for the limited purpose of showing that the Respondent was labeled a gang member by law enforcement.
[2] El Salvadorian stuffed tortillas.

the town that ordered pupusas from Cecilia.

At some point, Barrio 18 realized the family was making money from their family business and they began extorting the Respondent's mother, Cecilia. They demanded a regular stipend of "rent" money from the business, beginning with a monthly payment and then requiring weekly payments. The gang threatened to harm the Respondent, his older brother Cesar, and the family in general if their demands were not met. Alternatively, they told Cecelia that if she could not pay the extortion money, she could turn Cesar over to them to become part of their gang. The Abrego family paid the money on a regular basis, whenever they could, and hid Cesar from the gang. On one occasion, the gang came to the family's home and threatened to kill Cesar if the family did not pay the rent. The family responded by sending Cesar to the U.S.

After Cesar left, the gang started recruiting the Respondent. They told Cecilia that she would not have to pay rent any more if she let him join the gang. The mother refused to let this happen. The gang then threatened to kill the Respondent. When the Respondent was around 12-years old, the gang came to the home again, telling Cecilia that they would take him because she wasn't paying money from the family's pupusa business. The Respondent's father prevented the gang from taking the Respondent that day by paying the gang all of the money that they wanted. During the days, the gang would watch the Respondent when he went back and forth to school. The members of the gangs all had many tattoos and always carried weapons.

Eventually, the family had enough and moved from Los Nogales to the 10th of October neighborhood. This town was about 10 minutes away, by car, from Los Nogales. Shortly after the family moved, members of Barrio 18 from Nogales went to the 10th of October and let their fellow gang members know that the family had moved to that neighborhood. Barrio 18 members visited the house demanding the rent money from the pupusa business again. They went to the house twice threatening to rape and kill the Respondent's two sisters and threatening the Respondent. The Respondent's parents were so fearful that they kept the Respondent inside the home as much as possible. Finally, the family decided they had to close the pupusa business and move to another area, Los Andes, about a 15 minute drive from their last residence. Even at this new location, the family kept the Respondent indoors most of the time because of the threats on his life. After four months of living in fear, the Respondent's parents sent the Respondent to the U.S.

Even though the Respondent's father was a former policeman, they family never reported anything to the police regarding the gang extorting the family business. The gang members had

threatened Cecilia, telling her that if she ever reported anything to the police that they would kill the entire family. The family believed them, because they were well aware of the rampant corruption of the police in El Salvador and they believed that if they reported it to the police, the police would do nothing.

At present, even though the family has now shut down the pupusa business, Barrio 18 continues to harass and threaten the Respondent's two sisters and parents in Guatemala. Additionally, they have targeted a brother-in-law who now lives with the family.

B. The Respondent's Wife

The Respondent's wife also testified, but her testimony related to two other particular social groups not reached in this decision.[3]

III. Eligibility for Asylum, Withholding and CAT Relief

A. Asylum

An applicant for asylum bears the burden of establishing that he meets the definition of a refugee under INA § 101(a)(42)(A), which defines a refugee in part as an alien who is unable or unwilling to return to her home country because of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion. *Matter of S-P-*, 21 I&N Dec. 486, 489 (BIA 1996); 8 C.F.R. § 1208.13(a); INA § 208(b)(1)(B). The alien's fear of persecution must be country-wide. *Matter of Acosta*, 19 I&N Dec. 211, 235 (BIA 1985). Additionally, the alien must establish that he is unable or unwilling to avail himself of the protection of his country of nationality or last habitual residence. INA § 101(a)(42)(A); *see also Matter of A-B-*, 27 I&N Dec. 316, 325–26 (A.G. 2018). An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that he merits a grant of asylum as a matter of discretion. INA § 208(b)(1); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987).

i. Credibility and Corroboration

An alien bears the evidentiary burden of proof and persuasion in connection with any

[3] The other two particular social groups are: 1) Salvadoran male deportees labeled as MS-13 gang members by U.S. law enforcement; and 2) Immediate family of Jennifer Vasquez (the Respondent's wife.) The Court will not address the alternative claims for relief, as it is not necessary to do so at this time.

asylum application pursuant to section 208 of the Act. 8 C.F.R. § 1208.13(a); *see also Matter of S-M-J-*, 21 I&N Dec. 722, 723 (BIA 1997); *Matter of Acosta*, 19 I&N Dec. 211, 215 (BIA 1985); *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987). The Board of Immigration Appeals (BIA) has recognized the difficulties an asylum applicant may face in obtaining documentary or other corroborative evidence to support his claim of persecution. *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989). As a result, uncorroborated testimony that is credible, persuasive, and specific may be sufficient to sustain the burden of proof to establish a claim for asylum. *See* INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *Matter of Mogharrabi*, at 445. However, where it is reasonable to expect corroborating evidence for certain alleged facts, such evidence must be provided as long as the applicant has the evidence or can reasonably obtain it. *Matter of S-M-J-*, 21 I&N Dec. at 725. The absence of such corroboration may lead to a finding that an applicant has failed to meet his burden of proof. *Id.* at 725–26. The immigration judge must provide the applicant an opportunity to explain the lack of corroborating evidence and ensure that the applicant's explanation is included in the record. *See id.*; *Lin-Jian v. Gonzales*, 489 F.3d 182, 192 (4th Cir. 2007). The Board has made clear that an asylum applicant cannot meet his burden of proof by "general and vague" testimony, and "the weaker an alien's testimony, the greater the need for corroborative evidence." *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

In the instant matter, the Respondent provided credible responses to the questions asked. His testimony was internally consistent, externally consistent with his asylum application and other documents, and appeared free of embellishment. Further, he provided substantial documentation buttressing his claims. Included in this evidence were several affidavits from family members that described the family's pupusa business, and the threats by Barrio 18 to the various family members—in particular the Respondent—over the years. The court finds the Respondent credible. This finding is applicable to his other two claims as well (withholding under the Act and CAT protection).

ii. One-Year Filing Deadline

Under INA § 208(a)(2)(B), an applicant for asylum must demonstrate by clear and convincing evidence that the application has been filed within one year after the date of the alien's arrival in the United States. Following the *Mendez Rojas v. Johnson* case (305 F. Supp. 3d 1176 (W.D. Wash., Mar. 29, 2018)), in a joint stay agreement, the Government agreed to treat pending

asylum applications by four classes of applicants as though filed within one year of arrival.[4] *See* 305 F. Supp. 3d at 1179. Members of Class A.II are individuals in removal proceedings who have been released from DHS custody after having been found to possess a credible fear of persecution, did not receive notice from the DHS of the one-year deadline, and filed an untimely asylum application. *See id.* Members of Class B.II are individuals in removal proceedings who express a fear of return to their country of origin, were released from DHS custody without a credible fear determination, did not receive notice from the DHS of the one-year deadline, and filed an untimely asylum application. *See id.*

Here, the Respondent's asylum application is time-barred without exception. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). The Respondent testified that he entered the U.S. in 2012. However, he did not file his application for asylum until after he was detained in August 2019, seven years after his entry into the U.S. and well-beyond the one-year filing deadline. *See* Exh. 3. He has shown no changed or extraordinary circumstances that would entitle him to relief from the one-year bar. See 8 C.F.R. § 1208.4(a)(4) and (5). Based on the foregoing, the Respondent's application for asylum is time-barred and must be denied. We turn next to withholding of removal under the Act.

B. Withholding of Removal Pursuant to INA § 241(b)(3)

Withholding of removal, in contrast to asylum, confers only the right not to be deported to a particular country rather than the right to remain in the U.S. *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999). To establish eligibility for withholding of removal, a respondent must show that there is a clear probability of persecution in the country designated for removal on account of race, religion, nationality, membership in a particular social group, or political opinion. *INS v. Stevic*, 467 U.S. 407 (1984). Such a showing requires that the respondent establish that it is more likely than not (i.e., a clear probability) that the alien would be subject to persecution if returned to the country from which the alien seeks withholding of removal. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987). The standard for withholding of removal is thus more stringent than the standard for asylum. *Stevic*, 467 U.S. at 429-430. Under the withholding of removal regulations at 8 C.F.R. § 1208.16(b)(1), however, if an applicant has suffered past persecution, then there is a presumption that the applicant's life or freedom would be threatened in the future in the country of removal.

[4] Classes A.I and B.I apply only to individuals who are not in removal proceedings. *See Mendez Rojas*, 305 F. Supp. 3d at 1179.

i. Past Persecution

Persecution has been interpreted to include serious threats to an individual's life or freedom, or the infliction of significant harm on the applicant. *See Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); *Li v. Gonzales*, 405 F.3d 171 (4th Cir. 2005). Persecution is generally assessed cumulatively, and relevant incidents are not to be evaluated in isolation. *See Baharon v. Holder*, 588 F.3d 228 (4th Cir. 2009). A death threat qualifies as persecution. *See Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011). Extortion may constitute persecution, even if physical harm will be inflicted only upon failure to pay. *Oliva v. Lynch*, 807 F.3d 53 (4th Cir. 2015).

The Respondent suffered past persecution as he was threatened with death on more than one occasion. Therefore, DHS bears the burden of establishing "a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds" or that "[t]he applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so." *See* 8 C.F.R. § 1208.16(b)(1).

The "one central reason" standard that applies to asylum applications pursuant to section 208(b)(1)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(i) (2006), also applies to applications for withholding of removal under section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A) (2006). *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010). An applicant must demonstrate that a statutorily protected ground would be "at least one central reason" for the feared persecution. *See* INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007) (holding that in a mixed motive asylum case, an applicant must prove that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for the claimed persecution). An alien need not show that a statutorily protected ground would be the central reason or even a dominant central reason, but rather must show that such a ground was more than an "incidental, tangential, superficial or subordinate" reason for the past persecution or feared future persecution. *Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214; *see also Crespin-Valladares v. Holder,* 632 F.3d 117 (4th Cir. 2011); *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir. 2009). Persecution may be on account of multiple central reasons or intertwined reasons, and the full factual context must be taken into account when analyzing nexus. *Oliva v. Lynch*, 807 F.3d 53 (4th Cir. 2015).

ii. Well-Founded Fear of Future Persecution and Internal Relocation

Based on the above, the Respondent has demonstrated the he was subject to past persecution on account of a statutorily protected ground. He is entitled to the presumption under the regulations that he would have a clear probability of future persecution on account of a protected ground. Given his testimony and other evidence concerning official corruption and other abuses, he has demonstrated that authorities were and would be unable or unwilling to protect him from past or feared future persecution. Given country conditions and the Respondent's inability to avoid the threat through internal relocation, the Respondent could not necessarily avoid the threat through internal relocation, nor would it be reasonable to expect him to do so. DHS has failed to carry their burden to show that there are changed circumstances in Guatemala that would result in the Respondent's life not being threatened, or that internal relocation is possible and reasonable. The facts here show that the Barrio 18 gang continues to threaten and harass the Abrego family over these several years, and does so even though the family has moved three times.[5]

iii. Nexus to a Protected Ground

To be cognizable under the statute, members of a "particular social group" must share a "common immutable characteristic," which may be an innate characteristic or a shared past experience. *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). In either case, it must be a characteristic that members of the group either cannot change or should not be required to change. To constitute a "particular social group" under the statute, the group must be (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *See Matter of A-B-*, 27 I&N Dec. 316 (married women in Guatemala who are unable to leave their relationships do not constitute a particular social group); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014) (former members of Mara 18 gang in El Salvador who renounced gang membership do not constitute a particular social group); *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006) (former noncriminal drug informants do not present a cognizable social group); *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

Under well-established Fourth Circuit precedent, family ties may provide the basis for a

[5] The court understands that the family's moves have been only 15 minutes away each time. However, DHS has failed to show that internal relocation is not only possible, but reasonable to expect the Respondent to so relocate.

cognizable particular social group under the INA. *See, e.g., Crespin-Valladares v. Holder*, 632 F.3d 117, 124-126 (4th Cir. 2011) ("we can conceive of few groups more readily identifiable than the family"); *Hernandez-Avalos v. Lynch,* 784 F.3d 944, 949 (4th Cir. 2015) ("membership in a nuclear family qualifies as a protected ground for asylum purposes"); *Cruz v. Sessions*, 853 F.3d 122, 127 (4th Cir. 2017) ("by virtue of her domestic partnership with Martinez, Cantillano Cruz was a member of a cognizable particular social group, namely, 'the nuclear family of Johnny Martinez'"), *Salgado-Sosa v. Sessions*, 882 F.3d 451, 457 (4th Cir. 2018) ("Salgado-Sosa's family qualifies as a 'particular social group,' protected for purposes of his asylum and withholding of removal claims"). Neither those who resist recruitment efforts by gangs nor their family members generally constitute a particular social group under the INA, nor do such bases amount to political opinion. *See Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *see also INS v. Elias-Zacarias*, 502 U.S. 478 (1992) (forced recruitment or attempts to forcibly recruit into a guerrilla organization does not necessarily constitute persecution on account of political opinion). Membership or perceived membership in a criminal gang also does not constitute membership in a particular social group under the INA. *See Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008); *see also Lizama v. Holder,* 629 F.3d 440 (4th Cir. 2011) (claimed particular social group of "young, Americanized, well-off Salvadoran male deportees with criminal histories who oppose gangs" not cognizable under the INA). At the same time, the BIA has noted that social group determinations are made on a case by case basis. *Matter of M-E-V-G-*, 26 I&N Dec. 227.

Ascertaining whether membership in a family-based social group is at least one central reason for any past or feared future persecution may present challenges, and the Fourth Circuit has encouraged an expansive view of nexus in these cases. *See Hernandez-Avalos v. Lynch,* 784 F.3d 944 (4th Cir. 2015) (mother who refused to allow her son to join a gang was persecuted on account of her membership in the particular social group of his family); *Cruz v. Sessions*, 853 F.3d 122 (4th Cir. 2017) (nexus to family relationship established because wife of murdered man was more likely than others to search for her husband, confront the suspect, and express an intent to go to the police); *Salgado-Sosa v. Sessions*, 882 F.3d 451 (4th Cir. 2018) (nexus found where man fought back when he was in his family's home during attack targeted at stepfather because membership in the family was why the man and not some other person became involved); *but see Velasquez v. Sessions*, 866 F.3d 188 (4th Cir. 2017) (personal dispute among family members may not equate to persecution on account of family group membership); *Matter of A-B-*, 27 I&N Dec. at 338-339;

Cortez-Mendez v. Whitaker, 912 F.3d 205 (4th Cir. 2019) (circumstantial evidence presented did not establish as a factual matter that the respondent's relationship to his father was at least one central reason for his mistreatment by gang members who sought to forcibly recruit him).

The evidence in this case indicates quite clearly that at least one central reason the Respondent was subject to past persecution was due to him being his mothers' son, essentially as a member of his nuclear family. That the Respondent is his mothers' son is the reason why he, and not another person, was threatened with death. He was threatened with death because he was Cecilia's son and the Barrio 18 gang targeted the Respondent to get at the mother and her earnings from the pupusa business. Pursuant to unambiguous and repeated guidance from the Fourth Circuit, the nexus requirement is satisfied in this case. *See generally Hernandez-Avalos v. Lynch,* 784 F.3d at 944; *Cruz v. Sessions*, 853 F.3d at 122; *Salgado-Sosa v. Sessions*, 882 F.3d at 451.

The Court finds that the Respondent's proposed social group, "Immediate Family Members of the Abrego Family," essentially his nuclear family, is cognizable. Membership in this family group is immutable. It is also sufficiently particular, as it is clearly delineated and easy to determine who is and is not in the group, and it is socially distinct.

With respect to social distinction, the immediate family lived in the same home, and his mother ran a pupusa business. Neighbors and others in the community recognized the family as a distinct group that was related, and ran a family business. Everyone knew that Cecilia Abrego was where you purchased your pupusas and that if you could not make it to the family's home, then the Respondent would deliver the pupusas to your house four days a week. As with many other precedential cases involving immediate family members, the proposed social group in this case too satisfies all of the legal requirements for recognition as a cognizable social group. *Cf. Crespin-Valladares v. Holder*, 632 F.3d at 124-126; *Hernandez-Avalos v. Lynch,* 784 F.3d at 949; *Cruz v. Sessions*, 853 F.3d at 127; and *Salgado-Sosa v. Sessions*, 882 F.3d at 457.

This finding—that the Abrego family was socially distinct—does not run afoul of the Attorney General's (AG) recent case, *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019). In that case, the AG did not bar all family-based social groups from qualifying from relief. *Id.* at 595. Rather, the AG required that "[a]n applicant must establish that his specific family group is defined with sufficient particularity and is socially distinct in his society." *Id.* at 586. This case is a close call. But, the Court finds that the Respondent has established that Cecilia's family pupusa business was well-known in the community and therefore the family was socially distinct in society.

C. Relief from Removal Under CAT

The applicant for withholding of removal under the CAT bears the burden of proving that it is "more likely than not" that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). An applicant who establishes that he or she is entitled to CAT protection shall be granted withholding of removal unless he is subject to mandatory denial of that relief, in which case he shall be granted deferral of removal. 8 C.F.R. §§ 1208.16(c)(4), 1208.17(a). An applicant is subject to mandatory denial of withholding of removal under the CAT if that individual has participated in the persecution of others, has been convicted of a particularly serious crime, has committed a serious nonpolitical crime outside of the U.S., or is a danger to U.S. national security. Under applicable provisions of law at 8 C.F.R. § 1208.16(d) and INA § 241(b)(3)(B), an alien who has been convicted of an aggravated felony for which the alien was sentenced to an aggregate term of imprisonment of at least five years is considered to have been convicted of a particularly serious crime. That does not preclude other crimes from being considered particularly serious crimes.

"Torture" is defined in the treaty and at 8 C.F.R. § 1208.18(a)(1). It is defined in part as the intentional infliction of severe physical or mental pain or suffering by, or at the instigation of, or with the consent or acquiescence of a public official. Acquiescence of a public official requires that the official have awareness of or remain willfully blind to the activity constituting torture prior to its commission, and thereafter breach his or her legal responsibility to intervene to prevent such activity. *See* 8 C.F.R. § 1208.18(a)(7).

To qualify for protection under the CAT, "specific grounds must exist that indicate the individual would be personally at risk." *Matter of S-V-*, 22 I&N Dec. 1306, 1313 (BIA 2000). The mere existence of a pattern of human rights violations in a particular country does not constitute a sufficient ground for finding that a particular person would be more likely than not to be tortured. *Id.*

In assessing the likelihood of future torture, the Court must consider all evidence relevant to the possibility of future torture, including: evidence of past torture inflicted upon the applicant; evidence that the applicant could relocate to a part of the country of removal where he is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal; or other relevant information of conditions in the country of removal. 8 C.F.R. § 1208.16(c)(3). In order for an alien to meet the burden of proof for relief under the CAT, he or she

must demonstrate that each step in the necessary chain of events is more likely than not to happen. *Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006). Under Fourth Circuit precedent, the risks of torture from all sources must be aggregated when determining whether an individual is more likely than not to be tortured in a particular country. *Rodriguez-Arias v. Whitaker*, 915 F.3d 968 (4th Cir. 2019).

Instances of police brutality do not necessarily rise to the level of torture, nor does the indefinite detention of criminal deportees in substandard conditions. *Matter of J-E-*, 23 I&N Dec. 291, 301-02 (BIA 2002) (indefinite detention of criminal deportees in substandard conditions in Haiti does not constitute torture where there is no evidence that government officials intentionally and deliberately detain deportees under such conditions in order to inflict torture). Abusive or squalid conditions in pretrial detention facilities, prisons, or mental health institutions will not constitute torture when those conditions occur due to neglect, a lack of resources, or insufficient training and education, rather than a specific intent to cause severe pain and suffering. *Matter of J-R-G-P-*, 27 I&N Dec. 482 (BIA 2018).

Torture must come at the hands of the government. *Matter of S-V-*, 22 I&N Dec. at 1311-12. This can include acquiescence of officials provided it meets the conditions set out in the regulations at 8 C.F.R. § 1208.18(a)(7) ("Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity"). Awareness can include actual knowledge and willful blindness. *See* Senate Exec. Rep. 101-30 at 9 (1990); *see also Matter of S-V-*, 22 I&N Dec. at 1312. In *Matter of S-V-*, the BIA elaborated that a respondent needs to show more than that government officials are aware of the activity and powerless to stop it and needs to show that government officials are willfully accepting of the activity. *Matter of S-V-*, 22 I&N Dec. at 1311-1312. Following *Matter of S-V-*, the Attorney General, in *Matter of Y-L-, A-G-, & R-S-R-*, 23 I&N Dec. 270 (A.G. 2002), elaborated on the definition of acquiescence and indicated that the relevant inquiry is "whether governmental authorities would approve or 'willfully accept' atrocities committed." *Id.* at 283.[6]

The Fourth Circuit has clarified that "willful blindness can satisfy the acquiescence

[6] That decision noted in part that it would not suffice for a respondent to show that isolated, rogue government agents were involved in atrocities despite a government's best efforts to root out misconduct.

component of 8 C.F.R. § 1208.18(a)(1)." *See Suarez-Valenzuela v. Holder*, 714 F.3d 241, 246 (4th Cir. 2013). Pursuant to the willful blindness standard, government officials acquiesce to torture when they have actual knowledge of or turn a blind eye to torture. *Id.* at 245-246.

Decisions regarding an alien's likely future mistreatment are factual determinations subject to review only for clear error; the determination as to whether any such mistreatment constitutes torture as a legal matter is subject to de novo review. *Turkson v. Holder*, 667 F.3d 523 (4th Cir. 2012); *see also Kaplun v. Attorney General*, 602 F.3d 260 (3d Cir. 2010). Whether the government would acquiesce in any future torture is likewise a mixed question of law and fact. *Cruz-Quintanilla v. Whitaker*, 914 F.3d 884 (4th Cir. 2019).

Here, the Respondent has not shown that it is "more likely than not" that he would be tortured if he were to be removed to El Salvador.

IV. Conclusion

The Respondent's application for asylum is time-barred without exception. However, he has established past persecution based on a protected ground, and the presumption of a well-founded fear of future persecution. DHS has not shown there are changed circumstances in Guatemala that would result in the Respondent's life not being threatened, or that internal relocation is possible and reasonable under the circumstances. Therefore, the Respondent's application for withholding under the Act is granted. Finally, his CAT claim fails because he has not shown that he would suffer torture.

ORDER

It is hereby ordered that:

I. the Respondent's application for asylum pursuant to INA § 208 is **DENIED**;

II. the Respondent's application for withholding of removal pursuant to INA § 241(b)(3) is **GRANTED**; and

III. the Respondent's application for withholding of removal under the Convention Against Torture is **DENIED**;

10/10/19
Date

David M. Jones
United States Immigration Judge
Baltimore, Maryland

Appeal Rights

Each party has the right to appeal this Court's decision to the Board of Immigration Appeals. Any appeal must be filed within 30 calendar days of the mailing of this decision. Under the regulations, a notice of appeal must be received by the Board by that deadline. The notice of appeal must also state the reasons for the appeal. *See* 8 C.F.R. § 1240.15.

U.S. Department of Justice
Executive Office for Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Virginia 22041

File: [redacted] – Baltimore, MD

Date: DEC 19 2019

In re: Kilmer Armado ABREGO-GARCIA

IN BOND PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Lucia Curiel, Esquire

ON BEHALF OF DHS: Jennifer L. Hastings
Assistant Chief Counsel

APPLICATION: Redetermination of custody status

The respondent, a native and citizen of El Salvador, appeals from an Immigration Judge's April 24, 2019, decision denying his request for release on bond from the custody of the Department of Homeland Security pursuant to section 236(a) of the Immigration and Nationality Act, 8 U.S.C. § 1226(a). On May 22, 2019, the Immigration Judge issued a memorandum setting forth the reasons underlying her conclusion that the respondent did not show that he is not a danger to the community or that he presents a flight risk capable of being mitigated by bond. The appeal will be dismissed.

This Board reviews the Immigration Judge's factual findings for clear error. 8 C.F.R. § 1003.1(d)(3)(i); *see also Matter of Fatahi*, 26 I&N Dec. 791, 793 n.2 (BIA 2016). We review all other issues de novo. 8 C.F.R. § 1003.1(d)(3)(ii).

An alien "must demonstrate to the satisfaction of [the Immigration Judge] that [his or her] release would not pose a danger to property or persons . . . ." 8 C.F.R. § 1236.1(c)(8); *see also Matter of Adeniji*, 22 I&N Dec. 1102, 1111-12 (BIA 1999). Thus, only if an alien has established that he or she would not pose a danger to persons or property should an Immigration Judge decide the amount of bond necessary to ensure the alien's presence at proceedings to remove him or her from the United States. *Matter of Urena*, 25 I&N Dec. 140, 141 (BIA 2009).

The respondent argues that the Immigration Judge clearly erred in determining that he is a verified member of MS-13 because there is no reliable evidence in the record to support such a finding (Respondent's Br. at 6-9). In this regard, the respondent asserts that a Prince George's County Police Department Gang Field Interview Sheet ("GFIS") is based on hearsay relayed by a confidential source (Exh. 4). The respondent also claims that he presented sufficient evidence to rebut the allegation that he is affiliated with MS-13, including character references and criminal records showing that he has only been charged with traffic offenses. Therefore, the respondent contends that the Immigration Judge erroneously ruled that he did not show that he is not a danger to the community (Respondent's Br. at 9-10).

[redacted]

We adopt and affirm the Immigration Judge's danger ruling (IJ at 2-3). *See Matter of Burbano*, 20 I&N Dec. 872, 874 (BIA 1994). Notwithstanding the respondent's challenges to the reliability of the GFIS, the Immigration Judge appropriately considered allegations of gang affiliation against the respondent in determining that he has not demonstrated that he is not a danger to property or persons. *See Matter of Fatahi*, 26 I&N Dec. at 795 (in determining whether an alien presents a danger to the community and thus should not be released on bond pending removal proceedings, an Immigration Judge should consider both direct and circumstantial evidence of dangerousness); *Matter of Guerra*, 24 I&N Dec. 37, 40 (BIA 2006) (stating that Immigration Judges may look to a number of factors in determining whether an alien merits release on bond, including "the alien's criminal record, including the extensiveness of criminal activity, the recency of such activity, and the seriousness of the offenses").

Consequently, we need not address the Immigration Judge's flight risk determination (Respondent's Br. at 10-11).

Accordingly, the following order is entered.

ORDER: The appeal is dismissed.

FOR THE BOARD

Narrative

This is a Combined Intelligence Unit (CIU) Investigative Referral report. The information provided was obtained through a collaborative law enforcement partnership. The information provided is believed to be of investigative/enforcement value and is referred to your office for further analysis or action, as deemed necessary and appropriate by local leadership. Recipients of this information are requested to use Program Code 7EC for all subsequent Seizures, Arrests, Intelligence Reports, Reports of Investigation, or other case records related to this request.

On December 1, 2022, the Combined Intelligence Unit (CIU) received information that Kilmar Armando ABREGO-Garcia was queried in NCIC by the Tennessee Highway Patrol [redacted]. DHS sources indicate that ABREGO was identified through official law enforcement investigations as a member of the Mara Salvatrucha (MS-13).

SYPNOSIS:

ABREGO-Garcia is suspected of Labor/Human Trafficking

ENCOUNTER:

On December 1, 2022, subject was observed speeding and unable to maintain its lane and was subsequently pulled it over by Trooper [redacted] of the Tennessee Highway Patrol. Upon approach to the vehicle, encountering officer noted there were eight other individuals in the vehicle with the subject, who was identified as the driver. Subject stated he was driving "three days ago" (11/27 /2022) **from Houston, TX to Temple Hills, MD (via St Louis, MO) to bring in people to perform construction work. There was no luggage in the vehicle,** leading the encountering officer to suspect this was a human trafficking incident. **All the passengers gave the same home address as the subject's home address.** During the interview, subject pretended to speak less English than he was capable of and **attempted to put encountering officer off-track by responding to questions with questions.** When asked what relationship he had with the registered owner of the vehicle, subject replied that **the owner of the vehicle is his boss,** and that his work is in construction. Encountering officer decided not to cite the subject for driving infractions but gave him a warning citation for driving with an expired driver's license. Subject's driver's license is a MD "Limited Term Temporary". Encountering officer gathered names of other occupants in vehicle, but could not read their handwriting, but did not pursue further due to no citation being issued. As a result, he did not pass the names, dates of birth and IDs of those individuals. No incident report number was created but the **Computer Aided Dispatch number is 622057620.**

IMMIGRATION/CRIMINAL HISTORY:

On 10/10/19, IJ issued written decision granting Withholding of Removal.

Per the Prince Georges County Police Gang Unit, ABREGO-Garcia was validated as a member of the Mara Salvatrucha (MS13) Gang. Subject was identified as a member of the Mara Salvatrucha MS-13, "Chequeo" from the Western Clique a transnational criminal street gang. This information was provided by tested source who has provided truthful accurate information in the past. See Prince Georges County Police Department (Gang Sheet).

ADDITIONAL INFORMATION:

According to EARM case comments dated Octobe 26, 2022, wants to move to Houston Texas to be closer to family (parents), he is a HVAC employee, has been living in MD for 3 years and has 3 children. Subject was withholding (no asylum or CAT). Not a definite decision but is thinking about wanting to move next year.

WATCHLISTED SUBJECT:

NAME: Abrego Garcia, Kilmar Armando (Non-USPER)

GENDER: Male

DOB: 07/26/1995

CIT: El Salvador

[redacted]

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

Kilmar Armando Abrego Garcia,
Jennifer Stefania Vasquez Sura,
A.A.V., *a minor, by and through his next friend and mother, Jennifer Vasquez Sura*,

c/o Murray Osorio PLLC
8630 Fenton Street, Suite 918,
Silver Spring, MD 20910

Plaintiffs,

v.

Kristi Noem, *Secretary of Homeland Security*,

Secretary of Homeland Security
Washington, DC 20508

Todd Lyons, *Acting Director, U.S. Immigration and Customs Enforcement*,
Kenneth Genalo, *Acting Executive Associate Director, ICE Enforcement and Removal Operations*,
Nikita Baker, *ICE Baltimore Field Office Director*,

500 12th St., SW
Washington, D.C. 20536

Pamela Bondi, *Attorney General*,

950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Marco Rubio, *Secretary of State*,

The Executive Office of the Legal Adviser and Bureau of Legislative Affairs
Suite 5.600
600 19th Street NW
Washington DC 20522

Defendants.

Civil Action No. _____

COMPLAINT FOR INJUNCTIVE RELIEF AND DECLARATORY JUDGMENT

In 2019, Plaintiff Kilmar Armando Abrego Garcia won an order from an immigration judge granting him a form of relief called withholding of removal, which prohibits Defendants from removing him to El Salvador. Should Defendants wish to remove Plaintiff Abrego Garcia to El Salvador, the law sets forth specific procedures by which they can reopen the case and seek to set aside the grant of withholding of removal. Should Defendants wish to remove Plaintiff Abrego Garcia to any other country, they would have no legal impediment in doing so. But Defendants found those legal procedures bothersome, so they merely ignored them and deported Plaintiff Abrego Garcia to El Salvador anyway, ripping him away from his U.S.-citizen wife, Plaintiff Vasquez Sura, and his disabled U.S.-citizen child, Plaintiff A.A.V. Defendants sent Plaintiff Vasquez Sura to El Salvador knowing that he would be immediately incarcerated and tortured in that country's most notorious prison; indeed, Defendants have *paid the government of El Salvador millions of dollars to do exactly that*. Such conduct shocks the conscience and cries out for immediate judicial relief.

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear this case under 28 U.S.C. § 2201, the Declaratory Judgment Act, and 28 U.S.C. § 1331, Federal Question Jurisdiction; and because the individual Defendants are United States officials. 28 U.S.C. § 1346(a)(2).

2. The Court has authority to enter a declaratory judgment and to provide temporary, preliminary and permanent injunctive relief pursuant to Rules 57 and 65 of the Federal Rules of Civil Procedure, 28 U.S.C. §§ 2201-2202, the All Writs Act, and the Court's inherent equitable powers.

3. Venue lies in this District because Plaintiffs reside in Beltsville, Maryland and each Defendant is an agency or officer of the United States sued in his or her official capacity. 28

U.S.C. § 1391(e)(1). In addition, Defendant Baker's principal place of business is in Baltimore, Maryland, and the legal violations described herein took place at the direction and under the supervision of her predecessor in office.

THE PARTIES

4. Plaintiff Kilmar Armando Abrego Garcia is a citizen and native of El Salvador who resides in Beltsville, Maryland. Defendants have deported him to El Salvador without any legal process whatsoever, and in violation of an immigration judge order and a federal statute prohibiting them from doing so.

5. Plaintiff Jennifer Vasquez Sura is a U.S. citizen, and the wife of Plaintiff Abrego Garcia.

6. Plaintiff A.A.V., a U.S. citizen, is a minor child. He is the child of Plaintiff Abrego Garcia and Plaintiff Vasquez Sura.

7. Defendant Kristi Noem is the Secretary of the Department of Homeland Security ("DHS"). She is the cabinet-level secretary responsible for all immigration enforcement in the United States.

8. Defendant Todd Lyons is the Acting Director of U.S. Immigration and Customs Enforcement ("ICE"). He is the head of the federal agency responsible for all immigration enforcement in the United States.

9. Defendant Kenneth Genalo is the Acting Executive Associate Director of ICE Enforcement and Removal Operations. He is the head of the ICE office that carries out arrests of noncitizens and removals from the United States.

10. Nikita Baker is the ICE Baltimore Field Office Director. She is the head of the ICE office that unlawfully arrested Plaintiff, and such arrest took place under the direction and supervision of her predecessor in office.

11. Pamela Bondi is the Attorney General of the United States. The Immigration Judges who decide removal cases and application for relief from removal do so as her designees.

12. Marco Rubio is the Secretary of State of the United States. He is the individual whom Plaintiffs request this Court order to request the return of Plaintiff Abrego Garcia to the United States from El Salvador.

13. All government defendants are sued in their official capacities.

LEGAL BACKGROUND

14. Federal law prohibits the government from removing a noncitizen to a country where he is more likely than not to face persecution on account of a statutorily protected ground. 8 U.S.C. § 1231(b)(3)(A). This protection is usually referred to as "withholding of removal."

15. For an immigration judge (serving as the designee of Defendant Bondi) to grant withholding of removal to a noncitizen, the noncitizen must prove that he is more likely than not to suffer persecution. "The burden of proof is on the applicant for withholding of removal [] to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion." 8 C.F.R. § 1208.16(b).

16. If a noncitizen is granted withholding of removal, "DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated." *Johnson v. Guzman Chavez*, 594 U.S. 523, 531 (2021). No exceptions lie. However, withholding

of removal is a country-specific form of relief, and an individual granted withholding of removal can still be deported to any other country.

17. Federal regulations provide a procedure by which a grant of withholding of removal issued by an immigration judge may be terminated: DHS must move to reopen the removal proceedings before the immigration judge, and then DHS will bear the burden of proof, by a preponderance of the evidence, that grounds for termination exist. 8 C.F.R. § 1208.24(e). After a grant of withholding of removal is terminated, there would be no impediment to removal.

FACTS

18. Plaintiff Kilmar Armando Abrego Garcia is a citizen of El Salvador and no other country.

19. Plaintiff Abrego Garcia is not a member of or has no affiliation with Tren de Aragua, MS-13, or any other criminal or street gang. Although he has been accused of general "gang affiliation," the U.S. government has never produced an iota of evidence to support this unfounded accusation.

20. Plaintiff Abrego Garcia has no criminal history. He has never been charged or convicted of any criminal charges, in the United States, El Salvador, or any other country.

Plaintiff Abrego Garcia's 2019 removal proceedings

21. Plaintiff Abrego Garcia left El Salvador when he was around sixteen years old, fleeing gang violence. Beginning around 2006, gang members had stalked, hit, and threatened to kidnap and kill him in order to coerce his parents to succumb to their increasing demands for extortion.

22. Sometime around 2011, Plaintiff Abrego Garcia entered the United States without inspection. He then made his way to the state of Maryland, where his older brother, a U.S. citizen, resided. In the United States, Plaintiff Abrego Garcia has only ever resided in Maryland.

23. Around 2016, Plaintiff Abrego Garcia met Plaintiff Jennifer Vasquez Sura, a U.S. citizen with two U.S.-citizen children from a prior relationship. Over time, they became close and eventually became romantically involved.

24. Around December 2018, Plaintiff Abrego Garcia moved in with Plaintiff Vasquez Sura and her two children, after Plaintiff Vasquez Sura learned she was pregnant with their child. Plaintiff Abrego Garcia supported himself, Plaintiff Vasquez Sura, and her two children through work in the construction industry.

25. On March 28, 2019, Plaintiff Abrego Garcia went to a Home Depot in Hyattsville, Maryland to solicit employment. When he arrived, he joined three other young men who were also at Home Depot soliciting employment, two of whom he recognized from prior occasions at the Home Depot, though he had never interacted with them in any other context. The young men proceeded to chat to pass the time.

26. At 2:27 PM, while the four of them were chatting, a detective from the Hyattsville City Police approached the group. The detective did not speak to Plaintiff Abrego Garcia, but only one of the other men. Soon thereafter, officers from Prince George County Police Department ("PGPD") arrived on the scene and proceeded to handcuff all four young men, including Plaintiff Abrego Garcia. At no point did police explain why they were arresting Plaintiff Abrego Garcia, nor was Plaintiff Abrego Garcia ever charged with any crime. This was Plaintiff Abrego Garcia's first and only time in state custody.

27. At the police station, the four young men were placed into different rooms and questioned. Plaintiff Abrego Garcia was asked if he was a gang member; when he told police he was not, they said that they did not believe him and repeatedly demanded that he provide information about other gang members. The police told Plaintiff Abrego Garcia that he would be released if he cooperated, but he repeatedly explained that he did not have any information to give because he did not know anything.

28. Plaintiff Abrego Garcia was then transferred to another room and told that ICE officers would be coming to take him into federal immigration custody. Eventually, ICE officers arrived and took Plaintiff Abrego Garcia into detention.

29. The following day, Plaintiff Abrego Garcia was served with a Notice to Appear, 8 U.S.C. § 1229, commencing removal proceedings against him pursuant to 8 U.S.C. § 1229a. He was charged as removable pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) ("An alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible"), and no other charges.

30. On April 24, 2019, Plaintiff Abrego Garcia appeared for his first hearing in immigration court. Through counsel, he moved for release on bond pursuant to 8 U.S.C. § 1226(a), submitting over seventy pages of evidence in support thereof. ICE opposed a change in custody status, arguing that Plaintiff Abrego Garcia presented a danger to the community because local police had supposedly "verified" that he is an active gang member.

31. In support thereof, ICE offered a Gang Field Interview Sheet ("GFIS") generated by PGPD. The GFIS explained that the only reason to believe Plaintiff Abrego Garcia was a gang member was that he was wearing a Chicago Bulls hat and a hoodie; and that a confidential informant advised that he was an active member of MS-13 with the Westerns clique. The GFIS

had been entered into PGPD's database at 6:47 PM, approximately four hours after police met Plaintiff Abrego Garcia for the first time.

32. According to the Department of Justice and the Suffolk County District Attorney's Office, the "Westerns" clique operates in Brentwood, Long Island, in New York, a state that Plaintiff Abrego Garcia has never lived in.

33. The attorney for Plaintiff Abrego Garcia subsequently made multiple attempts to obtain additional information from law enforcement concerning these allegations. PGPD indicated that it did not have any incident report related to the Home Deport episode at all, nor did the Department have any incident reports containing his name. The Hyattsville City Police Department ("HCPD"), on the other hand, confirmed it had an incident report for the Home Depot incident, but that only 3 people were named and Plaintiff Abrego Garcia was not one of them, nor did it have any other incident reports with his name in its database. His attorney also contacted the PGPD Inspector General requesting to speak to the detective who authored the GFIS sheet, but was informed that the detective had been suspended. A request to speak to other officers in the Gang Unit was declined.

34. On June 25, 2019, Plaintiff Vasquez Sura and Plaintiff Abrego Garcia were married in the Howard Detention Center. Plaintiff Vasquez Sura was in her third trimester of pregnancy at the time. Due to a pre-existing condition, uterus didelphys, her pregnancy was categorized as high-risk. *See* Ex. B (Declaration of Plaintiff Vasquez Sura).

35. Plaintiff Abrego Garcia then filed an I-589 application for asylum, withholding of removal, and protection under the Convention Against Torture with the Baltimore Immigration Court and was scheduled for an individual hearing. His individual hearing spanned over two days: August 9, 2019, and September 27, 2019.

36. In advance of his hearing, Plaintiff Abrego Garcia, through counsel, filed a motion for a subpoena to require the appearance of two PGPD detectives, and any evidence substantiating his alleged gang membership.

37. In addition, Plaintiff Abrego Garcia, through counsel, submitted a legal brief and a voluminous evidentiary filing establishing his eligibility for protection and contesting the unfounded allegation of gang membership levied against him.

38. On August 9, 2019, the attorney for ICE indicated on the record that ICE had conferred with its law enforcement partners and that all the evidence and intelligence they had was what was contained in the GFIS. As a result, a subpoena was deemed unnecessary.

39. On August 11, 2019, Plaintiff Vasquez Sura gave birth to the couple's son, Plaintiff A.A.V. Plaintiff Abrego Garcia was unable to witness the birth of his son as he remained detained, awaiting to continue the second part of his hearing.

40. A.A.V. was born with Microtia, congenital malformation of the external ear, resulting in an underdeveloped ear. Testing later confirmed that A.A.V. was deaf in his right ear. *See* Ex. B (Declaration of Plaintiff Vasquez Sura).

41. On October 10, 2019, Plaintiff Abrego Garcia was granted withholding of removal pursuant to 8 U.S.C. § 1232(b)(3)(A), after the immigration judge agreed that he had established it was more likely than not that he would be persecuted by gangs in El Salvador because of a protected ground. *See* Ex. A (Immigration Judge order). ICE did not appeal the grant of relief, *see* Ex. E (immigration court "Automated Case Information" page); and Plaintiff Abrego Garcia was then promptly released from custody.

42. Plaintiff Abrego Garcia went home to his wife and children. They all have continuously resided in Prince George's County, Maryland.

43. In addition to hearing problems, A.A.V., who is now five years old, is intellectually disabled and has a speech disorder. To this day, he is unable to verbally communicate and in October 2024 he was diagnosed with autism.

44. Both Plaintiff Vasquez Sura and Plaintiff Abrego Garcia work to support their family of five. Plaintiff Abrego Garcia is a union member and is employed full-time as a first-year Sheetmetal Apprentice. In addition, he has been pursuing his own license at the University of Maryland.

45. As a condition of his withholding of removal status, Plaintiff Abrego Garcia is required to check in with ICE once a year, and has been fully compliant. He appeared for his most recent check-in on January 2, 2025, without incident. *See* Ex. C (ICE check-in record).

46. Aside from these check-ins, after being granted withholding protection and being released from custody, Plaintiff Abrego Garcia has had no contact with any law enforcement agency.

47. Plaintiff Abrego Garcia has never been arrested or charged with any crime in the U.S. or in El Salvador. There is no known link or association between him and the MS-13 gang. Prince George's County law enforcement never again questioned him regarding MS-13 or accused him of membership in MS-13.

Plaintiff Abrego Garcia's 2025 arrest and removal

48. In the early afternoon of Wednesday, March 12, 2025, after completing a shift as a sheet metal worker apprentice at a new job site in Baltimore, Plaintiff Abrego Garcia picked up his five-year old son, A.A.V., from his grandmother's house.

49. While driving with his son A.A.V. in the backseat, Plaintiff Abrego Garcia was pulled over by ICE officers acting at the direction and under the supervision of Defendant Baker's predecessor in office.

50. One ICE officer, who identified himself as part of Homeland Security Investigations, told Plaintiff Abrego Garcia that his "status has changed." Within minutes, Plaintiff Abrego Garcia was handcuffed and detained in one of several ICE vehicles on the scene. Plaintiff Vasquez Sura was called and instructed to appear at their location within ten minutes to get her five-year old son, A.A.V.; otherwise, the ICE officers threatened that the child would be handed over to Child Protective Services. *See* Ex. B (Declaration of Plaintiff Vasquez Sura).

51. After Plaintiff Vasquez Sura arrived at the scene, she was able to briefly talk with Plaintiff Abrego Garcia, who appeared confused, distraught, and crying. Moments later, Plaintiff Abrego Garcia was driven away. No explanation was provided to Jennifer as to why her husband was detained, where he was going, or what was happening. *Id.*

52. Almost immediately after Plaintiff Vasquez Sura left with her son A.A.V., she began to try to locate Plaintiff Abrego Garcia through the online ICE Detainee Locator system and by calling various immigration detention centers and facilities. It appeared that between Wednesday, March 12, and Saturday, March 15, Plaintiff Abrego Garcia was moved to various different locations across the country. *See* Ex. B (Declaration of Plaintiff Vasquez Sura).

53. The evening after his arrest, Plaintiff Vasquez Sura received a call from Plaintiff Abrego Garcia. At that time, it appeared that he was in Baltimore. During that conversation, Plaintiff Abrego Garcia informed Plaintiff Vasquez Sura that he was being questioned about gang affiliations. He repeatedly informed his interviewers that he was never a gang member and had no gang affiliations. He was shown several photos where he appeared in public, and asked about other

people in those photos, but was unable to provide any information on them, as he did not know them or anything about them. Plaintiff Abrego Garcia also told his wife that he had been told that he would go before an immigration judge and then be released. *See* Ex. B (Declaration of Plaintiff Vasquez Sura).

54. Plaintiff Vasquez Sura received a call from Plaintiff Abrego Garcia on the evening of March 13. Plaintiff Abrego Garcia told his wife that he believed he was in Louisiana, but was not sure because he had been moved around so many times. Plaintiff Abrego Garcia indicated to his wife that he was very confused. However, he was still being assured that he would be brought before an immigration judge soon. *See* Ex. B (Declaration of Plaintiff Vasquez Sura).

55. In an attempt to ascertain his actual location and find further information about his arrest and detention, Plaintiff Vasquez Sura called different detention centers, trying to speak to someone. She recalls one brief conversation where she was told that "El Salvador was asking for him." Her attempts to protest by saying that he had won protection from being removed to El Salvador fell on deaf ears. *See* Ex. B (Declaration of Plaintiff Vasquez Sura).

56. Around 11:00 AM on Saturday, March 15, 2025, Plaintiff Vasquez Sura received her last call from Plaintiff Abrego Garcia. During that conversation, Plaintiff Abrego Garcia informed her that he was being held by ICE at the East Hidalgo Detention Center in La Villa, Texas. *See* Ex. B (Declaration of Plaintiff Vasquez Sura).

57. Plaintiff Abrego Garcia then relayed that he was told that he was being deported to El Salvador. With a sense of urgency, he asked his wife to contact his mother so their family could get him from "CECOT," as that is where he was told they were sending him.[1]

[1] CECOT is the Terrorism Confinement Center in El Salvador, one of the largest prisons in the world.

58. Since that conversation, Plaintiff Vasquez Sura has not had any further contact with Plaintiff Abrego Garcia. *See* Ex. B (Declaration of Plaintiff Vasquez Sura).

59. The following day, on Sunday, March 16, Ms. Vasquez Sura was sent a photo from a news article discussing the deportation of alleged Venezuelan gang members that were deported without a hearing. The photo showed men kneeling on the ground, with their shaved heads bowed and their arms over their head. Their faces were not visible. Upon inspection, Jennifer identified one of these men as Plaintiff Abrego Garcia based on her husband's distinctive tattoos and two scars on his head. See Ex. D (CECOT photos).

60. For the next few days, the ICE Detainee Locator continued to indicate that Plaintiff Abrego Garcia was located at the East Hidalgo Detention Center, even though staff at that detention center told Plaintiff Vasquez Sura that he had left on Saturday. *See* Ex. B (Declaration of Plaintiff Vasquez Sura). (Now, Plaintiff Abrego Garcia no longer appears in the ICE Detainee Locator.)

61. Watching the news, Plaintiff Vasquez Sura was horrified to see more photos of CECOT prisoners that included her husband, and a video where Plaintiff Abrego Garcia was frog-walked through the CECOT prison. Plaintiff Abrego Garcia's family subsequently hired a lawyer in El Salvador, who has confirmed that Plaintiff Abrego Garcia is, in fact, being held at CECOT. The lawyer has ascertained that to date, there are no known criminal charges levied against Plaintiff Abrego Garcia in El Salvador either.

62. ICE and DHS took no steps to reopen the removal case of Plaintiff Abrego Garcia, nor to rescind his order of withholding of removal. *See* Ex. E (immigration court "Automated Case Information" page, showing no activity since October 10, 2019).

63. Upon information and belief, ICE and DHS leadership, including Defendants Noem, Lyons, Genalo, and the predecessor in office of Defendant Baker, decided to deport Plaintiff Abrego Garcia without following the law. Upon information and belief, they did so knowing and intending that the Government of El Salvador would detain Plaintiff Abrego Garcia in CECOT immediately upon arrival.

Conditions in CECOT

64. On March 15, 2025, Defendants deported 261 noncitizens, including 238 Venezuelan nationals and 23 Salvadoran nationals, to El Salvador without going through any legal processes whatsoever in front of an immigration judge. Upon information and belief, Plaintiff Abrego Garcia was one of those 23 Salvadoran nationals. Salvadoran President Nayib Bukele confirmed they have been sent to the country's mega-prison CECOT, the Terrorism Confinement Center. Upon information and belief, Defendants carried out this deportation through extrajudicial means because they believed that going through the immigration judge process took too long, and they feared that they might not win all of their cases before immigration judges.

65. Upon information and belief, ICE and DHS has paid or continues to pay the Government of El Salvador six million dollars in order for the Government of El Salvador to detain these individuals, including Plaintiff Abrego Garcia.[2]

66. Upon information and belief, all Defendants are aware that the government of El Salvador tortures individuals detained in CECOT. Indeed, U.S. President Donald Trump has made comments to the press expressing glee and delight at the torture that the Government of El Salvador inflicts upon detainees in CECOT.

[2] "US to pay El Salvador to jail 300 alleged gang members, AP reports" (Mar. 15, 2025), *available at* https://www.reuters.com/world/us/us-pay-el-salvador-jail-300-alleged-gang-members-ap-reports-2025-03-15/.

67. CECOT conditions have garnered attention from human rights organizations. Each of the 256 cells is intended to hold approximately 80 inmates but often holds nearly double.[3] The cramped cells are equipped with tiered metal bunks without mattresses, two basins for washing, and two open toilets. There are no windows, fans, or air conditioning, despite the region's warm and humid climate.[4]

68. Inmates in CECOT are confined to their cells for 23.5 hours daily and cannot go outdoors. They are denied access to reading materials, including even letters from friends or family. Inmates are prohibited from receiving visits from family and friends. Meals are provided through the bars, and the facility enforces strict regulations to maintain order.[5]

69. In May 2023, Cristosal, a leading human rights organization in El Salvador, released a comprehensive report detailing severe human rights abuses within the country's prison system, especially CECOT.[6] The investigation documented the deaths of 153 inmates between March 27, 2022, and March 27, 2023, attributing many to torture, beatings, mechanical asphyxiation (strangulation), and lack of medical attention. *Id.* Autopsies revealed common patterns of lacerations, hematomas, sharp object wounds, and signs of choking or strangulation. *Id.* Survivors reported being forced to pick food off the floor with their mouths, subjected to

[3] Leire Ventas & Carlos García, "El Salvador's Secretive Mega-Jail," *BBC News* (July 14, 2023), *available at* https://www.bbc.com/news/resources/idt-81749d7c-d0a0-48d0-bb11-eaab6f1e6556.

[4] Maanvi Singh, "US Deportees Face Brutal Conditions in El Salvador Mega-Prison: 'Severe Overcrowding, Inadequate Food,'" *The Guardian* (Mar. 20, 2025), *available at* https://www.theguardian.com/us-news/2025/mar/20/trump-deportations-venezuela-prison

[5] "Inside El Salvador's prison holding Venezuelans deported from US," *CNN* (March 17. 2025), *available at* https://edition.cnn.com/2025/03/17/world/video/el-salvador-prison-holding-venezuelans-deported-us-trump-digvid.

[6] Noé López, "Inmates in El Salvador Tortured and Strangled: A Report Denounces Hellish Conditions in Bukele's Prisons," *El País* (May 29, 2023), *available at* https://english.elpais.com/international/2023-05-29/inmates-in-el-salvador-tortured-and-strangled-a-report-denounces-hellish-conditions-in-bukeles-prisons.html.

electric shocks, and exposed to untreated skin fungus epidemics. *Id.* Cristosal's director has emphasized that these systemic violations have become state policy. *Id.*

70. Plaintiff Abrego Garcia is at imminent risk of irreparable harm with every additional day he spends detained in CECOT, included but not limited to torture and possible death.

71. Plaintiff Abrego Garcia has exhausted all administrative remedies. No administrative remedies are available to Plaintiff Abrego Garcia, precisely because Defendants made the choice to unlawfully forego proceedings before the immigration judge, which would entail a right to administrative review before the Board of Immigration Appeals and then a petition for review to the U.S. Court of Appeals for the Fourth Circuit.

FIRST CAUSE OF ACTION:
VIOLATION OF THE WITHHOLDING OF REMOVAL STATUTE,
8 U.S.C. § 1231(b)(3)(A)
(Plaintiff Abrego Garcia)

72. Plaintiffs incorporate the foregoing paragraphs 1-71 by reference.

73. The Withholding of Removal statute, 8 U.S.C. § 1231(b)(3)(A), prohibits Defendants from removing a noncitizen to any country from which he has been granted withholding of removal, unless such grant is formally terminated by lawful means.

74. As set forth above, Defendants removed Plaintiff Abrego Garcia to El Salvador, the country from which he had been granted withholding of removal, without formally terminating his grant of withholding of removal, thus violating this law.

75. Defendants' violation of law, as set forth herein, is causing Plaintiff Abrego Garcia irreparable harm with each day that he spends outside the United States and detained in CECOT.

76. Even if Plaintiff Abrego Garcia were released from CECOT, he would still be suffering irreparable harm in the form of separation from his U.S. citizen wife, Plaintiffs Vasquez Sura, and his severely disabled U.S. citizen child, Plaintiff A.A.V.

77. Plaintiffs ask the Court to immediately order Defendants to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Plaintiff Abrego Garcia to the United States. This should begin with ordering that Defendants immediately halt all payments to the Government of El Salvador to hold individuals in CECOT, and an order that Defendants immediately request that the Government of El Salvador release Plaintiff Abrego Garcia from CECOT and deliver him to the U.S. Embassy in El Salvador.

SECOND CAUSE OF ACTION:
PROCEDURAL DUE PROCESS
U.S. CONSTITUTION, AMENDMENT V
(Plaintiff Abrego Garcia)

78. Plaintiffs incorporate the foregoing paragraphs 1-71 by reference.

79. Plaintiff Abrego Garcia has a procedural due process right not to be removed to El Salvador, the country from which he had been granted withholding of removal, without an immigration judge first carrying out the procedures set forth in statute and federal regulations.

80. As set forth above, Defendants removed Plaintiff Abrego Garcia to El Salvador, the country from which he had been granted withholding of removal, without formally terminating his grant of withholding of removal, thus violating his procedural due process rights under the Fifth Amendment to the U.S. Constitution.

81. Defendants' violation of law, as set forth herein, is causing Plaintiff Abrego Garcia irreparable harm with each day that he spends outside the United States and detained in CECOT.

82. Even if Plaintiff Abrego Garcia were released from CECOT, he would still be suffering irreparable harm in the form of separation from his U.S. citizen wife, Plaintiffs Vasquez Sura, and his severely disabled U.S. citizen child, Plaintiff A.A.V.

83. Plaintiffs ask the Court to immediately order Defendants to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Plaintiff Abrego Garcia to the United States. This should begin with ordering that Defendants immediately halt all payments to the Government of El Salvador to hold individuals in CECOT, and an order that Defendants immediately request that the Government of El Salvador release Plaintiff Abrego Garcia from CECOT and deliver him to the U.S. Embassy in El Salvador.

THIRD CAUSE OF ACTION:
SUBSTANTIVE DUE PROCESS
U.S. CONSTITUTION, AMENDMENT V
(All Plaintiffs)

84. Plaintiffs incorporate the foregoing paragraphs 1-71 by reference.

85. Plaintiff Abrego Garcia has a substantive due process right under the Fifth Amendment to the U.S. Constitution not to be subjected to government conduct that shocks the conscience. Defendants' conduct as set forth above violates that right.

86. Plaintiffs Vasquez Sura and A.A.V., as the U.S.-citizen spouse and minor child of Plaintiff Abrego Garcia, also have a family unity interest in Plaintiff Abrego Garcia not being removed from the United States in a manner that shocks the conscience. Defendants' conduct as set forth above violates that right.

87. Defendants' conscience-shocking actions, as set forth herein, is causing Plaintiff Abrego Garcia irreparable harm with each day that he spends outside the United States and detained in CECOT.

88. Even if Plaintiff Abrego Garcia were released from CECOT, he would still be suffering irreparable harm in the form of separation from his U.S. citizen wife, Plaintiffs Vasquez Sura, and his severely disabled U.S. citizen child, Plaintiff A.A.V.

89. Plaintiffs ask the Court to immediately order Defendants to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Plaintiff Abrego Garcia to the United States. This should begin with ordering that Defendants immediately halt all payments to the Government of El Salvador to hold individuals in CECOT, and an order that Defendants immediately request that the Government of El Salvador release Plaintiff Abrego Garcia from CECOT and deliver him to the U.S. Embassy in El Salvador.

FOURTH CAUSE OF ACTION:
ADMINISTRATIVE PROCEDURE ACT
5 U.S.C. § 706(2)(A)
(Plaintiff Abrego Garcia)

90. Plaintiffs incorporate the foregoing paragraphs 1-71 by reference.

91. The Administrative Procedure Act provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion." 5 U.S.C. § 706(2)(A).

92. Defendants' actions as set forth herein were arbitrary, capricious, and an abuse of discretion.

93. Defendants' arbitrary and capricious actions, as set forth herein, are causing Plaintiff Abrego Garcia irreparable harm with each day that he spends outside the United States and detained in CECOT.

94. Even if Plaintiff Abrego Garcia were released from CECOT, he would still be suffering irreparable harm in the form of separation from his U.S. citizen wife, Plaintiffs Vasquez Sura, and his severely disabled U.S. citizen child, Plaintiff A.A.V.

95. Plaintiffs ask the Court to immediately order Defendants to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Plaintiff Abrego Garcia to the United States. This should begin with ordering that Defendants immediately halt all payments to the Government of El Salvador to hold individuals in CECOT, and an order that Defendants immediately request that the Government of El Salvador release Plaintiff Abrego Garcia from CECOT and deliver him to the U.S. Embassy in El Salvador.

FIFTH CAUSE OF ACTION:
HABEAS CORPUS
28 U.S.C. § 2241
(Plaintiff Abrego Garcia)

96. Plaintiffs incorporate the foregoing paragraphs 1-71 by reference.

97. The writ of habeas corpus is available to any individual who is held in custody of the federal government in violation of the Constitution or laws or treaties of the United States.

98. As set forth herein, Plaintiff Abrego Garcia is being held in custody by the Government of El Salvador, but the Government of El Salvador is detaining Plaintiff Abrego Garcia at the direct request of Defendants, and at the financial compensation of Defendants. Such detention is in violation of the Constitution or laws or treaties of the United States.

99. Plaintiffs ask the Court to immediately order Defendants to immediately cease compensating the Government of El Salvador for its detention of Plaintiff Abrego Garcia, and to immediately request that the Government of El Salvador release Plaintiff Abrego Garcia from CECOT and deliver him to the U.S. Embassy in El Salvador.

REQUEST FOR RELIEF

Plaintiffs pray for judgment against Defendants and respectfully request that the Court enters an order:

a) Declaring that Defendants' actions, as set forth herein, violated the laws of the United States and the Fifth Amendment to the U.S. Constitution;

b) Immediately ordering Defendants to immediately cease compensating the Government of El Salvador for its detention of Plaintiff Abrego Garcia;

c) Immediately ordering Defendants to immediately request that the Government of El Salvador release Plaintiff Abrego Garcia from CECOT and deliver him to the U.S. Embassy in El Salvador;

d) Should the Government of El Salvador decline such request, ordering Defendants to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Plaintiff Abrego Garcia to the United States;

e) Granting Plaintiffs costs and fees under the Equal Access to Justice Act; and

f) Granting such other relief at law and in equity as justice may require.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: March 24, 2025

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Case No. 25-1345

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

KILMAR ARMANDO ABREGO GARCIA, ET AL.,
Plaintiffs-Appellees,

v.

KRISTI NOEM, ET AL.,
Defendants-Appellants.

On Appeal from the U.S. District Court
for the District of Maryland
Case No. 8:25-CV-00951-PX

PLAINTIFFS-APPELLEES' OPPOSITION TO EMERGENCY MOTION FOR STAY PENDING APPEAL AND IMMEDIATE ADMINISTRATIVE STAY

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INTRODUCTION

In March 2025, federal agents seized Kilmar Armando Abrego Garcia in Maryland and, as the result of an "administrative error," removed him to El Salvador, in undisputed violation of a court order prohibiting his removal to that country. Abrego Garcia is now being held in a Salvadoran prison *solely* at the behest of the United States. He has no criminal record and is not wanted by the Salvadoran government. None of these facts is disputed.

At Friday's hearing, the United States[1] conceded that he "should not have been removed," SA098, and that it did not have a "satisfactory" answer as to why it could not bring him back, SA114.[2] Yet now it contends that it is powerless to do so and that an order requiring it to "facilitate" Abrego Garcia's return—as this Court has previously ordered the Government to do in other cases—is "intolerable." Worse, the Government argues that by defying the prior order *not* to remove Abrego Garcia to El Salvador, it has divested the courts of jurisdiction to right this wrong.

These arguments are meritless. There is no basis in this case to stay the injunction, which simply requires the Government to take routine action to restore the status quo and preserve Abrego Garcia's statutory and due process rights. The Government does not even argue that it would suffer irreparable harm absent a stay

[1] Defendants are referred to as "United States" or the "Government."

[2] "SA" refers to Plaintiffs' Supplemental Addendum filed in this Court.

because restoring the status quo prior to the wrongful removal inflicts no injury on the Government. The absence of any irreparable harm argument is fatal to its stay motion. The only one being irreparably harmed by the current state of affairs is Abrego Garcia, who is being incarcerated in the very country to which a court determined he could not be sent due to the "clear probability" of persecution there. SA008. "Particular to Abrego Garcia, the risk of harm shocks the conscience." SA163.

The Government also fails as to every other factor. Because it is not likely to succeed on the merits, the Government's motion mischaracterizes the district court's order. The court did *not* order the Government to "force El Salvador" to do anything. Rather, it directs the Government to "facilitate and effectuate" Abrego Garcia's return. Add002.[3] This Court and other circuits have repeatedly ordered the same relief. It is routine: "a matter of course." SA153; *see*, *e.g.*, *Ramirez v. Sessions*, 887 F.3d 693, 698 (4th Cir. 2018) ("As our sister circuits have done in similar circumstances, we grant this relief because judicial review would otherwise be frustrated if [petitioner] cannot be restored to the status he had before his removal.") (collecting cases).

[3] "Add" refers to the Government's Addendum filed in this Court.

The order does not intrude upon the President's authority to set foreign policy, or implicate foreign policy at all. Instead, it enforces a valid order of the immigration court and safeguards due process and statutory rights.

Nor does the Court lack jurisdiction. The Government contends (at 13) that its actions are insulated from scrutiny because "even if a removal runs afoul of some other legal bar (such as withholding relief), it is still the 'execution' of a 'removal order,'" which "strips district courts of jurisdiction" pursuant to 8 U.S.C. §1252(g). But the Government has already conceded that the purported removal order—which it failed to produce and appears nowhere in the record—"could *not* be used to send Mr. Abrego Garcia to El Salvador." SA102 (emphasis added). The Government's argument suggests that the executive branch may violate an immigration judge's order and, by doing so, deprive the courts of jurisdiction to enforce it. The district court made the chilling observation that the Government "cling[s] to the stunning proposition that they can forcibly remove any person—migrant and U.S. citizen alike—to prisons outside the United States, and then baldly assert they have no way to effectuate return because they are no longer the 'custodian,' and the Court thus lacks jurisdiction." SA151. That is not the law, and the Government unsurprisingly cites no precedent to support it.[4]

[4] "A world in which federal courts lacked the power to order the government to take every possible step to bring back to the United States individuals like Abrego

The Government further contends, by way of footnote (at 13 n.2), that Abrego Garcia's claims "sound in habeas" and are therefore beyond the court's power to remedy because he is "not in United States custody." This is sleight-of-hand. No law permits the Government to divest individuals of their Constitutional rights by the trick of paying another sovereign to jail them on its behalf. And, in any event, Abrego Garcia does not challenge his *detention*. He challenges his *removal*. SA151.

Neither equities nor public interest favor a stay. Six years after an immigration judge granted withholding of removal, the Government suddenly contends that Abrego Garcia represents a "danger" to the community. But he has never been charged with a crime, and the Government never moved to set aside the order withholding removal. Indeed, the Government admitted that it "made a choice here to produce no evidence," SA120, and that "the absence of evidence speaks for itself," SA128. Moreover, Abrego Garcia's conduct is irrelevant; the issue here is whether the Government may violate a court order and deport Abrego Garcia with no due process and no recourse. "[U]pholding constitutional rights surely serves the public interest." *Giovani Carandola, Ltd. v. Bason*, 303 F.3d 507, 521 (4th Cir. 2002).

Garcia is a world in which the government could send *any of us* to a Salvadoran prison without due process, claim that the misstep was a result of 'administrative error,' and thereby wash its hands of any responsibility for what happens next." Steve Vladeck, *Abrego Garcia, Constructive Custody, and Federal Judicial Power* (Apr. 5, 2025),**Error! Hyperlink reference not valid.** https://www.stevevladeck.com/p/138-abrego-garcia-constructive-custody.

The Court should deny the Government's stay motion.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

For years, Kilmar Armando Abrego Garcia lived in Beltsville, Maryland, with his wife, Plaintiff Jennifer Stefania Vasquez Sura (a U.S. citizen), and their three special needs children: D.T.V., X.T.V., and Plaintiff A.A.V. (all U.S. citizens). SA015; SA021. Abrego Garcia, a citizen of El Salvador, came to the United States as a teenager to escape gang violence targeting his family. SA002-003; SA145-146. He has never been charged with any crime. SA147; SA018; SA021.

In 2019, the Government commenced removal proceedings. SA146. Abrego Garcia moved for release on bond. SA146. The Government opposed, claiming he was an MS-13 gang member. SA146. The Government offered two pieces of "evidence": first, Abrego Garcia was wearing "his Chicago Bulls hat and hoodie," and second, "a vague, uncorroborated allegation from a confidential informant claiming he belonged to MS-13's 'Western' clique in New York—a place he has never lived." SA146 n.5; Add010-011. The immigration judge was "reluctant to give evidentiary weight to the Respondent's clothing as an indication of gang affiliation," but nevertheless refused to release Abrego Garcia on bond. Add047-048; SA146.

Abrego Garcia then sought relief from removal. SA001-002. During a full evidentiary hearing, Abrego Garcia offered his own sworn testimony, that of his

wife, Vasquez Sura, and voluminous evidence showing he was not a gang member and was eligible for protection under federal law. SA002-004; SA017.

The immigration judge ordered withholding of removal on October 10, 2019. SA014. The judge found Abrego Garcia "credible," observing that his "testimony was internally consistent, externally consistent" with the "substantial documentation," and "appeared free of embellishment." SA005. The judge further found that there was "a clear probability of future persecution" if Abrego Garcia returned to El Salvador. SA008. The judge therefore ordered that Abrego Garcia had the "right not to be deported" to El Salvador under 8 U.S.C. §1231(b)(3)(A). SA006; SA014. The Government never appealed that order, so it became final. SA147. Since 2019, Abrego Garcia has lived with his family in Maryland, working full time as a union sheet metal worker and dutifully appearing for annual check-ins with immigration authorities (most recently in January 2025). SA147.

On March 12, 2025, Abrego Garcia was arrested in front of his five-year old son, A.A.V., by ICE officers who falsely told him that his "status had changed." SA147; SA019. Three days later, Abrego Garcia was allowed to tell his wife that he was being deported to the Terrorism Confinement Center **(CECOT**) in El Salvador. SA020-021. Vasquez Sura has not heard from her husband since—but she has seen him in news photographs and videos of prisoners at CECOT. SA021-022.

On March 24, Plaintiffs filed suit and moved for a temporary restraining order. SA150. The Complaint and motion seek the same relief: "ordering Defendants to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Plaintiff Abrego Garcia to the United States." Add024.

The Government opposed that request, despite acknowledging that Abrego Garcia's removal to El Salvador—which violated the 2019 order that granted withholding of removal—was an "administrative error." SA046; Add053. ICE Field Office Director Robert L. Cerna admitted that "ICE was aware of this grant of withholding of removal at the time Abrego-Garcia's removal from the United States." Add053.

After Plaintiffs filed their Complaint, Defendant Kristi Noem visited CECOT but took no steps to secure Abrego Garcia's return. SA040.

The district court held a hearing on April 4. At the hearing, the Government "concede[d] the facts"—that "the plaintiff, Abrego Garcia, should not have been removed." SA098.

At the end of the hearing, the court entered identical written and oral orders granting Plaintiffs' motion, which it construed as seeking a preliminary injunction. Add001. In its written opinion, it found that Abrego Garcia's removal to El Salvador was "wholly lawless," SA149, and that "U.S. officials secured his detention in a facility that, by design, deprives its detainees of adequate food, water, and shelter,

fosters routine violence; and places him with his persecutors," SA165. The court ordered the Government to "facilitate and effectuate the return" of Abrego Garcia by "11:59 PM on Monday, April 7, 2025." Add002.

The Government noticed an appeal, SA143, and now seeks to stay that order. The district court denied the Government's stay motion on April 6. SA166.

ARGUMENT

I. THE GOVERNMENT DOES NOT SATISFY THE TEST FOR A STAY PENDING APPEAL.

A stay pending appeal is "extraordinary relief." *Williams v. Zbaraz*, 442 U.S. 1309, 1316 (1979) (Stevens, J., in chambers). A court considering such extraordinary relief must weigh four factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Nken v. Holder*, 556 U.S. 418, 434 (2009) (citation omitted).

The Government asserts (at 9) that "the latter two factors merge" in "suits against the Government." Not so. These factors—harm to the opposing party and the public interest—merge only "when the Government is the opposing party" to the stay request. *Id.* at 435. Where, as here, "the government Defendants are applying for a stay and Plaintiffs are the opposing party," the third and fourth factors remain "distinct." *U.S. Navy Seals 1-26 v. Biden*, 27 F.4th 336, 353 (5th Cir. 2022).

A. The Government Has Not Made A Strong Showing Of Likely Success On The Merits.

The Government conceded at the hearing below that its "only arguments are jurisdictional. We have nothing to say on the merits. We concede he should not have been removed to El Salvador." SA104. The Government's three jurisdictional arguments do not constitute the requisite "strong showing" of likely success on the merits.

1. The District Court's Order Is Proper And Possible.

The Government's main argument (at 9) is that the order below "is neither possible nor proper." That is wrong on both counts.

The district court properly ordered the Government to "facilitate and effectuate" Abrego Garcia's return by "11:59 PM on Monday, April 7, 2025." Add002. Contrary to the Government's assertion (at 10), Plaintiffs did not disclaim such relief; rather, they requested it. SA088 (arguing that the Court has "jurisdiction to order them to facilitate his return, and what we would like is for the Court to enter that order"); *see also* SA085-087; SA074-075; Add024.

The district court issued this order because it found, among other things, that "Abrego Garcia was removed to El Salvador in violation of the Immigration and Nationality Act, specifically 8 U.S.C. §1231(b)(3)(A), and without any legal process." Add002; *see also* SA149 ("there were no legal grounds whatsoever for his arrest, detention, or removal."). This finding follows from the Government's

concession that it unlawfully removed Abrego Garcia, *see* SA098 ("The facts—we concede the facts. This person should—the plaintiff, Abrego Garcia, should not have been removed. That is not in dispute."); SA104 ("We concede he should not have been removed to El Salvador."), and from the Government's admission that there was no evidence that a lawful process led to the removal, SA100.

The Government's contentions (at 10-11) that the district court's order improperly encroached on the Executive's prerogative to manage foreign affairs are unavailing. Courts routinely exercise jurisdiction to protect individual rights, including in immigration cases, without impinging on the Executive's ability to conduct foreign affairs. "[A]n area concerning foreign affairs that has been uniformly found appropriate for judicial review is the protection of individual or constitutional rights from government action." *Flynn v. Shultz*, 748 F.2d 1186, 1191 (7th Cir. 1984) (collecting authorities).

Courts routinely order the Government to return, or facilitate the return, of individuals the Government wrongly removed to foreign countries—including El Salvador. *See, e.g.*, *Ramirez*, 887 F.3d at 707 (directing Government "to facilitate Ramirez's return to the United States" from El Salvador); *Gordon v. Barr*, 965 F.3d 252, 261 (4th Cir. 2020) (similar); *Nunez-Vasquez v. Barr*, 965 F.3d 272, 287 (4th Cir. 2020) (directing Government "to return Nunez-Vasquez to the United States"); *Orabi v. Att'y Gen.*, 738 F.3d 535, 543 (3d Cir. 2014) (similar). The Government

returns "wrongfully removed migrants as a matter of course." SA153; *see Nken*, 556 U.S. at 435 (discussing how removed individuals "can be afforded effective relief by facilitation of their return"); *Lopez-Sorto v. Garland*, 103 F.4th 242, 249-53 (4th Cir. 2024) (discussing ICE policy to facilitate returns).

This Court ruled two years ago that if a person removed to El Salvador is later awarded withholding of removal, then "the DHS and the Attorney General should swiftly 'facilitate his return to the United States' from El Salvador." *Garcia v. Garland*, 73 F.4th 219, 234 (4th Cir. 2023) (quoting *Ramirez*, 887 F.3d at 706). Here, Abrego Garcia *already* has been awarded withholding of removal and the Government concedes his removal in violation of that court order was erroneous. By vindicating Abrego Garcia's individual rights consistent with *Ramirez*, *Gordon*, *Nunez-Vasquez*, and *Garcia*, the district court acted within its authority.

The Government's "impossibility" argument fares no better. The argument is based on the Government's unsubstantiated assertion (at 9) that "the United States has no control over Abrego Garcia" and that it is as powerless to "effectuate" the return of Abrego Garcia as it is to "effectuate" the "end of the war in Ukraine." That is nonsense.

The Government's assertion that it lacks the ability to retrieve Abrego Garcia is unsupported by any record evidence, as the Government *conceded*. The district court asked: "why can't the United States get Mr. Abrego Garcia back"? SA114. The

Government responded: "[W]hen this case landed on my desk, the first thing I did was ask my clients that very question. I've not received, to date, an answer that I find satisfactory." SA114. There is no evidence in the record that supports the assertion that it is impossible for the United States to get Abrego Garcia back. That absence alone dooms the Government's motion.

In fact, the undisputed evidence shows that the Government *can* return Abrego Garcia. SA155. Abrego Garcia is being held in CECOT only because the U.S. Government is paying El Salvador $6 million to hold him (and others) there. SA148-149. As Defendant Kristi Noem, the Secretary of Homeland Security, stated that CECOT is "is one of the tools in *our* [the United States'] toolkit that we will use if you commit crimes against the American people." SA149; SA155. The U.S. Government functionally controls Abrego Garcia's detention—it has simply contracted with El Salvador to be the jailer.[5] As the district court put it: "[Y]ou have an agreement with this facility where you're paying the money to perform a certain service. And so it stands to reason that you can go to the payee and say, we need one of our detainees back." SA127; *see also* SA155 ("[J]ust as in any other contract

[5] ICE routinely pays other governmental entities to hold detainees. *See, e.g.*, U.S. Gov't Accountability Office, *Immigration Detention* (Jan. 2021), https://www.gao.gov/assets/gao-21-149.pdf, at PDF page 2 (showing 59% of ICE detainees housed under an intergovernmental service agreement), cited in SA070.

facility, Defendants can and do maintain the power to secure and transport their detainees, Abrego Garcia included.").

The court offered the Government the opportunity to submit contrary evidence. *E.g.*, SA120. The Government chose not to. Its attorney stated at the hearing: "the government made a choice here to produce no evidence," SA120, and his "clients understand that the absence of evidence speaks for itself," SA128. *See also Robertson v. Jackson*, 972 F.2d 529, 535 (4th Cir. 1992) (rejecting impossibility defense to injunction where Government had not shown impossibility).

The record lacks any evidence that the Government has even *attempted* to seek Abrego Garcia's return. That is the furthest thing from a "strong showing" that the Government is likely to prevail on its impossibility argument.

2. Section 1252(g) Does Not Bar Jurisdiction.

The Government next contends (at 11-13) that 8 U.S.C. §1252(g) bars judicial review of claims challenging the Attorney General's decision to "execute removal orders against any alien under this chapter" (Chapter 12 of Title 8). Section 1252(g) is construed "narrowly," *Bowrin v. INS*, 194 F.3d 483, 488 (4th Cir. 1999) (citing *Reno v. AADC*, 525 U.S. 471, 482 (1999)), and it is inapplicable to removals conducted "not [as] part of Title 8, Chapter 12," *J.G.G. v. Trump*, 2025 WL 914682, at *28 (D.C. Cir. Mar. 26, 2025) (Millett, J., concurring).

The record is devoid of any order to remove Abrego Garcia. SA103 ("I do not have that order. It is not in the record."). "Even more disturbing, the Defendants concede that [they] cannot even produce the documents which reflect *any* authority, lawful or otherwise, to transfer him to El Salvador." SA161. Instead, the record contains an order that *prohibits* the Government from removing Abrego Garcia to El Salvador. SA001-014. Because of that order, the Government conceded below that any removal order "could not be used to send Mr. Abrego Garcia to El Salvador." SA102. Whatever authority the Government purported to be acting under when it removed Abrego Garcia to El Salvador, it was not executing a removal order under Title 8, Chapter 12. SA157.[6] Section 1252(g) is therefore inapplicable. *See Enriquez-Perdomo v. Newman*, 54 F.4th 855, 865 (6th Cir. 2022) (holding §1252(g) inapplicable "when a removal order is not subject to execution").

Even assuming Abrego Garcia's removal was pursuant to the execution of a removal order, §1252(g) would still be inapplicable. Section 1252(g) "strip[s] the federal courts of jurisdiction only to review challenges to the Attorney General's decision to exercise her *discretion* to initiate or prosecute these specific stages in the

[6] The Government asserts (at 12) that "there is no doubt that Abrego Garcia was removed pursuant to that order," but its only support is Plaintiffs' allegation that Defendants "decided to deport Plaintiff Abrego Garcia without following the law." Needless to say, an allegation Abrego Garcia was deported unlawfully does *not* show—and Plaintiffs dispute—that Abrego Garcia was removed pursuant to the execution of a removal order. SA157.

deportation process," including "execut[ing] removal orders." *Bowrin*, 194 F.3d at 488; *see also Madu v. Att'y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006) ("section 1252(g) does not apply" to a challenge raising a non-discretionary bar to removal). Here, the order barring Abrego Garcia's removal to El Salvador was mandatory, not discretionary, so §1252(g) does not apply. SA157-158; *see also Kong v. United States*, 62 F.4th 608, 618 (1st Cir. 2023) (§1252(g) inapplicable where claim did not arise from "discretionary decision to execute removal"); *Arce v. United States*, 899 F.3d 796, 800 (9th Cir. 2018) ("§1252(g) is simply not implicated" when "the Attorney General totally lacks the discretion to effectuate a removal order.").

The cases the Government cites are inapposite. *Johnson v. Guzman Chavez*, 594 U.S. 523 (2021), concerned 8 U.S.C. §§1226 and 1231; it says nothing about §1252(g). In *Camarena v. Director, ICE*, "no one dispute[d] the validity—or the existence—of the petitioners' removal orders." 988 F.3d 1268, 1273 (11th Cir. 2021). So too in *E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021) ("[E.F.L.] does not challenge the legality of her removal order."). And *Silva v. United States*, 866 F.3d 938, 940 (8th Cir. 2017), held that §1252(g) applies to "nondiscretionary" decisions, which is contrary to the law in this Court, *see Bowrin*, 194 F.3d at 488—and in other courts, *e.g.*, *Arce*, 899 F.3d at 801 ("[W]e find the analysis in Judge Kelly's [*Silva*] dissent much more persuasive.").

3. Habeas Does Not Provide The Exclusive Remedy, And, In Any Event, Habeas Relief Is Available.

In a footnote, the Government contends (at 13-14 n.2) that "Plaintiffs' claims sound in habeas, and would have had to have been brought via that exclusive remedy when Abrego Garcia was still within the United States." This Court does "not ordinarily entertain arguments made solely in a footnote," so it can disregard this argument. *United States v. Arbaugh*, 951 F.3d 167, 174 n.2 (4th Cir. 2020).

Nevertheless, Plaintiffs' core claims do not sound in habeas. SA150-152. Plaintiffs have pleaded claims for violations of 8 U.S.C. §1231(b)(3)(A), the Fifth Amendment, and the Administrative Procedure Act, each of which challenges Abrego Garcia's unlawful *removal* from the United States. Add019-023. Those claims do not challenge his *confinement*, and thus do not sound in habeas. SA151. Plaintiffs' fifth claim is a habeas claim, Add023, but it is pleaded in the alternative.

Moreover, the Government is wrong that habeas would be available only if Abrego Garcia "was still within the United States." Habeas can apply beyond the borders of the United States. *Boumediene v. Bush*, 553 U.S. 723 (2008). Here, as explained above in Section I.A.1, the undisputed evidence shows that the U.S. Government retains functional control over Abrego Garcia's detention by virtue of its agreement with El Salvador to house detainees at CECOT. SA151-152. That suffices for habeas jurisdiction. *See Abu Ali v. Ashcroft*, 350 F. Supp. 2d 28, 45-51 (D.D.C. 2004) (holding federal habeas jurisdiction exists for an individual detained

in Saudi Arabia at the behest of U.S. officials). Where, as here, a detainee is "held in federal detention in a non-federal facility pursuant to a contract," the detainee "should sue the federal official most directly responsible for overseeing that contract facility when seeking a habeas writ," *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1185 (N.D. Cal. 2017), or "the head of the agency in charge of interpreting and executing the immigration laws," *Jarpa v. Mumford*, 211 F. Supp. 3d 706, 724 (D. Md. 2016). That is what Plaintiffs have done. The Government's habeas arguments are unlikely to succeed.

B. The Government Does Not Show Irreparable Harm.

One of the two "most critical" *Nken* factors is "whether the applicant will be irreparably injured absent a stay." 556 U.S. at 434. Remarkably, the Government's motion does not argue that it will suffer irreparable harm without a stay. Its only references to irreparable injury are on pages 8-9, when it lists the *Nken* factors, and on pages 15 and 17, when it challenges the irreparable harms that Abrego Garcia will face without injunctive relief. The Government's failure to argue that it will be irreparably injured absent a stay is enough, by itself, to deny the stay motion. *See KalshiEX LLC v. CFTC*, 119 F.4th 58, 64 (D.C. Cir. 2024) (denying Government's motion for stay pending appeal "because a showing of irreparable harm is a necessary prerequisite for a stay"); *Doe #1 v. Trump*, 957 F.3d 1050, 1061 (9th Cir.

2020) ("[I]f a stay applicant cannot show irreparable harm, a stay may not issue, regardless of the petitioner's proof regarding the other stay factors.") (cleaned up).

Nor could the Government show irreparable harm here. The Government has conceded that Abrego Garcia "should not have been removed." SA098. Directing the Government to undo its error by bringing Abrego Garcia back is no injury at all, let alone injure irreparable injury.

To the extent the Government contends that the district court's order irreparably injures it by violating the separation of powers, that just repeats its jurisdictional argument. As previously explained, the court's order is consistent with this Court's well-established caselaw directing the Government to return, or facilitate the return, of wrongly removed individuals, and therefore such an order does not irreparably injure the Government. *See, e.g.*, *Ramirez*, 887 F.3d at 707.

C. A Stay Would Substantially Injure Plaintiff Abrego Garcia.

Even as the Government is silent about any irreparable harm it faces, it chides Abrego Garcia (at 15) for supposedly failing to offer any "irreparable harm that would justify this injunction." But the third *Nken* factor examines whether the stay will "substantially injure the other parties," not whether it will "irreparably" injure them. *See Nken*, 556 U.S. at 434.

In any event, as the district court found, Abrego Garcia's "continued presence in El Salvador … constitutes irreparable harm" to *him*. Add002; SA163-64. As the

immigration judge found when granting Abrego Garcia withholding of removal, Abrego Garcia faces "a clear probability of future persecution" in El Salvador. SA008. The Government defied that order by removing Abrego Garcia to El Salvador, in violation of his statutory and due process rights. SA160-162; SA104 ("We have nothing to say on the merits. We concede he should not have been removed to El Salvador."). "It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

More pressingly, Abrego Garcia is incarcerated in CECOT, "one of the most dangerous prisons in the Western Hemisphere," SA145, where he is subject to "some of the most inhumane and squalid conditions known in any carceral system." SA148. Detainees in CECOT face "the risk of torture, beatings, and even death," which "clearly and unequivocally supports a finding of irreparable harm." *J.G.G. v. Trump*, 2025 WL 890401, at *16 (D.D.C. Mar. 24, 2025). As the district court found, "the risk of harm shocks the conscience." SA163.

D. The Public Interest Favors Denying A Stay.

Finally, the public interest weighs heavily against a stay. The Supreme Court recognized in *Nken* that "there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face

substantial harm." 556 U.S. at 436. That is the exact situation Abrego Garcia is in: the immigration judge ordered withholding of removal precisely because Abrego Garcia faces persecution in El Salvador, SA008; SA013. Thus, as the district court found, "the balance of equities and the public interest weigh in favor of returning him to the United States." Add002; SA164-165.

In addition, "the public undoubtedly has an interest in seeing its governmental institutions follow the law." *Vitkus v. Blinken*, 79 F.4th 352, 368 (4th Cir. 2023) (cleaned up). The Government must follow the orders of its immigration courts, or such orders and courts become meaningless. When, as here, the Government admitted error, the public interest lies in correcting that error, not prolonging it.

The Government asserts (at 16) that the immigration judge's order finding that Abrego Garcia faces persecution in El Salvador is "dubious" and "untenable." But the Government did not even appeal it and that order remains valid and binding. SA001. As the Government concedes (at 16-17), it has procedures available to it to seek to reopen the immigration judge's order, but "the Government did not avail itself of that procedure in this case."

The Government now argues (at 14-17) that the public interest favors a stay because it asserts that Abrego Garcia is a member of the violent MS-13 gang. Below, the Government "did not assert … that Abrego Garcia was an 'enemy combatant,' an 'alien enemy' under the Alien Enemies Act, … or removable based on MS-13's

recent designation as a Foreign Terrorist Organization." SA145 n.2. And the Government "offered no evidence linking Abrego Garcia to MS-13 or to any terrorist activity." SA145 n.2. The flimsy "evidence" of gang membership from a bail hearing—a Bulls hat, hoodie, and anonymous tip that Abrego Garcia had purportedly participated in gang activity in a place he never visited, SA146 n.5—*preceded* the immigration judge's finding that voluminous evidence and testimony warranted granting withholding of removal in 2019. Indeed, Abrego Garcia has never been charged with or convicted of any crime. SA147; SA018; SA021.

More fundamentally, the issue in this case is improper *removal*, not *detention*. Once Abrego Garcia is returned to the United States, the Government may seek to challenge the withholding of removal, *see* 8 C.F.R. §1208.24(f), and an immigration court would determine whether Abrego Garcia should be detained pending such proceedings, *see* 8 U.S.C. §1226(a). That is the forum—not this Court—for adjudicating the Government's attacks on Abrego Garcia.

II. THE COURT SHOULD DENY AN ADMINISTRATIVE STAY.

The "point" of an administrative stay is "to minimize harm while an appellate court deliberates, so the choice to issue an administrative stay reflects a first-blush judgment about the relative consequences of staying the lower court judgment versus allowing it to go into effect." *United States v. Texas*, 144 S. Ct. 797, 798 (2024)

(Barrett, J., concurring in the denial of applications for stay). The *Nken* factors "can influence the stopgap decision, even if they do not control it." *Id.* at 799.

Here, the path to minimize harm is to deny an administrative stay. Every moment Abrego Garcia remains in El Salvador constitutes "irreparable harm" to him. Add002; SA163-164. An administrative stay that prolongs his time in El Salvador will *inflict*, rather than *minimize*, harm. Detainees in CECOT face "the risk of torture, beatings, and even death," *J.G.G.*, 2025 WL 890401, at *16, while being "denied communication with their relatives and lawyers," Add025. The Government identifies no countervailing harm at all, let alone sufficient harm to outweigh the grave and irreparable harm Abrego Garcia suffers daily. These reasons to deny an administrative stay are bolstered by the *Nken* factors, which, cut decisively against any stay. *See also Zayre-Brown v. N.C. Dep't of Adult Corrections*, 2024 WL 3534690, at *1 (4th Cir. July 25, 2024) (denying administrative stay).

CONCLUSION

The Court should deny the stay motion.

Dated: April 6, 2025

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CERTIFICATE OF COMPLIANCE

1. This brief complies with type-volume limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because, excluding the parts of the document exempted by Federal Rule of Appellate Procedure 32(f), this brief contains 5178 words.

2. This brief complies with the typeface and type style requirements of Federal Rule of Appellate Procedure 32(a)(5)-(6) because it has been prepared in a proportionally spaced typeface (14-point Times New Roman) using Microsoft Word 365.

Dated: April 6, 2025

/s/ Jonathan G. Cooper
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Case No. 25-1345

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

KILMAR ARMANDO ABREGO GARCIA, ET AL.,
Plaintiffs-Appellees,

v.

KRISTI NOEM, ET AL.,
Defendants-Appellants.

On Appeal from the U.S. District Court
for the District of Maryland
Case No. 8:25-CV-00951-PX

PLAINTIFFS' SUPPLEMENTAL RECORD MATERIALS

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UNITED STATES DEPARTMENT OF JUSTICE
EXECUTIVE OFFICE FOR IMMIGRATION REVIEW
UNITED STATES IMMIGRATION COURT
BALTIMORE, MARYLAND

IN THE MATTER OF:	)	**IN REMOVAL PROCEEDINGS**
Kilmar Armando ABREGO-GARCIA	)	**File #A 201-577-119**
RESPONDENT	)	

INDIVIDUAL HEARING DATE:	August 9 and September 27, 2019
CHARGE:	Section 212(a)(6)(A)(i) of the Immigration and Nationality Act ("INA" or the "Act"), as amended, in that the Respondent is an alien present in the United States without being admitted or paroled, or who arrived in the United States at any time or place other than as designated by the Attorney General.
APPLICATIONS:	INA § 208, Asylum; INA § 241(b)(3), Withholding of Removal; Protection Under Article 3 of the Convention Against Torture.

APPEARANCES

ON BEHALF OF RESPONDENT
Lucia Curiel
Khatia Mikadze

ON BEHALF OF THE DHS
Amy Donze-Sanchez

MEMORANDUM OF DECISION AND ORDER

I. Procedural History

The Respondent is a native and citizen of El Salvador. The Department of Homeland Security ("DHS") issued the Respondent a Notice to Appear ("NTA") on March 29, 2019 which alleged that the Respondent: (1) is not a citizen or national of the United States; (2) is a native and citizen of El Salvador; (3) entered the United States at or near an unknown place on or about an

unknown date; and (4) was not then admitted or paroled after inspection by an immigration officer.

At a Master Calendar Hearing the Respondent, through counsel, admitted the factual allegations contained in the NTA and conceded removability as charged. Based on the Respondent's admissions and concessions, the Court found his removability to be established by clear and convincing evidence as required by INA § 240(c)(3). *See also Woodby v. INS*, 385 U.S. 276 (1966). As relief from removal, the Respondent filed a Form I-589, Application for Asylum, Withholding of Removal, and Relief under Article 3 of the Convention Against Torture ("CAT"). The Respondent and his wife both testified in support of the applications. The Court reserved the matter for the issuance of a written decision.

The Court has considered the arguments of both parties and the entire record carefully. The following documentary evidence was considered by the Court and admitted into the record: Exhibit 1, the Notice to Appear; Exhibit 2, the I-213; Exhibit 3, the Respondent's application with all supporting documents; and Exhibit 5, Part A, explanation of the wife's pregnant condition while testifying.[1] All evidence and testimony admitted has been considered, even if not specifically addressed in the decision. Having reviewed the evidence of record and the applicable law, the Court's written decision and order now follow.

II. Testimonial Evidence Presented

A. Respondent

The Respondent is a 24-year old native of El Salvador. He was born in 1995 in Los Nogales neighborhood, San Salvador, El Salvador. The Respondent testified that he fears returning to his country because the Barrio 18 gang was targeting him and threatening him with death because of his family's pupusa[2] business. The Respondent's mother, Cecilia, ran the business out of her home. Although the business had no formal storefront, everyone in the town knew to get their pupusas from "Pupuseria Cecilia." The Respondent's father, brother and two sisters all helped run the family business. The Respondent's job was to go to the grocery store to buy the supplies needed for the pupusas, and then he and his brother would do deliveries four days a week to the people in

[1] Exhibit 4 is a Prince George's County Police Department Gang Field Interview Sheet. It was admitted for the limited purpose of showing that the Respondent was labeled a gang member by law enforcement.

[2] El Salvadorian stuffed tortillas.

the town that ordered pupusas from Cecilia.

At some point, Barrio 18 realized the family was making money from their family business and they began extorting the Respondent's mother, Cecilia. They demanded a regular stipend of "rent" money from the business, beginning with a monthly payment and then requiring weekly payments. The gang threatened to harm the Respondent, his older brother Cesar, and the family in general if their demands were not met. Alternatively, they told Cecelia that if she could not pay the extortion money, she could turn Cesar over to them to become part of their gang. The Abrego family paid the money on a regular basis, whenever they could, and hid Cesar from the gang. On one occasion, the gang came to the family's home and threatened to kill Cesar if the family did not pay the rent. The family responded by sending Cesar to the U.S.

After Cesar left, the gang started recruiting the Respondent. They told Cecilia that she would not have to pay rent any more if she let him join the gang. The mother refused to let this happen. The gang then threatened to kill the Respondent. When the Respondent was around 12-years old, the gang came to the home again, telling Cecilia that they would take him because she wasn't paying money from the family's pupusa business. The Respondent's father prevented the gang from taking the Respondent that day by paying the gang all of the money that they wanted. During the days, the gang would watch the Respondent when he went back and forth to school. The members of the gangs all had many tattoos and always carried weapons.

Eventually, the family had enough and moved from Los Nogales to the 10th of October neighborhood. This town was about 10 minutes away, by car, from Los Nogales. Shortly after the family moved, members of Barrio 18 from Nogales went to the 10th of October and let their fellow gang members know that the family had moved to that neighborhood. Barrio 18 members visited the house demanding the rent money from the pupusa business again. They went to the house twice threatening to rape and kill the Respondent's two sisters and threatening the Respondent. The Respondent's parents were so fearful that they kept the Respondent inside the home as much as possible. Finally, the family decided they had to close the pupusa business and move to another area, Los Andes, about a 15 minute drive from their last residence. Even at this new location, the family kept the Respondent indoors most of the time because of the threats on his life. After four months of living in fear, the Respondent's parents sent the Respondent to the U.S.

Even though the Respondent's father was a former policeman, they family never reported anything to the police regarding the gang extorting the family business. The gang members had

threatened Cecilia, telling her that if she ever reported anything to the police that they would kill the entire family. The family believed them, because they were well aware of the rampant corruption of the police in El Salvador and they believed that if they reported it to the police, the police would do nothing.

At present, even though the family has now shut down the pupusa business, Barrio 18 continues to harass and threaten the Respondent's two sisters and parents in Guatemala. Additionally, they have targeted a brother-in-law who now lives with the family.

B. The Respondent's Wife

The Respondent's wife also testified, but her testimony related to two other particular social groups not reached in this decision.[3]

III. Eligibility for Asylum, Withholding and CAT Relief

A. Asylum

An applicant for asylum bears the burden of establishing that he meets the definition of a refugee under INA § 101(a)(42)(A), which defines a refugee in part as an alien who is unable or unwilling to return to her home country because of persecution, or a well-founded fear of persecution, on account of race, religion, nationality, membership in a particular social group, or political opinion. *Matter of S-P-*, 21 I&N Dec. 486, 489 (BIA 1996); 8 C.F.R. § 1208.13(a); INA § 208(b)(1)(B). The alien's fear of persecution must be country-wide. *Matter of Acosta*, 19 I&N Dec. 211, 235 (BIA 1985). Additionally, the alien must establish that he is unable or unwilling to avail himself of the protection of his country of nationality or last habitual residence. INA § 101(a)(42)(A); *see also Matter of A-B-*, 27 I&N Dec. 316, 325–26 (A.G. 2018). An applicant who establishes statutory eligibility for asylum still bears the burden of demonstrating that he merits a grant of asylum as a matter of discretion. INA § 208(b)(1); *see also INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987).

i. Credibility and Corroboration

An alien bears the evidentiary burden of proof and persuasion in connection with any

[3] The other two particular social groups are: 1) Salvadoran male deportees labeled as MS-13 gang members by U.S. law enforcement; and 2) Immediate family of Jennifer Vasquez (the Respondent's wife.) The Court will not address the alternative claims for relief, as it is not necessary to do so at this time.

asylum application pursuant to section 208 of the Act. 8 C.F.R. § 1208.13(a); *see also Matter of S-M-J-*, 21 I&N Dec. 722, 723 (BIA 1997); *Matter of Acosta*, 19 I&N Dec. 211, 215 (BIA 1985); *Matter of Mogharrabi*, 19 I&N Dec. 439, 446 (BIA 1987). The Board of Immigration Appeals (BIA) has recognized the difficulties an asylum applicant may face in obtaining documentary or other corroborative evidence to support his claim of persecution. *Matter of Dass*, 20 I&N Dec. 120, 124 (BIA 1989). As a result, uncorroborated testimony that is credible, persuasive, and specific may be sufficient to sustain the burden of proof to establish a claim for asylum. *See* INA § 208(b)(1)(B)(ii); 8 C.F.R. § 1208.13(a); *Matter of Mogharrabi*, at 445. However, where it is reasonable to expect corroborating evidence for certain alleged facts, such evidence must be provided as long as the applicant has the evidence or can reasonably obtain it. *Matter of S-M-J-*, 21 I&N Dec. at 725. The absence of such corroboration may lead to a finding that an applicant has failed to meet his burden of proof. *Id.* at 725–26. The immigration judge must provide the applicant an opportunity to explain the lack of corroborating evidence and ensure that the applicant's explanation is included in the record. *See id.*; *Lin-Jian v. Gonzales*, 489 F.3d 182, 192 (4th Cir. 2007). The Board has made clear that an asylum applicant cannot meet his burden of proof by "general and vague" testimony, and "the weaker an alien's testimony, the greater the need for corroborative evidence." *Matter of Y-B-*, 21 I&N Dec. 1136, 1139 (BIA 1998).

In the instant matter, the Respondent provided credible responses to the questions asked. His testimony was internally consistent, externally consistent with his asylum application and other documents, and appeared free of embellishment. Further, he provided substantial documentation buttressing his claims. Included in this evidence were several affidavits from family members that described the family's pupusa business, and the threats by Barrio 18 to the various family members—in particular the Respondent—over the years. The court finds the Respondent credible. This finding is applicable to his other two claims as well (withholding under the Act and CAT protection).

ii. One-Year Filing Deadline

Under INA § 208(a)(2)(B), an applicant for asylum must demonstrate by clear and convincing evidence that the application has been filed within one year after the date of the alien's arrival in the United States. Following the *Mendez Rojas v. Johnson* case (305 F. Supp. 3d 1176 (W.D. Wash., Mar. 29, 2018)), in a joint stay agreement, the Government agreed to treat pending

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asylum applications by four classes of applicants as though filed within one year of arrival.[4] *See* 305 F. Supp. 3d at 1179. Members of Class A.II are individuals in removal proceedings who have been released from DHS custody after having been found to possess a credible fear of persecution, did not receive notice from the DHS of the one-year deadline, and filed an untimely asylum application. *See id.* Members of Class B.II are individuals in removal proceedings who express a fear of return to their country of origin, were released from DHS custody without a credible fear determination, did not receive notice from the DHS of the one-year deadline, and filed an untimely asylum application. *See id.*

Here, the Respondent's asylum application is time-barred without exception. INA § 208(a)(2)(B); 8 C.F.R. § 1208.4(a)(2). The Respondent testified that he entered the U.S. in 2012. However, he did not file his application for asylum until after he was detained in August 2019, seven years after his entry into the U.S. and well-beyond the one-year filing deadline. *See* Exh. 3. He has shown no changed or extraordinary circumstances that would entitle him to relief from the one-year bar. See 8 C.F.R. § 1208.4(a)(4) and (5). Based on the foregoing, the Respondent's application for asylum is time-barred and must be denied. We turn next to withholding of removal under the Act.

B. Withholding of Removal Pursuant to INA § 241(b)(3)

Withholding of removal, in contrast to asylum, confers only the right not to be deported to a particular country rather than the right to remain in the U.S. *INS v. Aguirre-Aguirre*, 526 U.S. 415 (1999). To establish eligibility for withholding of removal, a respondent must show that there is a clear probability of persecution in the country designated for removal on account of race, religion, nationality, membership in a particular social group, or political opinion. *INS v. Stevic*, 467 U.S. 407 (1984). Such a showing requires that the respondent establish that it is more likely than not (i.e., a clear probability) that the alien would be subject to persecution if returned to the country from which the alien seeks withholding of removal. *INS v. Cardoza-Fonseca*, 480 U.S. 421, 423 (1987). The standard for withholding of removal is thus more stringent than the standard for asylum. *Stevic*, 467 U.S. at 429-430. Under the withholding of removal regulations at 8 C.F.R. § 1208.16(b)(1), however, if an applicant has suffered past persecution, then there is a presumption that the applicant's life or freedom would be threatened in the future in the country of removal.

[4] Classes A.I and B.I apply only to individuals who are not in removal proceedings. *See Mendez Rojas*, 305 F. Supp. 3d at 1179.

i. Past Persecution

Persecution has been interpreted to include serious threats to an individual's life or freedom, or the infliction of significant harm on the applicant. *See Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985); *Li v. Gonzales*, 405 F.3d 171 (4th Cir. 2005). Persecution is generally assessed cumulatively, and relevant incidents are not to be evaluated in isolation. *See Baharon v. Holder*, 588 F.3d 228 (4th Cir. 2009). A death threat qualifies as persecution. *See Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011). Extortion may constitute persecution, even if physical harm will be inflicted only upon failure to pay. *Oliva v. Lynch*, 807 F.3d 53 (4th Cir. 2015).

The Respondent suffered past persecution as he was threatened with death on more than one occasion. Therefore, DHS bears the burden of establishing "a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds" or that "[t]he applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so." *See* 8 C.F.R. § 1208.16(b)(1).

The "one central reason" standard that applies to asylum applications pursuant to section 208(b)(1)(B)(i) of the Immigration and Nationality Act, 8 U.S.C. § 1158(b)(1)(B)(i) (2006), also applies to applications for withholding of removal under section 241(b)(3)(A) of the Act, 8 U.S.C. § 1231(b)(3)(A) (2006). *Matter of C-T-L-*, 25 I&N Dec. 341 (BIA 2010). An applicant must demonstrate that a statutorily protected ground would be "at least one central reason" for the feared persecution. *See* INA § 208(b)(1)(B)(i); *Matter of J-B-N- & S-M-*, 24 I&N Dec. 208 (BIA 2007) (holding that in a mixed motive asylum case, an applicant must prove that race, religion, nationality, membership in a particular social group, or political opinion was or will be at least one central reason for the claimed persecution). An alien need not show that a statutorily protected ground would be the central reason or even a dominant central reason, but rather must show that such a ground was more than an "incidental, tangential, superficial or subordinate" reason for the past persecution or feared future persecution. *Matter of J-B-N- & S-M-*, 24 I&N Dec. at 214; *see also Crespin-Valladares v. Holder*, 632 F.3d 117 (4th Cir. 2011); *Quinteros-Mendoza v. Holder*, 556 F.3d 159, 164 (4th Cir. 2009). Persecution may be on account of multiple central reasons or intertwined reasons, and the full factual context must be taken into account when analyzing nexus. *Oliva v. Lynch*, 807 F.3d 53 (4th Cir. 2015).

ii. Well-Founded Fear of Future Persecution and Internal Relocation

Based on the above, the Respondent has demonstrated the he was subject to past persecution on account of a statutorily protected ground. He is entitled to the presumption under the regulations that he would have a clear probability of future persecution on account of a protected ground. Given his testimony and other evidence concerning official corruption and other abuses, he has demonstrated that authorities were and would be unable or unwilling to protect him from past or feared future persecution. Given country conditions and the Respondent's inability to avoid the threat through internal relocation, the Respondent could not necessarily avoid the threat through internal relocation, nor would it be reasonable to expect him to do so. DHS has failed to carry their burden to show that there are changed circumstances in Guatemala that would result in the Respondent's life not being threatened, or that internal relocation is possible and reasonable. The facts here show that the Barrio 18 gang continues to threaten and harass the Abrego family over these several years, and does so even though the family has moved three times.[5]

iii. Nexus to a Protected Ground

To be cognizable under the statute, members of a "particular social group" must share a "common immutable characteristic," which may be an innate characteristic or a shared past experience. *Matter of A-B-*, 27 I&N Dec. 316 (A.G. 2018). In either case, it must be a characteristic that members of the group either cannot change or should not be required to change. To constitute a "particular social group" under the statute, the group must be (1) composed of members who share a common immutable characteristic, (2) defined with particularity, and (3) socially distinct within the society in question. *See Matter of A-B-*, 27 I&N Dec. 316 (married women in Guatemala who are unable to leave their relationships do not constitute a particular social group); *Matter of W-G-R-*, 26 I&N Dec. 208 (BIA 2014) (former members of Mara 18 gang in El Salvador who renounced gang membership do not constitute a particular social group); *Matter of M-E-V-G-*, 26 I&N Dec. 227 (BIA 2014); *Matter of C-A-*, 23 I&N Dec. 951 (BIA 2006) (former noncriminal drug informants do not present a cognizable social group); *Matter of Acosta*, 19 I&N Dec. 211 (BIA 1985).

Under well-established Fourth Circuit precedent, family ties may provide the basis for a

[5] The court understands that the family's moves have been only 15 minutes away each time. However, DHS has failed to show that internal relocation is not only possible, but reasonable to expect the Respondent to so relocate.

cognizable particular social group under the INA. *See, e.g., Crespin-Valladares v. Holder*, 632 F.3d 117, 124-126 (4th Cir. 2011) ("we can conceive of few groups more readily identifiable than the family"); *Hernandez-Avalos v. Lynch,* 784 F.3d 944, 949 (4th Cir. 2015) ("membership in a nuclear family qualifies as a protected ground for asylum purposes"); *Cruz v. Sessions*, 853 F.3d 122, 127 (4th Cir. 2017) ("by virtue of her domestic partnership with Martinez, Cantillano Cruz was a member of a cognizable particular social group, namely, 'the nuclear family of Johnny Martinez'"), *Salgado-Sosa v. Sessions*, 882 F.3d 451, 457 (4th Cir. 2018) ("Salgado-Sosa's family qualifies as a 'particular social group,' protected for purposes of his asylum and withholding of removal claims"). Neither those who resist recruitment efforts by gangs nor their family members generally constitute a particular social group under the INA, nor do such bases amount to political opinion. *See Matter of S-E-G-*, 24 I&N Dec. 579 (BIA 2008); *see also INS v. Elias-Zacarias*, 502 U.S. 478 (1992) (forced recruitment or attempts to forcibly recruit into a guerrilla organization does not necessarily constitute persecution on account of political opinion). Membership or perceived membership in a criminal gang also does not constitute membership in a particular social group under the INA. *See Matter of E-A-G-*, 24 I&N Dec. 591 (BIA 2008); *see also Lizama v. Holder,* 629 F.3d 440 (4th Cir. 2011) (claimed particular social group of "young, Americanized, well-off Salvadoran male deportees with criminal histories who oppose gangs" not cognizable under the INA). At the same time, the BIA has noted that social group determinations are made on a case by case basis. *Matter of M-E-V-G-*, 26 I&N Dec. 227.

Ascertaining whether membership in a family-based social group is at least one central reason for any past or feared future persecution may present challenges, and the Fourth Circuit has encouraged an expansive view of nexus in these cases. *See Hernandez-Avalos v. Lynch,* 784 F.3d 944 (4th Cir. 2015) (mother who refused to allow her son to join a gang was persecuted on account of her membership in the particular social group of his family); *Cruz v. Sessions*, 853 F.3d 122 (4th Cir. 2017) (nexus to family relationship established because wife of murdered man was more likely than others to search for her husband, confront the suspect, and express an intent to go to the police); *Salgado-Sosa v. Sessions*, 882 F.3d 451 (4th Cir. 2018) (nexus found where man fought back when he was in his family's home during attack targeted at stepfather because membership in the family was why the man and not some other person became involved); *but see Velasquez v. Sessions*, 866 F.3d 188 (4th Cir. 2017) (personal dispute among family members may not equate to persecution on account of family group membership); *Matter of A-B-*, 27 I&N Dec. at 338-339;

Cortez-Mendez v. Whitaker, 912 F.3d 205 (4th Cir. 2019) (circumstantial evidence presented did not establish as a factual matter that the respondent's relationship to his father was at least one central reason for his mistreatment by gang members who sought to forcibly recruit him).

The evidence in this case indicates quite clearly that at least one central reason the Respondent was subject to past persecution was due to him being his mothers' son, essentially as a member of his nuclear family. That the Respondent is his mothers' son is the reason why he, and not another person, was threatened with death. He was threatened with death because he was Cecilia's son and the Barrio 18 gang targeted the Respondent to get at the mother and her earnings from the pupusa business. Pursuant to unambiguous and repeated guidance from the Fourth Circuit, the nexus requirement is satisfied in this case. *See generally Hernandez-Avalos v. Lynch,* 784 F.3d at 944; *Cruz v. Sessions*, 853 F.3d at 122; *Salgado-Sosa v. Sessions*, 882 F.3d at 451.

The Court finds that the Respondent's proposed social group, "Immediate Family Members of the Abrego Family," essentially his nuclear family, is cognizable. Membership in this family group is immutable. It is also sufficiently particular, as it is clearly delineated and easy to determine who is and is not in the group, and it is socially distinct.

With respect to social distinction, the immediate family lived in the same home, and his mother ran a pupusa business. Neighbors and others in the community recognized the family as a distinct group that was related, and ran a family business. Everyone knew that Cecilia Abrego was where you purchased your pupusas and that if you could not make it to the family's home, then the Respondent would deliver the pupusas to your house four days a week. As with many other precedential cases involving immediate family members, the proposed social group in this case too satisfies all of the legal requirements for recognition as a cognizable social group. *Cf. Crespin-Valladares v. Holder*, 632 F.3d at 124-126; *Hernandez-Avalos v. Lynch,* 784 F.3d at 949; *Cruz v. Sessions*, 853 F.3d at 127; and *Salgado-Sosa v. Sessions*, 882 F.3d at 457.

This finding—that the Abrego family was socially distinct—does not run afoul of the Attorney General's (AG) recent case, *Matter of L-E-A-*, 27 I&N Dec. 581 (A.G. 2019). In that case, the AG did not bar all family-based social groups from qualifying from relief. *Id.* at 595. Rather, the AG required that "[a]n applicant must establish that his specific family group is defined with sufficient particularity and is socially distinct in his society." *Id.* at 586. This case is a close call. But, the Court finds that the Respondent has established that Cecilia's family pupusa business was well-known in the community and therefore the family was socially distinct in society.

C. Relief from Removal Under CAT

The applicant for withholding of removal under the CAT bears the burden of proving that it is "more likely than not" that he or she would be tortured if removed to the proposed country of removal. 8 C.F.R. § 1208.16(c)(2). An applicant who establishes that he or she is entitled to CAT protection shall be granted withholding of removal unless he is subject to mandatory denial of that relief, in which case he shall be granted deferral of removal. 8 C.F.R. §§ 1208.16(c)(4), 1208.17(a). An applicant is subject to mandatory denial of withholding of removal under the CAT if that individual has participated in the persecution of others, has been convicted of a particularly serious crime, has committed a serious nonpolitical crime outside of the U.S., or is a danger to U.S. national security. Under applicable provisions of law at 8 C.F.R. § 1208.16(d) and INA § 241(b)(3)(B), an alien who has been convicted of an aggravated felony for which the alien was sentenced to an aggregate term of imprisonment of at least five years is considered to have been convicted of a particularly serious crime. That does not preclude other crimes from being considered particularly serious crimes.

"Torture" is defined in the treaty and at 8 C.F.R. § 1208.18(a)(1). It is defined in part as the intentional infliction of severe physical or mental pain or suffering by, or at the instigation of, or with the consent or acquiescence of a public official. Acquiescence of a public official requires that the official have awareness of or remain willfully blind to the activity constituting torture prior to its commission, and thereafter breach his or her legal responsibility to intervene to prevent such activity. *See* 8 C.F.R. § 1208.18(a)(7).

To qualify for protection under the CAT, "specific grounds must exist that indicate the individual would be personally at risk." *Matter of S-V-*, 22 I&N Dec. 1306, 1313 (BIA 2000). The mere existence of a pattern of human rights violations in a particular country does not constitute a sufficient ground for finding that a particular person would be more likely than not to be tortured. *Id.*

In assessing the likelihood of future torture, the Court must consider all evidence relevant to the possibility of future torture, including: evidence of past torture inflicted upon the applicant; evidence that the applicant could relocate to a part of the country of removal where he is not likely to be tortured; evidence of gross, flagrant or mass violations of human rights within the country of removal; or other relevant information of conditions in the country of removal. 8 C.F.R. § 1208.16(c)(3). In order for an alien to meet the burden of proof for relief under the CAT, he or she

must demonstrate that each step in the necessary chain of events is more likely than not to happen. *Matter of J-F-F-*, 23 I&N Dec. 912 (A.G. 2006). Under Fourth Circuit precedent, the risks of torture from all sources must be aggregated when determining whether an individual is more likely than not to be tortured in a particular country. *Rodriguez-Arias v. Whitaker*, 915 F.3d 968 (4th Cir. 2019).

Instances of police brutality do not necessarily rise to the level of torture, nor does the indefinite detention of criminal deportees in substandard conditions. *Matter of J-E-*, 23 I&N Dec. 291, 301-02 (BIA 2002) (indefinite detention of criminal deportees in substandard conditions in Haiti does not constitute torture where there is no evidence that government officials intentionally and deliberately detain deportees under such conditions in order to inflict torture). Abusive or squalid conditions in pretrial detention facilities, prisons, or mental health institutions will not constitute torture when those conditions occur due to neglect, a lack of resources, or insufficient training and education, rather than a specific intent to cause severe pain and suffering. *Matter of J-R-G-P-*, 27 I&N Dec. 482 (BIA 2018).

Torture must come at the hands of the government. *Matter of S-V-*, 22 I&N Dec. at 1311-12. This can include acquiescence of officials provided it meets the conditions set out in the regulations at 8 C.F.R. § 1208.18(a)(7) ("Acquiescence of a public official requires that the public official, prior to the activity constituting torture, have awareness of such activity and thereafter breach his or her legal responsibility to intervene to prevent such activity"). Awareness can include actual knowledge and willful blindness. *See* Senate Exec. Rep. 101-30 at 9 (1990); *see also Matter of S-V-*, 22 I&N Dec. at 1312. In *Matter of S-V-*, the BIA elaborated that a respondent needs to show more than that government officials are aware of the activity and powerless to stop it and needs to show that government officials are willfully accepting of the activity. *Matter of S-V-*, 22 I&N Dec. at 1311-1312. Following *Matter of S-V-*, the Attorney General, in *Matter of Y-L-, A-G-, & R-S-R-*, 23 I&N Dec. 270 (A.G. 2002), elaborated on the definition of acquiescence and indicated that the relevant inquiry is "whether governmental authorities would approve or 'willfully accept' atrocities committed." *Id.* at 283.[6]

The Fourth Circuit has clarified that "willful blindness can satisfy the acquiescence

[6] That decision noted in part that it would not suffice for a respondent to show that isolated, rogue government agents were involved in atrocities despite a government's best efforts to root out misconduct.

component of 8 C.F.R. § 1208.18(a)(1)." *See Suarez-Valenzuela v. Holder*, 714 F.3d 241, 246 (4th Cir. 2013). Pursuant to the willful blindness standard, government officials acquiesce to torture when they have actual knowledge of or turn a blind eye to torture. *Id.* at 245-246.

Decisions regarding an alien's likely future mistreatment are factual determinations subject to review only for clear error; the determination as to whether any such mistreatment constitutes torture as a legal matter is subject to de novo review. *Turkson v. Holder*, 667 F.3d 523 (4th Cir. 2012); *see also Kaplun v. Attorney General*, 602 F.3d 260 (3d Cir. 2010). Whether the government would acquiesce in any future torture is likewise a mixed question of law and fact. *Cruz-Quintanilla v. Whitaker*, 914 F.3d 884 (4th Cir. 2019).

Here, the Respondent has not shown that it is "more likely than not" that he would be tortured if he were to be removed to El Salvador.

IV. Conclusion

The Respondent's application for asylum is time-barred without exception. However, he has established past persecution based on a protected ground, and the presumption of a well-founded fear of future persecution. DHS has not shown there are changed circumstances in Guatemala that would result in the Respondent's life not being threatened, or that internal relocation is possible and reasonable under the circumstances. Therefore, the Respondent's application for withholding under the Act is granted. Finally, his CAT claim fails because he has not shown that he would suffer torture.

ORDER

It is hereby ordered that:

I. the Respondent's application for asylum pursuant to INA § 208 is **DENIED**;

II. the Respondent's application for withholding of removal pursuant to INA § 241(b)(3) is **GRANTED**; and

III. the Respondent's application for withholding of removal under the Convention Against Torture is **DENIED**;

10/10/19
Date

David M. Jones
United States Immigration Judge
Baltimore, Maryland

Appeal Rights

Each party has the right to appeal this Court's decision to the Board of Immigration Appeals. Any appeal must be filed within 30 calendar days of the mailing of this decision. Under the regulations, a notice of appeal must be received by the Board by that deadline. The notice of appeal must also state the reasons for the appeal. *See* 8 C.F.R. § 1240.15.

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AFFIDAVIT OF JENNIFER STEFANIA VASQUEZ SURA

1. My name is Jennifer Stefania Vasquez Sura. I was born on December 20, 1995, in Fairfax, VA. I am a U.S. citizen. I currently reside at 4502 Beltsville, MD, 20705. I am married to Kilmar Armando Abrego Garcia, who was born on July 26, 1995, in El Salvador. Kilmar was granted humanitarian protection by an immigration judge in October 2019.

2. Kilmar and I have three children together. I had two children from a prior relationship, D.T.V. and X.T.V., and Kilmar and I have one biological child together, A.A.V.. All three of our children have special needs.

3. D.T.V., was born on July 23, 2014, in La Plata, Maryland. She suffers from epilepsy and started having seizures in July 2024.

4. X.T.V, was born on October 26, 2015, in La Plata, Maryland. He was diagnosed with autism.

5. A.A.V., was born on August 11, 2019, in Silver Spring, Maryland. He was also diagnosed with autism.

6. Although having three small children with special needs can be challenging, Kilmar and I love our children and are grateful to be their parents. Having Kilmar as my partner in life and in raising and caring for them has been the greatest blessing to our family.

7. Both Kilmar and I work to support our family and care for our children.

8. I work in the dental field, and Kilmar is a sheet metal worker.

Kilmar's Arrest and Immigration Custody

9. On March 27, 2019, we had an appointment with a perinatal specialist. My pregnancy was considered high-risk because I was born with two uteruses. My condition is called Uterus didelphys. We were excited to learn we were expecting a boy.

10. The following morning, Kilmar was worried about my pregnancy risks and so he drove me and the kids. We dropped off X.T.V at the babysitter and D.T.V at school. He then drove me to work. The plan was for him to look for work during the day and then pick me up when I was done with work.

11. After Kilmar dropped me off, he went to Hyattsville, seeking work in construction. Someone suggested that he go to Home Depot for day labor opportunities.

12. Kilmar would often bring me lunch while I was at work. However, that day, I texted him telling him that I had food. He told me he would have lunch at a nearby buffet restaurant.

13. At the end of my work shift, I texted him asking him to pick me up. I remember seeing that the message was marked as "read," but Kilmar did not respond, which was not like him. I called him, but he did not answer. Shortly after, his phone was turned off.

14. That evening, Kilmar never arrived to pick me up. I had to ask a co-worker for a ride and to pick up my son from daycare. We had to take an Uber home.

15. By 7 p.m., I was frustrated and worried. At 9 p.m., I contacted his friends, and they informed me he had been at Home Depot but was arrested. I called various jails, but no one had information on his whereabouts. The next morning, around 10 a.m., Kilmar called me from ICE custody.

16. I hired a lawyer to get him out on bond. I attended his bond hearing and was shocked when the government said he should stay detained because Kilmar is an MS-13 gang member. Kilmar is not and has never been a gang member. I'm certain of that. Because of these false accusations, he was denied bond. This left me alone to care and provide for our family, while I was very far along in my pregnancy, under extreme stress. I was terrified that he could be deported to El Salvador and our son would not have a father.

Our Marriage in Detention and Our Family's Struggles

17. From the moment Kilmar was detained, my children and I were sad and worried. Kilmar has always been a loving, reliable partner and father. We struggled without him emotionally and economically. By then, we both knew we wanted to build a life together

as husband, but we did not know if he would be deported. Facing that possibility, Kilmar and I both felt getting married in detention might be our only chance to get married, even though it was far from how we ever imagined it.

18. We got married on June 25, 2019, while he was detained. I coordinated with the detention center and a local pastor to officiate our wedding. We were separated by glass and were not allowed physical contact. The officer had to pass our rings to each other. It was heartbreaking not to be able to hug him.

19. Next came his final hearing on August 9, 2019, where it would be decided if he would be granted humanitarian protection or if he would be deported. The hearing lasted over five hours and focused on two things: the false accusations against Kilmar and the risk to Kilmar's life if he was deported to El Salvador. The hearing was continued until September because they could not get through everything.

20. During the first hearing, I began having contractions. Our son, A.A.V., was born two days later on August 11, 2019. It was a complicated C-section. However, A.A.V. was born and I instantly fell in love with him. A.A.V. was born with microtia, a congenital ear deformity. Testing later showed that he is deaf in one ear. Kilmar missed A.A.V.'s birth because he was detained.

21. Throughout his hearings, I testified and so did Kilmar. I testified a lot about Kilmar's character. It was so emotional and unfair. It was so clear that they had absolutely no evidence that Kilmar was ever a gang member, yet they made us prove he was not one. It should be the other way around. Kilmar also testified about difficult things he went through in El Salvador before I met him. He testified about how he was a victim of gang violence in El Salvador when he was a teenager and he came to the U.S. to escape all of that.

22. The judge did not make a decision on his case until October 19, 2019. That day, Kilmar's attorney called and told me the news: Kilmar won his case. She explained that the judge granted him a special status that allows him to stay in the U.S. and makes it illegal to deport him to El Salvador. She told me that he cannot leave the country or he would lose his status.

Kilmar's Release and Family Life

23. When I got the news that he was being released, I rushed to pick him up. It was the first time he held his son. He was emotional, as were our children when they saw him after school.

24. Although our family separation was hard, the love we have for each other and our kids has sustained us. Kilmar appeared to be a little more reserved and he now had a sadness about him that I didn't see before he went into immigration custody.

25. Kilmar resumed working as a sheet metal worker and did everything he could to secure a better future for himself and our family. In September 2024, he secured a job with W.E. Bowers and he began a five-year apprenticeship program to become a licensed journeyman. He was enrolled at the University of Maryland and had classes every other Thursday. The license would allow him to earn better wages.

26. By 18 months old, our son, A.A.V., showed signs of autism. We were placed on a waiting list to be evaluated for autism under our child's health insurance plan, but due to extremely long wait times, Kilmar and I decided to pay for it out of pocket. Even then, there was still a significant wait, but we were able to get A.A.V a much earlier appointment this way and he was formally diagnosed with autism by a pediatric specialist on October 21, 2024.

27. Both of our older children attend school and both have Individualized Education Plans. Both Kilmar and I are active participants in our children's education and development.

28. In August 2024, A.A.V. started to attend a regular school but due to his condition in late October 2024 he was transferred to a special school. Now he is in a special program for children with special needs. When he finishes school, he will receive a completion certificate rather than a high school degree.

29. Kilmar continued to be the supportive, loving, reliable, and law-abiding man I know and love. He was never arrested or accused of a crime. And to my knowledge, he never again was stopped by the police officers that accused him of being a gang member in 2019. We

really believed that the false accusations had been cleared up and that they were behind us.

The Second Arrest and Deportation

30. On Wednesday March 12, 2025, Kilmar was sent to a new job site in Baltimore. After work, he picked up A.A.V. from his mother's house to bring him home. Shortly after he picked up our son, Kilmar called me, saying he was being pulled over. We each share our location with each other and I could see that he was close to home. I told him to put me on speaker when he was talking with the police because he does not feel confident speaking English. He did.

31. Kilmar thought it was a routine traffic stop. He pulled over in an Ikea parking lot and rolled down the window. The person at his window told him to turn off the car and get out. In English, Kilmar told the officer that his son was in the backseat of the car and had special needs. At that point, I heard the officer take Kilmar's phone and hang up.

32. A few minutes later, someone identifying themselves as with the Department of Homeland Security called me back and said that I needed to get there in 10 minutes to pick up my son or they would call child protective services.

33. I arrived within minutes and they flagged me down as if they knew my car. When I arrived, Kilmar was on the curb in handcuffs. They had taken his work boots and his belt off. There were two male officers and a female officer with my child. They claimed his "immigration status had changed" and were taking him away.

34. I put A.A.V in my car seat, who was crying. They asked me if I wanted to say goodbye to Kilmar. Kilmar was crying and I told him he would come back home because he hadn't done anything wrong.

35. A.A.V. has been very distressed since Kilmar has been gone. He is very close to Kilmar and one of the few people A.A.V. trusts. Although he cannot speak, he shows me how much he missed Kilmar. He has been finding Kilmar's work shirts and smelling them, to smell Kilmar's familiar scent. He has been crying and acting out more than usual since

Kilmar was arrested. As an autistic child, he needs stability and patterns. The sudden disappearance of his father is a big change for A.A.V. that makes him very distressed, and makes him act out physically.

36. Kilmar has called me a total of five times since his arrest on March 12, 2025. He called me twice from an immigration facility in Baltimore, twice from Louisiana, and once from Texas.

37. At approximately 9:00 PM the night he was arrested, Kilmar called me from Baltimore. He told me that he was questioned about a past traffic stop and that out of nowhere, they were bringing up the old, false accusations of MS-13 gang membership that we thought were behind us. He said that when they interrogated him about his connections to MS-13 that they asked him about his visits to Don Ramon, a restaurant we frequented as a family, and asked him about a photo they had of him playing basketball with others at a local public court. Kilmar did not understand what was happening or why. He was reassured he would see a judge.

38. Kilmar called me once more from Baltimore, basically saying the same thing. He was being asked the same questions and he would repeat the truth again and again - that he was not in a gang and didn't know anything about any gang members.

39. After that, I started to regularly check the ICE detainee locator. Whenever I would see his name somewhere, I would call that detention center, and I would tell them to give Kilmar the free call he was entitled to and I would ask them why he was there. I was desperate. None of this made any sense. No one would tell me why he was detained.

40. Kilmar called me two more times from Louisiana. Those calls were sad and confusing to us both. Kilmar still had hope that this nightmare would end soon because he was still being told that he would speak with a judge.

41. The final call I received from Kilmar was Saturday morning, March 15, 2025, at approximately 11:00 AM. That call was short and Kilmar's tone was different. He was scared. He was told he was being deported to El Salvador. He was told he was being deported to El Salvador to a super-max prison called "CECOT." He asked me to contact

his mom with all his U.S. immigration paperwork so they can give that to a lawyer in El Salvador.

42. After that, I never heard from Kilmar again.

Aftermath

43. On Sunday, my brother in law, Cesar, texted me a photo of deportees sent to the Salvadoran super-max, CECOT. The photo was part of an article discussing the deportation of alleged Venezuelan gang members without court hearings. It was a group of men bent over on the ground, with their heads down and their arms on their heads. None of their faces were visible. There was one man who had two scars on his head like Kilmar does, and tattoos that looked similar to Kilmar's. I zoomed into get a closer look at the tattoos. My heart sank. It was Kilmar.

44. The ICE detainee locator continued to indicate that Kilmar was at the East Hidalgo Detention Center, but when I called, they told me he was no longer there and could not tell me where he was. They told me to call the number for the Baltimore ICE office provided by the detainee locator website. When I called, the number was disconnected. Now, Kilmar no longer appears in the ICE detainee locator.

45. I keep seeing news footage from El Salvador. These reports are talking about horrible gang members from Venezuela. No one is talking about my husband and the fact that he is not a gang member, has no criminal history, is married to a U.S. citizen and has three special needs U.S. citizen children, and won legal protection in the United States. These reports and articles had some more pictures of CECOT prisoners where Kilmar is photographed. I know its him from his tattoos and his head scars. I also saw a video of him where he is being dragged by prison guards.

46. Nonetheless, Kilmar was with this group in the news. I recognized Kilmar by his hand tattoos and scars on his head. His family also confirmed his detention in El Saldavor, who hired an attorney in El Salvador. Still, we have received no answers from either the U.S. or El Salvador government.

47. This has been a nightmare for my family. My faith in God carries me, but I am exhausted and heartbroken. My children need their father. A.A.V, especially, requires constant care and stability. I need to know when my husband is coming home.

I, **JENNIFER STEFANIA VASQUEZ SURA**, hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowlege.

Jennifer Vasquez
_____
Signature

03 / 23 / 2025
_____
Date

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

Kilmar Armando Abrego Garcia, *et al.*, *Plaintiffs*, v. Kristi Noem, *et al.*, *Defendants.*	Civil Action No. 8:25-cv-00951-PX

PLAINTIFF'S SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF INJUNCTIVE RELIEF

Plaintiff Kilmar Armando Abrego Garcia, by counsel, pursuant to Fed. R. Civ. P. 65(a) and this Court's order of March 25, 2025 (Dkt. No. 8), hereby files this supplemental memorandum in support of his request for injunctive relief (Dkt. No. 6), seeking an order from this Court restraining Defendants from continuing to financially support Plaintiff's further detention in El Salvador and ordering Defendants to request that the Government of El Salvador return Plaintiff to their custody. In support of this motion, Plaintiffs respectfully represent as follows:

Introduction

Plaintiff Kilmar Armando Abrego Garcia ("Mr. Abrego Garcia") won an order from an immigration judge ("IJ") prohibiting his removal to El Salvador, after he established it was more likely than not that he would be persecuted in that country on account of a statutorily protected ground. The government could have chosen to appeal that order, but did not. The government could have chosen to remove Mr. Abrego Garcia to any *other* country on earth, but did not. The government could later have filed a motion to reopen proceedings against Mr. Abrego Garcia and seek to set aside the order of protection, but did not. Instead, the government put Mr. Abrego

Garcia on a plane to El Salvador, seemingly without any pretense of a legal basis whatsoever. Once in El Salvador, that country's government immediately placed Mr. Abrego Garcia into a torture center—one that the U.S. government is reportedly paying the government of El Salvador to operate. This grotesque display of power without law is abhorrent to our entire system of justice, and must not be allowed to stand.

This memorandum is perhaps short, but that is because the legal argument for a judgment in favor of Plaintiff is clear and inescapable. This case may end up raising difficult questions of redressability in a subsequent phase, but a preliminary injunction should issue promptly, ordering Defendants to do the two most basic things that are clearly in their power: request that the government of El Salvador return Plaintiff to Defendants' custody; and cease paying the government of El Salvador to continue to detain Plaintiff in the notorious CECOT torture prison.

Background

On October 10, 2019, at the conclusion of hotly contested removal proceedings before an IJ in Baltimore, Mr. Abrego Garcia won an order granting him withholding of removal, pursuant to Section 241(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3), as to El Salvador. Dkt. No. 1-1 at 14. The government did not appeal. Dkt. No. 1-5 at 2. From October 2020 through January 2, 2024, Mr. Abrego Garcia attended his annual ICE reporting check-in without fail and without incident. Dkt. No. 1-3.

On March 12, 2025, Mr. Abrego Garcia was pulled over by ICE officers while driving his disabled U.S.-citizen son, Plaintiff A.A.V., home from school. Dkt. 1-2 at ¶ 30-34. His U.S.-citizen wife, Plaintiff Vasquez, was called to pick up the child and saw Mr. Abrego Garcia being taken into ICE custody. *Id.* Mr. Abrego Garcia was able to call his wife from ICE custody on five occasions thereafter, *id.* at ¶¶ 36-41. The last call was on March 15, 2015, at 11:00am, in which

Mr. Abrego Garcia told his wife that he was being deported to El Salvador, to a supermax prison called CECOT. *Id.* at ¶ 41. Mr. Abrego Garcia's wife later saw news photographs of her husband in the CECOT prison. *Id.* at ¶ 43-46; Dkt. No. 1-4 (photographs of Mr. Abrego Garcia in the CECOT prison, with Mr. Abrego Garcia circled in red). Since then, Mr. Abrego Garcia has not been able to contact his wife or legal counsel, and his wife and legal counsel have received no factual explanation or legal justification for his removal to El Salvador.

The CECOT prison is a notorious torture chamber. As Judge Boasberg wrote earlier this week in *JGG v. Trump*, declining to vacate a Temporary Restraining Order on behalf of a group of Venezuelan nationals removed to El Salvador on the same airplane as Mr. Abrego Garcia:

> In Salvadoran prisons, deportees are reportedly "highly likely to face immediate and intentional life-threatening harm at the hands of state actors." ECF No. 44-4 (Sarah Bishop Decl.), ¶ 63.
>
> The country's government has boasted that inmates in CECOT "never leave"; indeed, one expert declarant alleges that she does not know of any CECOT inmate who has been released. See ECF No. 44-3 (Juanita Goebertus Decl.), ¶ 3; see also Bishop Decl., ¶ 23 ("[W]e will throw them in prison and they will never get out.") (quoting Nayib Bukele (@nayibbukele), X (May 16, 2023, 7:02 p.m.), https://x.com/nayibbukele/status/1658608915683201030?s=20). Once inmates enter the prisons, moreover, their families are often left in the dark. See Bishop Decl., ¶ 25 ("In a sample of 131 cases, [it was] found that 115 family members of detainees have not received any information about the whereabouts or wellbeing of their detained family members since the day of their capture.").
>
> Plaintiffs offer declarations that inmates are rarely allowed to leave their cells, have no regular access to drinking water or adequate food, sleep standing up because of overcrowding, and are held in cells where they do not see sunlight for days. See Goebertus Decl., ¶¶ 3, 11; Bishop Decl., ¶ 31.
>
> At CECOT specifically, one declarant states that "if the prison were to reach full supposed capacity ..., each prisoner would have less than two feet of space in shared cells ... [which] is less than half the space required for transporting midsized cattle under EU law." Bishop Decl., ¶ 30. Given poor sanitary conditions, Goebertus points out, "tuberculosis, fungal infections, scabies, severe malnutrition[,] and chronic digestive issues [a]re common." Goebertus Decl., ¶ 12.

> Beyond poor living conditions, Salvadoran inmates are, according to evidence presented, often disciplined through beatings and humiliation. One inmate claimed that "police beat prison newcomers with batons …. [W]hen he denied being a gang member, they sent him to a dark basement cell with 320 detainees, where prison guards and other detainees beat him every day. On one occasion, one guard beat him so severely that [he] broke a rib." Id., ¶ 8. Three prior deportees from the United States reported being kicked in the face, neck, abdomen, and testicles, with one requiring "an operation for a ruptured pancreas and spleen." Id., ¶ 17. One inmate reported being forced to "kneel on the ground naked looking downwards for four hours in front of the prison's gate." Id., ¶ 10. That same prisoner also said that he was made to sit in a barrel of ice water as guards questioned him and then forced his head under water so he could not breathe. Id.
>
> One scholar avers that, since March 2022, an estimated 375 detainees have died in Salvadoran prisons. See Bishop Decl., ¶¶ 15, 43. Although the Salvadoran government maintains that all deaths have been natural, others respond that 75% of them "were violent, probably violent, or with suspicions of criminality on account of a common pattern of hematomas caused by beatings, sharp object wounds, and signs of strangulation on the cadavers examined." Id., ¶¶ 44–45. When an inmate is killed, there are also reports that guards "bring the body back into the cells and leave it there until the body start[s] stinking." Id., ¶ 39.

J.G.G. v. Trump, No. CV 25-766 (JEB), 2025 WL 890401, at *16 (D.D.C. Mar. 24, 2025).[1] The few available photographs of Mr. Abrego Garcia's treatment are consistent with this narrative. Dkt. No. 1-4.

Defendants not only knew that Mr. Abrego Garcia would be detained in CECOT upon his arrival in El Salvador, they even told him so. Dkt. 1-2 at ¶ 41. Defendants have celebrated the CECOT detention of Mr. Abrego Garcia and the planeload of Venezuelan nationals whom he accompanied to El Salvador. *See* Ex. A hereto (tweet by Salvadoran president Nayib Bukele noting that "23 MS-13 members wanted by Salvadoran justice" were transferred to CECOT, along with 238 Venezuelan nationals, and stating that "[t]he United States will pay a very low fee for them[.]"; Ex. D hereto (tweet by Defendant Rubio thanking President Bukele for his assistance). On March 26, 2025, one day after the first telephonic hearing in this case, Defendant Noem visited CECOT.

[1] The two declarations cited by Judge Boasberg are attached hereto as Exs. B and C, and their contents are incorporated herein by reference.

Mary Beth Sheridan and Maria Sacchetti, "Noem visits El Salvador prison where deportees are in 'legal limbo,'" *The Washington Post* (March 26, 2025), *available at* https://www.washingtonpost.com/world/2025/03/26/el-salvador-noem-cecot-venezuelans/ (noting that the U.S. government has paid six million dollars to El Salvador to hold 238 Venezuelan nationals, along with 23 Salvadoran nationals accused of being MS-13 members, in CECOT). Defendant Noem was granted a special tour inside the CECOT prison, separated from the prisoners by mere metal bars. *See* "Photos Show Kristi Noem's Visit Through Notorious El Salvador Prison," *Newsweek* (March 26, 2025), Ex. E hereto.

Unfortunately, Secretary Noem did not return to the United States with Mr. Abrego Garcia. He remains in CECOT.

Legal Standard

A preliminary injunction is an "extraordinary remedy" and "shall be granted only if the moving party clearly establishes entitlement to the relief sought." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017) (citations omitted). The Fourth Circuit differentiates between a prohibitory injunction which seeks to maintain the status quo, and a mandatory injunction which seeks to alter the status quo, *see League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 235 (4th Cir. 2014); the latter is disfavored. "We have defined the status quo for this purpose to be the last uncontested status between the parties which preceded the controversy. To be sure, it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions, but such an injunction restores, rather than disturbs, the status quo ante." *Id.* at 236 (internal citations omitted). Since the controversy in this matter arose when Defendants removed Mr. Abrego Garcia from the United States, the "last uncontested status between the parties" was one in which Mr. Abrego Garcia was present in the United States.

A court may issue a preliminary injunction upon notice to the adverse party. Fed. R. Civ. P. 65(a). It is well settled law that "[a] preliminary injunction is an extraordinary remedy never awarded as of right." *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). A movant seeking a preliminary injunction must establish each of the four *Winter* elements: (1) that he is likely to succeed on the merits, (2) that he is likely to suffer irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in his favor, and (4) that an injunction is in the public interest. *Id.* at 20. Demonstrating a likelihood of success does not require a plaintiff to "establish a certainty of success"; instead, the plaintiff "must make a clear showing that he is likely to succeed at trial." *Di Biase v. SPX Corp.*, 872 F.3d 224, 230 (4th Cir. 2017).

Argument

I. Plaintiff is likely to succeed on the merits of this case.

Plaintiff is likely to succeed on the merits of this case, since the government removed him to a country to which the law clearly and indisputably prohibited them from doing so, without observing proper (or indeed any) legal procedures. As the Supreme Court has explained, a noncitizen "may seek statutory withholding under [8 U.S.C.] § 1231(b)(3)(A), which provides that 'the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.'" *Johnson v. Guzman Chavez*, 594 U.S. 523, 530 (2021). Plaintiff Abrego Garcia won just such an order in 2019. Dkt. No. 1-1. "If an alien is granted withholding-only relief, DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated. [8 C.F.R.] §§ 208.22, 1208.22. But because withholding of removal is a form of country specific relief, nothing prevents DHS from removing [the] alien to a third country other than the country to which

removal has been withheld or deferred, [8 C.F.R.] §§ 208.16(f), 1208.16(f); *see also* §§ 208.17(b)(2), 1208.17(b)(2)." *Guzman Chavez*, 594 U.S. at 531-32 (some internal citations omitted). It is clear, therefore, that the Immigration and Nationality Act ("INA") prevented the government from removing Mr. Abrego Garcia to El Salvador.

Nor is it an excuse for the government to protest that Mr. Abrego Garcia is a member of the MS-13 gang (he is not) and therefore a terrorist (he is not) subject to removal outside of removal proceedings pursuant to 8 U.S.C. § 1229a: no proceedings were ever brought against him in the Alien Terrorist Removal Court, 8 U.S.C. § 1532; nor were federal criminal or extradition proceedings ever brought against him.

Finally, this Court need not wade into tricky issues about the centuries-old Alien Enemies Act, 50 U.S.C. § 21 *et seq.*: as a national of El Salvador, Plaintiff is simply not subject to the proclamation against the Venezuelan gang Tren de Aragua, *see* Proclamation, "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua" (March 15, 2025), *available at* https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/, at § 1 ("I proclaim that all ***Venezuelan citizens*** 14 years of age or older who are members of [Tren de Aragua], are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies.") (Emphasis added.)

Plaintiff has brought several viable claims for relief, *inter alia* under the Administrative Procedure Act, 5 U.S.C. § 702. Plaintiff is a "person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action," and is therefore "entitled to judicial review" under the APA. *Id.* His removal represented "final agency action" that is "subject to

judicial review." 5 U.S.C. § 704. Likewise, Plaintiff's procedural due process claim is a viable one. Having been granted withholding of removal Mr. Abrego Garcia—a "person" within the meaning of the Due Process Clause of the Fifth Amendment—had a property and liberty interest in not being removed to El Salvador without observance of legal procedures. *Rusu v. INS*, 296 F.3d 316, 320 (4th Cir. 2002) (deportation proceedings are subject to procedural due process requirements).

For the foregoing reasons, Plaintiff is likely to succeed on the merits of this litigation.

II. Plaintiff is likely to suffer irreparable harm in the absence of preliminary relief.

Although "the burden of removal alone cannot constitute the requisite irreparable injury," *Nken v. Holder*, 556 U.S. 418, 435 (2009), this case presents far more immediate injury than the garden-variety removal case in which "[a]liens 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," *id.*

Mr. Abrego Garcia is suffering irreparable harm with each day that he remains detained in the CECOT torture prison. As Judge Boasberg recently held in *JGG*, "the risk of torture, beatings, and even death clearly and unequivocally supports a finding of irreparable harm." 2025 WL 890401, at *16, citing *United States v. Iowa*, 126 F.4th 1334, 1352 (8th Cir. 2025) (torture); *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (physical abuse).

In addition, all plaintiffs are suffering irreparable harm by virtue of the unlawful family separation without notice. *See* Dkt. No. 1-2 at ¶¶ 35 (noting the distress of Plaintiff A.A.V., Mr. Abrego Garcia's autistic U.S.-citizen child); 47. "Even absent First Amendment injury, family separation alone causes irreparable harm." *Int'l Refugee Assistance Project v. Trump*, 883 F.3d

233, 308 (4th Cir. 2018) (Gregory, C.J., concurring), *vacated on other grounds*, 585 U.S. 1028 (2018).

For these reasons, Plaintiff has made an adequate showing of irreparable harm to justify preliminary injunctive relief under the second *Winter* factor.

III. The balance of equities tips in Plaintiff's favor, and an injunction is in the public interest.

"Once an applicant satisfies the first two factors, the traditional stay inquiry calls for assessing the harm to the opposing party and weighing the public interest. These factors merge when the Government is the opposing party. *Nken*, 556 U.S. at 435.

Here, the balance of equities and the public interest tilt sharply in favor of the issuance of a preliminary injunction. Again, Judge Boasberg: "There is, moreover, a strong public interest in preventing the mistaken deportation of people based on categories they have no right to challenge. *See* [*Nken*, 556 U.S. at 436] ("Of course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm."). The public also has a significant stake in the Government's compliance with the law. *See, e.g.*, *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.")" *JGG*, 2025 WL 890401, at *17.

To the extent Defendants argue danger to the community based on Plaintiff Abrego Garcia's supposed ties to MS-13, again, he has neither been convicted nor charged with any crime. If the government wishes to reinstitute removal proceedings against him, and an immigration judge grants its motion to reopen his order of withholding of removal, he will indeed be subject to detention pursuant to 8 U.S.C. §1226(a), but he will be eligible to seek a bond hearing from an

immigration judge and request release on bond. No evidence weighs against Plaintiff in the balancing of the equities and the public interest.

IV. No jurisdictional bar applies in this case.

Several jurisdictional bars often apply in cases challenging removal under Title 8 of U.S. Code, but none applies in this case. As 8 U.S.C. § 1252(f)(2) provides, "[n]otwithstanding any other provision of law, no court shall enjoin the removal of any alien pursuant to a final order under this section unless the alien shows by clear and convincing evidence that the entry or execution of such order is prohibited as a matter of law." To the extent that this section of law applies since Plaintiff is seeking to be restored to the *ex ante* position he held prior to his removal to El Salvador, the "clear and convincing evidence" standard is easily met here, for the reasons set forth above. Nor does 8 U.S.C. § 1252(g) apply here, since the facts described herein do not represent the Attorney General's "decision or action" to "execute removal orders" against Mr. Abrego Garcia: there was no removal order to execute, and if it was executed, it certainly was not done "under this chapter" (Chapter 12 of Title 8, U.S. Code) as that chapter prohibited such removal. The discretionary bars at 8 U.S.C. § 1252(a)(2)(B) do not apply, as the withholding of removal statute is mandatory and admits of no discretion; the criminal-alien bar, 8 U.S.C. § 1252(a)(2)(C) does not apply where Plaintiff has no criminal conviction. Finally, the zipper clause, 8 U.S.C. § 1252(b)(9), does not apply, because, again, Mr. Abrego Garcia was not removed "under this subchapter." Accordingly, no provision of law strips this Court of jurisdiction to hear and decide this action.

Conclusion

Where the government casts aside laws and the orders of courts, including administrative courts, state power consists solely of the capacity to commit violence. This Court can reassert the

primacy of due process by ordering Defendants to take reasonable steps within their power to (1) request that the government of El Salvador remove Mr. Abrego Garcia from the CECOT torture prison in which Defendants caused him to be placed, and return him to the custody of the United States; and (2) stop compensating the operators of the CECOT torture prison for their continued detention of Mr. Abrego Garcia. A preliminary injunction should issue.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: March 28, 2025

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Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, along with all attachments thereto, to this Court's CM/ECF case management system, which will send a Notice of Electronic Filing (NEF) to all case participants.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: March 28, 2025

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Photos Show Kristi Noem's Visit Through Notorious El Salvador Prison

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News Article | 20

Homeland Security Secretary Kristi Noem visited El Salvador's high-security Terrorism Confinement Center in Tecoluca on Wednesday, where recently deported Venezuelan migrants accused by the Trump administration of gang affiliations are being held.

Photos of her visit showed Noem touring crowded cell blocks, the prison armory, and isolation units within the facility, which has drawn international attention for its harsh conditions. Inmates are shown packed into small cells and are reportedly denied outdoor time and stripped of any form of visitation or rehabilitation programs.

Prisoners stand looking out from their cell as US Secretary of Homeland Security Kristi Noem speaks while touring the Terrorist Confinement Center, in Tecoluca, El Salvador, Wednesday, March 26, 2025. **ASSOCIATED PRESS**

Why It Matters

Noem's visit is part of a broader push by the Trump administration to showcase its crackdown on immigration, particularly against individuals it refers to as the "worst of the worst."

In February, El Salvador President Nayib Bukele agreed to accept deportees from the U.S. of any nationality — even American citizens — offering to hold them in the country's sprawling maximum-security facility known as CECOT, or the Terrorism Confinement Center.

What to Know

The trip comes amid ongoing legal challenges to the administration's use of the Alien Enemies Act of 1798, which President Trump invoked to justify the deportation of Venezuelans he claims are members of the Tren de Aragua gang.

Homeland Security Secretary Kristi Noem tours the Terrorist Confinement Center in Tecoluca, El Salvador, Wednesday, March 26, 2025. **ASSOCIATED PRESS**

On Wednesday, a federal appeals court upheld a block on further deportations under the act, calling into question the legality of the removals. While the Trump administration insists the migrants are threats to national security, it has yet

strongly deny any gang ties. Venezuelan human rights advocates and attorneys representing some of the 30 deportees argue they've been imprisoned without due process, and with no clear path to release.

At the prison, Noem recorded a video statement warning, "If an immigrant commits a crime, this is one of the consequences you could face... You will be removed and you will be prosecuted."

READ MORE El Salvador

Yunseo Chung Speaks Out After Judge Blocks ICE Deporting Columbia Student

Man Selling Fake Social Security Cards Arrested by ICE

Deported Venezuelans Told to Sign Papers Admitting Gang Membership: Filing

How Judge James Boasberg Might Handle Trump Admin Lawyers

A prisoner stands shackled against a wall as Homeland Security Secretary Kristi Noem tours the Terrorist Confinement Center in Tecoluca, El Salvador, Wednesday, March 26, 2025. **ASSOCIATED PRESS**

She emphasized the administration's intent to expand deportation efforts in partnership with El Salvador, with Homeland Security stating she would discuss increasing deportation flights with Salvadoran President Nayib Bukele. The prison, opened in 2023 as part of Bukele's crackdown on gangs, can house up to 40,000 inmates and is notorious for its lack of legal protections. The deportees, who no longer appear in ICE's online system and have not seen a judge in El Salvador, are effectively in legal limbo.

El Salvador has had no diplomatic relations with Venezuela since 2019, leaving the prisoners without consular support. A video released by Salvadoran authorities showed the men shackled, shaved and dressed in white prison uniforms before being confined.

> I toured the CECOT, El Salvador's Terrorism Confinement Center.
>
> President Trump and I have a clear message to criminal illegal aliens: LEAVE NOW.
>
> If you do not leave, we will hunt you down, arrest you, and you could end up in this El Salvadorian prison.
> pic.twitter.com/OItDqNsFxM

What People Are Saying

Noem posted Wednesday on X, formerly Twitter: "I toured the CECOT, El Salvador's Terrorism Confinement Center.President Trump and I have a clear message to criminal illegal aliens: LEAVE NOW. If you do not leave, we will hunt you down, arrest you, and you could end up in this El Salvadorian prison."

U.S. Secretary of State Marco Rubio at a recent press conference in San Salvador: "Any unlawful immigrant, illegal immigrant in the United States who's a dangerous criminal – MS-13, Tren de Aragua, whatever it may be – he [El Salvador President Nayib Bukelehas] offered his jails so we can send them here and he will put them in his jails".

Bukele in a post on X (formerly Twitter): "We are willing to take in only convicted criminals (including convicted U.S. citizens) into our mega-prison (CECOT) in exchange for a fee. The fee would be relatively low for the U.S. but significant for us, making our entire prison system sustainable."

Manuel Flores, secretary general of El Salvador leftist opposition party Farabundo Martí National Liberation Front, has criticized the plan: "We also have many violent criminals in our country, however, that did not necessarily come here illegally but have been arrested 30 times, 35 times, 41, 42 times ... for murder [and] other heinous charges. I don't want these violent repeat offenders in our country any more than I want illegal aliens from other countries in."

Shackled prisoners stand against a wall as US Homeland Security Secretary Kristi Noem tours the Terrorist Confinement Center (CECOT) in Tecoluca, El Salvador, March 26, 2025. **AFP/GETTY IMAGES**

What Happens Next

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
(Greenbelt Division)

KILMAR ARMANDO ABREGO GARCIA et al.,

Plaintiffs,

v.

KRISTI NOEM, Secretary of Homeland Security, et al.,

Defendants.

Civil No.: 8:25-cv-00951-PX

DEFENDANTS' CORRECTED MEMORANDUM OF LAW IN OPPOSITION TO PLAINTIFFS' EMERGENCY MOTION FOR TEMPORARY RESTRAINING ORDER

Table of Contents

INTRODUCTION

Plaintiffs are a Salvadoran national removed to El Salvador and his two U.S. citizen family members who live in the United States. Compl., ECF No. 1, ¶¶ 4–6. They have sued Defendants, federal officials in their official capacities, seeking declaratory and injunctive relief. *Id.* ¶¶ 7–13; *id.* Request for Relief. The core allegation is that the lead Plaintiff, Abrego Garcia, was removed to El Salvador despite a grant of withholding of removal to that country.

Plaintiffs have moved for a temporary restraining order ("TRO") asking for a prohibitory injunction—an order that Defendants "immediately stop paying compensation to the Government of El Salvador for the detention of Plaintiff Abrego Garcia"—and a mandatory injunction—an order that the federal government "request that the Government of El Salvador return Plaintiff Abrego Garcia to [Defendants'] custody." TRO Mot., ECF No. 6, at 2–3.

This Court should deny the motion because Plaintiffs have not made the requisite showings for a TRO. First, Plaintiffs have not shown they are likely to succeed on the merits of the case. Indeed, they have not shown how this Court has jurisdiction even to issue a TRO in this case. Second, Plaintiffs have not shown a likelihood they will suffer an irreparable injury absent their requested TRO. Finally, Plaintiffs have not shown that the balance of the equities and the public interest weigh in their favor.

STATEMENT OF FACTS[1]

Plaintiff Abrego Garcia is a citizen and native of El Salvador, and his coplaintiffs are his U.S. citizen wife and five-year-old child, who reside in Maryland. Compl. ¶¶ 4–6, 42. Both Abrego Garcia and his wife work full-time to support their family. *Id.* ¶ 44.

In March 2019, Abrego Garcia was served a notice to appear in removal proceedings, charging him as inadmissible as an "alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General." *Id.* ¶¶ 25–29 (quoting 8 U.S.C. § 1182(a)(6)(A)(i)). During a bond hearing, Immigration and Customs Enforcement ("ICE") stated that a confidential informant had advised that Abrego Garcia was an active member of the criminal gang MS-13. *Id.* ¶ 31. Bond was denied. *See id.* ¶¶ 34, 39; *see also* IJ Order, *infra* Ex. A, at 2–3 (finding that Abrego Garcia was a danger to the community); BIA Opinion, *infra* Ex. B, at 1–2 (adopting and affirming IJ Order, specifically finding no clear error in its dangerousness finding).

Abrego Garcia then filed an I-589 application for asylum, withholding of removal, and protection under the United Nations Convention Against Torture. Compl. ¶ 35. Although Abrego Garcia was found removable, the immigration judge granted him withholding of removal to El Salvador in an order dated October 10, 2019. *Id.* ¶ 41.

[1] As alleged in the complaint, except as to the exhibits attached to this memorandum.

Plaintiffs allege that, on March 12, 2025, Abrego Garcia was stopped by ICE officers, who informed him that his immigration status had changed. *Id.* ¶¶ 48–50; *see also* Cerna Decl., *infra* Ex. C, ¶ 11. After being detained, he was questioned about gang affiliations and transferred ultimately to a detention center in Texas. Compl. ¶¶ 53, 56; Cerna Decl. ¶¶ 2, 11. Plaintiffs allege Abrego Garcia was told he would be removed to El Salvador and detained at the CECOT prison there. Compl. ¶¶ 56–57 & n.1.

On March 15, although ICE was aware of his protection from removal to El Salvador, Abrego Garcia was removed to El Salvador because of an administrative error. Cerna Decl. ¶¶ 12–15. On March 16, a news article contained a photograph of individuals entering intake at CECOT. *Id.* ¶ 59. Abrego Garcia's wife identified one of the detainees depicted as her husband based on his tattoos and head scars. *Id.*

Plaintiffs allege, based on a news article, that the federal government "has paid or continues to pay the Government of El Salvador six million dollars in order for the Government of El Salvador to detain" individuals removed there from the United States, "including Plaintiff Abrego Garcia." *Id.* ¶ 65 & n.2.

LEGAL STANDARD

Emergency injunctive relief is an extraordinary remedy requiring "a clear showing that the plaintiff is entitled to relief." *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011) (quoting *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22, (2008)); *Seth v. McDonough*, 461 F. Supp. 3d 242, 257 (D. Md. 2020) ("[T]he standards for a temporary restraining order and a preliminary injunction are the

same." (citing *Int'l Longshoremen's Ass'n, Local 333 v. Int'l Longshoremen's Ass'n, AFL-CIO*, Civil No. 15-813, 2015 WL 1402342, at *1 (D. Md. Mar. 25, 2015))). Plaintiffs' motion asks this Court, "on an incomplete record, [to] order a party to act, or refrain from acting, in a certain way." *Seth*, 461 F. Supp. 3d at 257. Thus, "[t]he danger of a mistake in this setting is substantial." *Id.* (alteration in original) (quoting *Hughes Network Sys., Inc. v. InterDigital Commc'ns Corp.*, 17 F.3d 691, 693 (4th Cir. 1994)). This Court must therefore exercise its discretion with caution. *See id.* This concern is even greater when, as here, the "requested immediate injunctive relief deeply intrudes into the core concerns of the executive branch." *Adams v. Vance*, 570 F.2d 950, 954 (D.C. Cir. 1978); *see also Sampson v. Murray*, 415 U.S. 61, 83–84 (1974) (A court is "quite wrong in routinely applying . . . the traditional standards governing more orthodox 'stays'" in an area to which "the Government has traditionally been granted the widest latitude.").

Additionally, the mandatory preliminary injunctive relief Plaintiffs request "is disfavored, and warranted only in the most extraordinary circumstances." *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994). The standard for obtaining a mandatory injunction is thus "even more searching" than the already "exacting standard of review" for a prohibitory injunction. *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013).

The factors this Court considers, as prescribed by *Winter*, are (1) whether the party seeking the injunction is "likely to succeed on the merits," (2) whether that party is "likely to suffer irreparable harm" absent the injunction, (3) whether "the

balance of hardships tips in [that party's] favor," and (4) whether the "injunction is in the public interest." *Id.* at 320. This Court must ensure that each factor is "satisfied as articulated" before an injunction may issue. *Stinnie v. Holcomb*, 77 F.4th 200, 208 (4th Cir. 2023) (en banc) (quoting *Real Truth About Obama, Inc. v. FEC*, 575 F.3d 342, 347 (4th Cir. 2009), *vacated on other grounds*, 559 U.S. 1089 (2010))). The latter two factors "merge when the Government is the opposing party." *Miranda v. Garland*, 34 F.4th 338, 365 (4th Cir. 2022) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

ARGUMENT

I. Plaintiffs have not made a clear showing that they will likely prevail on the merits.

A. This Court lacks jurisdiction because Abrego Garcia is not in United States custody.

Plaintiffs' claims fall within the historical "core" of the writ of habeas corpus. Because Plaintiffs' claims sound in habeas, they can proceed only in habeas. But because Plaintiffs concede that Abrego Garcia is not in United States custody, this Court cannot hear those claims.

Habeas corpus "is the appropriate remedy to ascertain . . . whether any person is rightfully in confinement or not." *DHS v. Thuraissigiam*, 591 U.S. 103, 117 (2020) (quoting 3 Joseph Story, *Commentaries on the Constitution of the United States* § 1333, p.206 (1833)). Thus, habeas requires as an essential element of jurisdiction that the detainee be in the custody of the United States. *See, e.g.*, *Carafas v. LaVallee*, 391 U.S. 234, 238 & n.9 (1968); *Smith v. Ashcroft*, 295 F.3d 425, 428 (4th Cir. 2002). And a person "is held 'in custody' by the United States

when the United States official charged with his detention has 'the power to produce him.'" *Munaf v. Geren*, 553 U.S. 674, 686 (2008) (quoting *Wales v. Whitney*, 114 U.S. 564, 574 (1885)).

The Supreme Court and Fourth Circuit's case law confirms that core habeas claims like the ones Plaintiffs bring—claims that challenge the authority of the Executive to exercise a power that led to the detention—*must* be brought in habeas. *See, e.g.*, *Nance v. Ward*, 597 U.S. 159, 167 (2022) ("[A]n inmate must proceed in habeas when the relief he seeks would 'necessarily imply the invalidity of his conviction or sentence." (quoting *Heck v. Humphrey*, 512 U.S. 477, 480 (1994))); *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973) (answering in the affirmative the question "whether the specific federal habeas corpus statute, explicitly and historically designed to provide the means for a state prisoner to attack the validity of his confinement, must be understood to be the exclusive remedy available" despite the broad language of 42 U.S.C. § 1983); *Plyler v. Moore*, 129 F.3d 728, 733 (4th Cir. 1997) (explaining that if "an action [i]s one challenging the legality of physical confinement . . . the only proper avenue for relief was a petition for a writ of habeas corpus").

Here, Plaintiffs seek review of the legality of the Executive's restraint of and removal of Abrego Garcia to El Salvador, leading to his present detention there. Compl. ¶ 63 (alleging Defendants "decided to deport Plaintiff Abrego Garcia without following the law"). Plaintiffs make it clear that the ultimate relief they seek is his return to the United States to live at liberty with his family. *Id.* ¶¶ 76–77, 82–83,

88–89, 94–95 (alleging irreparable harm from separation from his family and asking "the Court to immediately order Defendants to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Plaintiff Abrego Garcia to the United States.") Because Plaintiffs seek Abrego Garcia's release from allegedly unlawful detention on the grounds that it was effected illegally, they make a core habeas claim, and they must therefore bring it exclusively in habeas.

But there is no jurisdiction in habeas. Plaintiffs admit—as they must—that the United States does not have custody over Abrego Garcia. They acknowledge that there may be "difficult questions of redressability" in this case, reflecting their recognition that Defendants do not have "the power to produce" Abrego Garcia from CECOT in El Salvador. Mem. Supp. TRO Mot. 2. But even more, they concede that Abrego Garcia is not in Defendants' custody. *Id.* (asking the Court to order Defendants to "request that the government of El Salvador return Plaintiff to Defendants' custody"). Despite their allegations of continued payment for Abrego Garcia's detention, Plaintiffs do not argue that the United States can exercise its will over a foreign sovereign. The most they ask for is a court order that the United States entreat—or even cajole—a close ally in its fight against transnational cartels. This is not "custody" to which the great writ may run. This Court therefore lacks jurisdiction.

And even if the writ were to run to Abrego Garcia's custody in El Salvador, the fact remains that the writ acts not on the detainee but the custodian. 28 U.S.C.

§§ 2242–43. Thus, a custodian with the power to produce Abrego Garcia must be physically within the jurisdiction of this Court for this Court to exercise jurisdiction in habeas. *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). But the only Defendant alleged to be within the physical jurisdiction of this Court is Defendant Nikita Baker. Compl. ¶¶ 3, 10. And no allegation is made that Defendant Baker, the Baltimore Field Office Director for ICE, has the power to produce Abrego Garcia to this Court. *See id.* ¶¶ 3, 10, 63 (containing the only allegations in the complaint about Defendant Baker individually).

B. Plaintiffs cannot show redressability.

Plaintiffs cannot, as they must, show that it is "'likely,' as opposed to merely 'speculative,' that [their alleged] injury will be 'redressed by a favorable decision" in this Court. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992) (quoting *Simon v. E. Ky. Welfare Rights Org.*, 426 U.S. 26, 41–42 (1976)); *see also id.* ("The party invoking federal jurisdiction bears the burden of establishing [redressability]."). A failure to do so means that the "irreducible constitutional minimum" of standing to sue in federal court is not met. *Id.* at 560. This Court thus lacks Article III jurisdiction, for there is no justiciable case or controversy.

When "[t]he existence of one or more of the essential elements of standing 'depends on the unfettered choices made by independent actors not before the courts and whose exercise of broad and legitimate discretion the courts cannot presume either to control or to predict,' . . . it becomes the burden of the plaintiff to adduce facts showing that those choices have been or will be made in such manner as to . . .

permit redressability of injury." *Id.* at 562 (quoting *ASARCO Inc. v. Kadish*, 490 U.S. 605, 615 (1989) (opinion of Kennedy, J.)). Here, "Plaintiffs' injury can only be redressed by [a] foreign nation[] not before the court." *Lin v. United States*, 690 F. App'x 7, 8–9 (D.C. Cir. 2017) (collecting cases) (dismissing claim for declaratory relief for lack of redressability because plaintiffs did not show "that a court ruling invalidating [certain] decrees would likely cause [other nations] to provide relief"). Plaintiffs concede that Abrego Garcia is in the custody of El Salvador, a foreign sovereign over which this Court "has no jurisdiction." TRO Mot. 2. Plaintiffs instead seek orders from this Court directing the United States to obtain Abrego Garcia's release from Salvadoran custody by financial pressure and diplomacy. *Id.* at 2–3. But they have made no showing that such measures are *likely*, not merely speculative, to obtain the ultimate relief they seek—Abrego Garcia's release. There is no showing that any payment made to El Salvador is yet to occur; no showing that El Salvador is likely to release CECOT detainees but for any such payment; no showing that El Salvador is even inclined to consider a request to release a detainee at the United States' request.

Although their motion and supporting memorandum contemplate the futility of this Court's order, Plaintiffs relegate the redressability requirement to a later time. *Id.* at 2 ("If those efforts are unsuccessful, the parties can brief any further remedial steps that may lie within this Court's jurisdiction."); Mem. Supp. TRO Mot., ECF No. 10, at 2 ("This case may end up raising difficult questions of redressability in a subsequent phase, but a preliminary injunction should issue

promptly."). To the contrary—if Plaintiffs cannot clearly show a likelihood of satisfying redressability *now*, they cannot obtain the extraordinary remedy of a TRO. *See Lujan*, 504 U.S. at 561 ("Since they are not mere pleading requirements but rather an indispensable part of the plaintiff's case, each element must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.*, with the manner and degree of evidence required at the successive stages of the litigation."). Even if Plaintiffs could surpass the lighter burden of showing redressability for purposes of pleading, they have not met their higher burden for purposes of preliminary equitable relief.

Because this Court has no power over a foreign sovereign and because Plaintiffs have not clearly shown that enjoining Defendants as Plaintiffs ask will likely redress their injuries, Plaintiffs lack standing for the relief they seek.

C. 8 U.S.C. § 1252(g) deprives this Court of jurisdiction.

This Court lacks jurisdiction to review Defendants' removal of Abrego Garcia. Section 1252(g) deprives district courts of jurisdiction to review "*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 the INA, notwithstanding any other provision of law, except as otherwise provided in § 1252. 8 U.S.C. § 1252(g) (emphasis added). Interpreting this provision, the Supreme Court has held the statute's plain language bars any claim related to conduct falling within one of these three events—commencing proceedings, adjudicating cases, or executing removal orders.

See Reno v. Am.-Arab Anti-Discrimination Comm., 525 U.S. 471, 482 (1999). While section 1252(g) "does not sweep broadly," the provision's "narrow sweep is firm" and this Court cannot "entertain challenges to the enumerated executive branch decisions or actions." *E.F.L. v. Prim*, 986 F.3d 959, 964 (7th Cir. 2021). It "precludes judicial review of 'any' challenge to 'the decision or action by [DHS] to . . . execute removal orders'" which "includes challenges to DHS's 'legal authority' to do so." *Id.* at 965 (alteration in original); *see also Camarena v. Director, ICE*, 988 F.3d 1268, 1273–74 (11th Cir. 2021) ("No matter how [the plaintiffs] characterize their claims, they amount to an attack on the government's execution of their removal orders. That runs afoul of § 1252(g): If we held otherwise, any petitioner could frame his or her claim as an attack on the government's *authority* to execute a removal order rather than its *execution* of a removal order."). And, although authority exists permitting "substantive review of the underlying legal bases for" an execution of an order of removal, that review is limited to whether a removal order exists at all. *Madu v. U.S. Att'y Gen.*, 470 F.3d 1362, 1368 (11th Cir. 2006); *see also Camarena*, 988 F.3d at 1273.

Here, Plaintiffs' claims are challenges to the execution of his removal order, review of those claims is barred in the district courts under § 1252(g). Contrary to their assertion otherwise, *see* Mem. Supp. TRO Mot. 10, they specifically challenge the decision to execute Abrego Garcia's removal order. Compl. ¶ 63 (alleging Defendants "decided to deport Plaintiff Abrego Garcia without following the law"). Their bare assertion that "there was no removal order to execute," Mem. Supp. TRO

Mot. 10, is refuted by their own admission. Mem. Supp. TRO Mot. 1 ("The government could have chosen to remove Mr. Abrego Garcia to any *other* country on earth, but did not."). *See also* Compl., Ex. A, at 2 ("Based on [Abrego Garcia]'s admissions and concessions, the Court found his removability to be established by clear and convincing evidence as required by INA § 240(c)(3)."); *id.* at 14 (granting withholding of removal under INA § 241(b)(3)).

And Plaintiffs' claims for relief fall within the § 1252(g) prohibition because they each raise a challenge "by or on behalf of" Abrego Garcia to the decision to execute his removal order. *See* Compl. ¶¶ 74, 79, 85, 92; *see also Mapoy v. Carroll*, 185 F.3d 224, 228 (4th Cir. 1999) (where basis for claim is denial of stay of removal and continued detention in anticipation of removal, claim arises from decision to execute order of removal); *see also Duron v. Johnson*, 898 F.3d 644, 647–48 (5th Cir. 2018) (court must look at substance of complaint to determine whether claim is "by or on behalf of" alien; complaint of unlawful discrimination against U.S. citizen's alien father, styled as violating U.S. citizens' Fifth Amendment rights, is necessarily claim on behalf of father "to be free of such discrimination").

Here, Plaintiffs' contention that their challenge to the Executive's destination of removal does not fall within § 1252(g) because the destination is illegal under the INA, Mem. Supp. TRO Mot. 10, is circular and proves too much. Under their logic, this Court may assume jurisdiction to decide whether the order is legal, but if the order were determined legal, then jurisdiction would disappear again. Besides the fact that this Court must determine its own jurisdiction before reaching the merits

of a claim, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 101 (1998), if Plaintiffs were correct, then any challenge to the legality of a removal order would avoid § 1252(g) altogether. But Congress added that provision precisely to avoid the "deconstruction, fragmentation, and hence prolongation of removal proceedings," which such an interpretation of § 1252(g) would incentivize. *Reno*, 525 U.S. at 487.

Thus, because Plaintiffs' claims arise from Defendants' decision to execute Abrego Garcia's removal order, those claims cannot be raised in this Court, and preliminary relief cannot issue.[2]

II. Plaintiffs have not clearly shown that irreparable harm is likely without the preliminary relief they seek.

Plaintiffs cannot meet the second *Winter* requirement, either. They point only to two irreparable harms they say they will suffer: the separation of Plaintiffs' family, and the alleged risk that Abrego Garcia will be tortured or killed in CECOT.

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[2] Abrego Garcia should have requested a stay of removal in connection to a motion to reopen directed to the immigration judge, 8 C.F.R. § 1003.23(b)(v), and then filed a petition for review in the Fourth Circuit if the immigration judge (and Board of Immigration Appeals on appeal) ultimately denied reopening. That was Congress's intent—to streamline all matters into review of a final order of removal. *See* 8 U.S.C. § 1252(a)(5) (petition for review exclusive means of judicial review), (b)(9) (judicial review of all questions of law and fact arising from "any action taken . . . to remove an alien from the United States under this subchapter" available only in petition for review); *Shaboyan v. Holder*, 652 F.3d 988, 990–91 (9th Cir. 2010) ("[T]he BIA's order denying Shaboyan's request for a stay would still be reviewable as part of a petition for review stemming from a final order of removal.").

And Plaintiffs could have taken these steps while Abrego Garcia was still in the United States—Plaintiffs allege he was able to talk to his wife by phone multiple times and that, the morning of March 15, he told his wife that there were plans to remove him to El Salvador. Compl. ¶¶ 52–57. Plaintiffs' failure to invoke the appropriate remedy when they had the chance does not mean there was no adequate remedy to review the impending removal action.

Mem. Supp. TRO Mot. 8.[3] But family separation is not an injury of the kind necessary to prevail on this factor in light of the Supreme Court's admonishment not to "routinely apply[] . . . the traditional standards governing more orthodox 'stays'" in an area to which "the Government has traditionally been granted the widest latitude." *Sampson*, 415 U.S. at 83–84.

And Plaintiffs have not clearly shown a likelihood that Abrego Garcia will be tortured or killed in CECOT. Plaintiffs point to little evidence about conditions in CECOT itself (focusing primarily on its capacity for detainees), instead extrapolating from allegations about conditions in different Salvadoran prisons. Goebertus Decl., Ex. B to Mem. Supp. TRO Mot., ¶¶ 2–4; Bishop Decl., Ex. C to Mem. Supp. TRO Mot., ¶¶ 24 & n.17, 30 & n.27. While there may be allegations of abuses in other Salvadoran prisons—very few in relation to the large number of detainees—there is no clear showing that Abrego Garcia himself is likely to be tortured or killed in CECOT.

More fundamentally, this Court should defer to the government's determination that Abrego Garcia will not likely be tortured or killed in El Salvador. "[S]eparation of powers principles . . . preclude the courts from second-guessing the Executive's assessment of the likelihood a detainee will be tortured by a foreign sovereign." *Kiyemba v. Obama*, 561 F.3d 509, 515 (D.C. Cir. 2009). The United States, as a signatory to the Convention Against Torture, is committed not

[3] Notably, Plaintiffs do not contend that Abrego Garcia is threatened by the reason he gave to get withholding of removal—alleged harm from the Barrios 18 gang's extortion of his family's pupusa shop. *See generally* Ex. 1 to Compl.

to return a person to a country where that person is likely to be tortured. *See generally* 8 C.F.R. § 1208.18. And, as one of Plaintiffs' declarants concedes, "El Salvador is a signatory to both the Convention Against Torture and the International Covenant on Civil and Political Rights." Bishop Decl. ¶ 32. Although the government erred in removing Abrego Garcia specifically to El Salvador, the government would not have removed *any* alien to El Salvador for detention in CECOT if it believed that doing so would violate the United States' obligations under the Convention. That judgment is therefore due respect under separation-of-powers principles. *See Kiyemba*, 561 F.3d at 515.

Thus, Plaintiffs cannot show the clear likelihood of irreparable harm necessary to satisfy the second *Winter* factor, especially in light of heightened burden necessitated by the intrusion of Plaintiffs' requested relief on the core of Executive foreign-affairs functions.

III. Plaintiffs have not shown that the balance of the equities and public interest clearly weigh in their favor.

Nor can Plaintiffs prevail on the remaining *Winter* factors. Abrego Garcia is a danger to the community—he is estopped from asserting otherwise—and there is a weighty public interest in ensuring the Executive can implement a unified course of conduct in foreign affairs. These interests tip the balance decisively against the Plaintiffs' asserted interests.

Abrego Garcia is barred from disputing that, as a member of the criminal gang MS-13, he is a danger to the community. This factual finding was made in his bond proceedings before the agency, IJ Order 2–3, and he appealed that finding to

the Board of Immigration Appeals, which affirmed it as not clearly erroneous, BIA Opinion 1–2. Because he did not seek further review of the Board's decision, that decision is a final judgment precluding relitigation of the issues it resolved. *Hagan v. McNallen* (*In re McNallen*), 62 F.3d 619, 624 (4th Cir. 1995) (noting that collateral estoppel may apply to administrative proceedings as well as judicial).

Collateral estoppel applies when "(1) the issue sought to be precluded [was] the same as that involved in the prior action, (2) that issue [was] actually litigated, (3) it [was] determined by a valid and final judgment, and (4) the determination [was] essential to the prior judgment." *Combs v. Richardson*, 838 F.2d 112, 115 (4th Cir. 1988) (quoting *In re Ross*, 602 F.2d 604, 607–08 (3d Cir. 1979)); *see also In re McNallen*, 62 F.3d at 624 (requiring that "the party against whom the prior decision was asserted enjoyed a full and fair opportunity to litigate that issue in an earlier proceedings").

Here, Abrego Garcia cannot now relitigate the finding that he is a danger to the community. That issue was actually litigated and decided in his bond hearing in 2019. IJ Order 2–3 ("Respondent failed to meet his burden of demonstrating that his release from custody would not pose a danger to others, as the evidence shows that he is a verified member of MS-13" and he "has failed to present evidence to rebut that assertion."). He appealed that decision to the appropriate administrative review body, the Board of Immigration Appeals, which adopted and affirmed the immigration judge's "danger ruling" notwithstanding Abrego Garcia's arguments. BIA Opinion 1–2. There is no evidence of further review by the Fourth Circuit, and

the time for such review has passed, so the agency decision is a valid and final judgment. Moreover, because the Board affirmed the immigration judge solely on the ground that Abrego Garcia was a danger to the community, that ground is essential to the judgment. Restatement (Second) of Judgments § 27 cmt. o (Am. L. Inst. 1982). Finally, Abrego Garcia had a full and fair opportunity to litigate the issue. He had the opportunity to give evidence tending to show he was not part of MS-13, which he did not proffer. IJ Order 2–3. And he had sufficient motivation to challenge the finding—he needed to prevail on it to obtain bond pending his removal proceedings. *See* Compl. ¶ 39 (discussing missing the birth of his son because he was detained); *accord* Restatement (Second) of Judgments § 28 cmt. j (discussing unfairness in applying preclusive effect to first judgment when "the amount in controversy in the first action [was] so small in relation to the amount in controversy in the second"). Thus, the finding of Abrego Garcia's danger to the community is conclusive, and he is estopped from challenging it now.

In light of Abrego Garcia's danger to the community, the balance of equities and the public interest tip against an injunction ordering Defendants to orchestrate his return to the United States. Although there is a "public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. at 435, there too is a strong public interest in not importing members of violent transnational gangs into the country. *See id.* at 436 (noting a heightened "interest in prompt removal" if an "alien is particularly dangerous"). And though the danger to the general public may be mitigated if Abrego Garcia were detained upon return to the United States, even

while in detention, gang members may stoke violence against government officials and other detainees. *See* Michael E. Miller, Wash. Post, *"Vying for Control": How MS-13 Uses Violence and Extortion in America's Jails* (Feb. 4, 2018).[4] And detainees may also escape.

Further, as discussed above, an injunction as Plaintiffs request would harm the public interest by preventing the Executive from implementing a unified course of conduct for the United States' foreign affairs. "[M]atters relating 'to the conduct of foreign relations . . . are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference.'" *Hernandez v. Mesa*, 589 U.S. 93, 103–04 (2020) (ellipsis in original) (quoting *Haig v. Agee*, 453 U.S. 280, 292 (1981)). "Between the two political branches, only the Executive has the characteristic of unity at all times," giving him the capability, which the other departments of government lack, "of engaging in the delicate and often secret diplomatic contacts" necessary in foreign affairs. *Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 14–15 (2015). Thus, ordering the Executive to renege on any promise of payment that might exist would threaten the nation's credibility in any future negotiations or allow foreign negotiators to seek to leverage the disunity in foreign policy caused by this Court's order. *See id.*; *cf. Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 381 ("[T]he President's maximum power to persuade rests on his capacity to bargain for the benefits of access to the entire

[4] *Available at* https://www.washingtonpost.com/local/vying-for-control-how-ms-13-uses-violence-and-extortion-in-americas-jails/2018/02/04/c8b8ab92-06c8-11e8-8777-2a059f168dd2_story.html.

national economy without exception for enclaves fenced off willy-nilly by inconsistent political tactics."). And ordering the Executive to request the release of a member of a gang responsible for violence and drug trafficking throughout the Americas threatens the country's national security. Such orders would therefore constitute "unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013).

The heavy interest in the President's primacy in foreign affairs outweigh the interests on the Plaintiffs' side of the scale. Although the Defendants recognize the financial and emotional hardships to Abrego Garcia's family, *see* Compl., Ex. 2, ¶ 47, the public interest in not returning a member of a violent criminal gang to the United States outweighs those individual interests. *See Nken*, 556 U.S. at 436. And to the extent that the Plaintiffs assert a general public interest in not perpetuating unlawful agency action, Mem. Supp. TRO Mot. 9, they have made no showing that the removal of Abrego Garcia to El Salvador was something other than an administrative error, *see* Cerna Decl. ¶¶ 12–15.

Because Plaintiffs have not made a clear showing that a TRO is warranted under these circumstances, their motion should be denied.

CONCLUSION

The motion should be denied.

Respectfully submitted,

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Dated: March 31, 2025

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
Greenbelt Division

Kilmar Armando Abrego Garcia, *et al.*, *Plaintiffs*, v. Kristi Noem, *et al.*, *Defendants.*	Civil Action No. 8:25-cv-00951-PX

REPLY MEMORANDUM IN SUPPORT OF
MOTION FOR PRELIMINARY INJUNCTION

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Introduction

Defendants admit they knew that Plaintiff Kilmar Abrego Garcia won an order from an immigration judge finding that he would more likely than not be persecuted in El Salvador on account of a protected ground, and that this order was never appealed or otherwise set aside. Dkt. 11-3 at ¶¶ 9, 13. They admit that notwithstanding their awareness of this order, *id.* ¶ 13, they arrested Plaintiff, *id.* ¶ 11; transferred him to a staging area for flights to El Salvador, *id.*; and placed his name on a flight manifest to El Salvador, *id.* ¶ 14. In light of these factual concessions, this Court need not accept as true Defendants' conclusory and self-contradictory protestations that the deportation represented "administrative error," "an oversight," and "was carried out in good faith." Id. ¶ 15.

Defendants do not deny that Plaintiff is currently incarcerated in the infamous CECOT jail, they merely quibble over whether his treatment therein rises to the level of torture. Defendants do not deny that they have paid the government of El Salvador millions of dollars to detain Plaintiff and others like him in CECOT, that Defendant Marco Rubio thanked the President of El Salvador on Twitter for detaining Plaintiff in CECOT, and that Defendant Kristi Noem *went inside the CECOT jail* after the filing of this lawsuit yet took no steps to attempt or request to extract Plaintiff therefrom.[1]

Most shockingly, Defendants do not claim to be attempting to seek Plaintiff's return to the United States absent this Court's intervention.[2] This would be a very different case if Defendants

[1] Defendants spend most of their brief seeking to paint Plaintiff as a member of the MS-13 gang, *see* Dkt. 11 at 2, 15-17, a contention which Plaintiff disputes, *see* Dkt. 1 at ¶¶ 19-41 and exhibits cited therein. Plaintiff has been neither charged nor convicted with any crime, *see* Dkt. 1-2, a fact which Defendants do not dispute. In any event, Defendants do not contend that Plaintiff's alleged gang membership gave them legal authority to deport Plaintiff to El Salvador. In addition, although the White House has accused Plaintiff of involvement in human trafficking, Defendants' court filing omits any such scandalous accusation.

[2] This is a new and upsetting development for the Department of Justice. Undersigned counsel has litigated prior cases arising out of erroneous deportations. *See, e.g.*, *Tomas-Ramos v. Hott*, 1:19-cv-01587-AJT-JFA (E.D. Va., filed Dec. 18, 2019) (noncitizen requested Reasonable Fear Interview, but was erroneously removed prior to interview being

came before the court hat in hand, confessing error and assuring the court that remedial steps were underway, and arguing that the Court should not short-circuit measures that were already in process. Instead, Defendants have already washed their hands of Plaintiff, of his U.S.-citizen wife, of his autistic nonverbal five-year-old U.S.-citizen child. Defendants' proposed resolution of this state of affairs, which they caused either intentionally or at best recklessly, is nothing at all.

This is an outrageous set of facts. If Defendants' actions in this case are allowed to remain without redress, then the withholding of removal statute and orders of immigration courts are meaningless, because the government can deport whomever they want, wherever they want, whenever they want, and no court can do anything about it once it's done.

Standard of Review

Defendants seek to paint the injunction requested by Plaintiff as mandatory rather than prohibitive, *see* Dkt. 12-1 at 5, citing *Taylor v. Freeman*, 34 F.3d 266, 270 n.2 (4th Cir. 1994); *Pashby v. Delia*, 709 F.3d 307, 319 (4th Cir. 2013). They fail to respond to Plaintiff's citation to *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014), in which the Fourth Circuit explained that an injunction such as this one, restoring Plaintiff to his "last uncontested status between the parties which preceded the controversy," is considered a prohibitive injunction in the Fourth Circuit. *See also Aggarao v. MOL Ship Mgmt. Co.*, 675 F.3d 355, 378 (4th Cir. 2012) ("The status quo to be preserved by a preliminary injunction, however, is not the circumstances existing at the moment the lawsuit or injunction request was actually filed, but the last uncontested status between the parties which preceded the controversy. To be sure, it is sometimes necessary to require a party who has recently disturbed the status quo to reverse its actions, but . . . such an injunction restores, rather than disturbs, the status quo ante." (Internal

schedule). In prior cases, as soon as they realized a noncitizen had been erroneously deported, DOJ and DHS worked quickly to attempt to return him. Here, they are uninterested in helping unless ordered to do so by this Court.

citations omitted.)). Accordingly, this case—which seeks to restore Plaintiff's status as being physically present in the United States—would be analyzed under the more permissive standard for prohibitive injunctions.

Argument

It is hard for Defendants to argue that Plaintiff is unlikely to succeed on the merits of this case when they admit all the facts that give rise to liability. Defendants' jurisdictional argument cites cases regarding disputed removal orders and challenges to removals under the law; Plaintiff's removal was wildly extrajudicial and undisputedly devoid of any basis in law, so the cited jurisdictional bars do not apply. Irreparable harm does not require a showing of actual torture, and the treatment that Plaintiff is suffering rises to the level of irreparable harm, whether or not it constitutes torture (although it does). Defendants' unsubstantiated belief that Plaintiff is an MS-13 member could well have formed a basis for them to file a motion before the immigration court seeking to set aside his order of protection, but it does not retroactively immunize his blatantly and concededly unlawful deportation to the one country where his removal was prohibited by an order from an immigration judge. Finally, the two things Plaintiff asks this Court to order are well within this Court's power, and Defendants ought not be heard to complain that such simple remedial steps will necessarily be ineffective if they have not attempted any steps whatsoever to remedy their grievous conduct.

I. Defendant's "core habeas" argument makes no sense.

This case was filed as a complaint for injunctive relief. Dkt. 1. Defendants argue that "because Plaintiffs' claims sound in habeas, they can proceed only in habeas. But because Plaintiffs concede that Abrego Garcia is not in United States custody, this Court cannot hear those claims." In other words, since Plaintiff's claims somehow *implicate* detention (because detention

goes hand-in-hand with removal), they should have been brought as habeas claims; but because his claims do not *challenge* current detention, the habeas claims would fail.[3]

This argument makes no sense, and is divorced from the facts of this case and the manner in which the complaint was pled. Plaintiff's core contention in this case is that Defendants *removed him from the United States* without legal justification, not that they *continue to detain him* without legal justification. For example, Plaintiff's first cause of action complains that "Defendants removed Plaintiff Abrego Garcia to El Salvador, the country from which he had been granted withholding of removal, without formally terminating his grant of withholding of removal, thus violating this law." Dkt. 1 at ¶ 74. His second cause of action complains that "Defendants removed Plaintiff Abrego Garcia to El Salvador, the country from which he had been granted withholding of removal, without formally terminating his grant of withholding of removal, thus violating his procedural due process rights under the Fifth Amendment to the U.S. Constitution." *Id.* at ¶ 80. And so on.

The fact that Plaintiff is now detained in the notorious CECOT jail rather than at liberty within El Salvador is relevant to Plaintiff's TRO motion on the irreparable harm prong, but is not relevant to liability on the core claim: Defendants deported him to a prohibited country. Since Plaintiff does not challenge his present confinement by Defendants, most of their case citations are irrelevant. *See, e.g.*, Dkt. 12 at 6 ("Habeas corpus 'is the appropriate remedy to ascertain . . . whether any person is rightfully in confinement or not,'" quoting *DHS v. Thuraissigiam*, 591 U.S. 103, 117 (2020)).

Defendants' citations (Dkt. 12 at 7) to *Nance v. Ward*, *Heck v. Humphrey* and *Preiser v.*

[3] An exception lies under *Smith v. Ashcroft*, 295 F.3d 425 (4th Cir. 2002), recognizing continuous jurisdiction over habeas corpus petitions filed while the Petitioner was still in custody but removed thereafter, as long as legal rights and obligations continue to stem therefrom.

Rodriguez for the principle that a challenge to detention implicating the underlying legal basis for the detention (e.g. a criminal conviction) must only be brought in habeas, are also inapposite here.[4] This case presents no controversy over the underlying legal judgment at issue, the 2019 grant of withholding of removal; both parties agree that was lawfully entered and remains in force. Nor is there a controversy regarding the actual removal by airplane to El Salvador, which both parties agree was not legally authorized. *Preiser* and its progeny are simply not implicated.

In the alternative, but not as Plaintiff's core legal contention, Plaintiff did bring a fifth cause of action under habeas corpus, alleging that he is in the constructive custody of the U.S. government, given that the government of El Salvador is detaining him "at the direct request of Defendants, and at the financial compensation of Defendants." Dkt. 1 at ¶ 98. This cause of action rests on the theory that the government of El Salvador is detaining Plaintiff at the behest of Defendants and subject to financial compensation from Defendants. Such a claim *does* fall within the core of habeas jurisprudence and is a viable claim. *See, e.g.*, *Boumediene v. Bush*, 553 U.S. 723 (2008).[5] ICE frequently contracts with other governmental entities to hold its detainees.[6] Where ICE detainees are held in jails run by other governmental entities, the immediate custodian for purposes of habeas corpus is "the federal official most directly responsible for overseeing that contract facility when seeking a habeas writ." *Saravia v. Sessions*, 280 F. Supp. 3d 1168, 1185 (N.D. Cal. 2017), *aff'd*, 905 F.3d 1137 (9th Cir. 2018); *see also Jarpa v. Mumford*, 211 F. Supp.

[4] Likewise, *Plyler v. Moore*, 129 F.3d 728 (4th Cir. 1997), which held that challenges to the length of confinement are properly brought at habeas petitions, has no bearing on this case.

[5] Plaintiff, who has lived in the United States with a legal work permit for five years after being granted immigration relief, has a stronger claim to access to the writ of habeas corpus than did Guantanamo detainees who had never set foot in the territorial United States.

[6] "ICE primarily uses intergovernmental service agreements (IGSA) to acquire detention space. Officials said IGSAs offer several benefits over contracts, including fewer requirements for documentation or competition." GAO, Report to the Chairman, Committee on Homeland Security, House of Representatives (January 2021), *available at* https://www.gao.gov/assets/gao-21-149.pdf, at 2 (showing 59 percent of ICE detainees housed in a facility operated by another governmental entity).

3d 706, 724 (D. Md. 2016) (where habeas petitioner held in local county jail on ICE contract, "[a]pplying the immediate custodian rule here would yield the 'impractical result' of having the immediate custodian . . . unable to grant the relief requested. Rather, the relief sought can only practically be delivered by the head of the agency in charge of interpreting and executing the immigration laws."); *Wilkinson v. Dotson*, 544 U.S. 74, 92 (2005).

This habeas corpus cause of action is therefore viable, on the theory that the government of El Salvador is acting as the jailer for Defendants pursuant to financial compensation from Defendants, as did the local county jail in *Jarpa*. *See* Dkt. 10-4 (tweet from El Salvador president acknowledging receipt of a "low fee" for detaining Plaintiff; response from Defendant Rubio thanking El Salvador president for same); Mary Beth Sheridan and Maria Sacchetti, "Noem visits El Salvador prison where deportees are in 'legal limbo,'" *The Washington Post* (March 26, 2025), *available at* https://www.washingtonpost.com/world/2025/03/26/el-salvador-noem-cecot-venezuelans/ (noting that the U.S. government has paid six million dollars to El Salvador to hold 238 Venezuelan nationals, along with 23 Salvadoran nationals accused of being MS-13 members—one of whom is Plaintiff—in CECOT). Again, Defendant's memorandum does not deny paying the government of El Salvador to detain Plaintiff in CECOT.

For the foregoing reasons, Plaintiff's complaint for injunctive relief did not need to be filed as a habeas corpus petition, and therefore all of Defendants' caselaw arguing against habeas corpus in the post-deportation context is irrelevant, and the Plaintiff is likely to succeed on the merits; in the alternative, since Plaintiff *did* plead a viable cause of action for habeas corpus, the complaint is likely to succeed on the merits.

II. The jurisdictional bar at 8 U.S.C. § 1252(g) only applies to removals carried out within the immigration laws.

Defendants' argument for application of the jurisdictional bar at 8 U.S.C. § 1252(g)

attempts to improperly frame this case as a "challenge to the legality of a removal order[.]" Dkt. 12 at 14. But all parties agree that Plaintiff's removal was not legal nor pursuant to any removal order. The jurisdictional bar does not apply.

Section 1252(g) covers "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*." (Emphasis added.) But Section 1252(g) does not apply to a removal conducted "not [as] part of Title 8, Chapter 12." *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *28 (D.C. Cir., Mar. 26, 2025) (Millett, J., concurring).

As the District Court explained in *Coyotl v. Kelly*, Section 1252(g) "does not apply to the entire universe of deportation-related claims, but instead 'applies only to three discrete actions that the Attorney General may take: her "decision or action" to "*commence* proceedings, *adjudicate* cases, or *execute* removal orders." There are of course many other decisions or actions that may be part of the deportation process[.]'" 261 F. Supp. 3d 1328, 1340 (quoting *Reno v. AADC*, 525 U.S. 471, 482 (1999). *See also Welch v. Reno*, 2000 WL 1481426, at *1 (D. Md., Sept. 20, 2000) (noting that the Supreme Court in *AADC* "defined the jurisdictional limitations of Section 1252(g) narrowly.").

Defendants argue that notwithstanding Section 1252(g)'s narrow scope, their actions fall within the provision stripping jurisdiction over the Secretary's "decision or action to . . . execute removal orders." Dkt. 11 at 11. But here, *there was no removal order as to El Salvador at all*. Such removal had been withheld. Surely if Defendants had removed Plaintiff to Panama, their Section 1252(g) argument would hold more water, as the parties would be fighting over whether such removal was carried out with observance of proper legal formalities and respect for due process. But here, there is no dispute over "the government's authority to execute a removal order" because

the government claims no such authority; and there was no removal-to-El-Salvador order for Plaintiff to attack. *See also Enriquez-Perdomo v. Newman*, 54 F.4th 855, 865 (6th Cir. 2022) ("Congress' purpose, as articulated in *AADC*, supports our interpretation that 'execute removal orders' contemplates removal orders that are subject to execution. By definition, when a removal order is not subject to execution, government officials have no authority, discretionary or otherwise, to execute it."); *Guerra-Castaneda v. United States*, 656 F. Supp. 3d 356, 362–63 (D. Mass. 2023) ("[T]he government had no authority to execute a removal order with respect to Guerra-Castaneda because there was no extant removal order for it to carry out. . . . The plain meaning of § 1252(g) does not extend to the government's removal of a non-citizen in the face of a court order precluding its authority to do so.").[7] Indeed, Defendants' corrected brief (Dkt. 12 at 12) cites to *Madu v. Attorney General*, 470 F.3d 1362, 1368 (11th Cir. 2006), which agrees that Section 1252(g) does not bar claims challenging deportation without lawful authorization. Defendants' citation to *Camarena v. Director, ICE*, 988 F.3d 1268, 1273–74 (11th Cir. 2021), therefore does not carry the day.

Finally, Defendants' suggestion in fn.2 that Plaintiff was somehow the party responsible to prevent his own removal by filing a motion to reopen and seeking a stay of removal, makes no sense. Plaintiff *had already won the order* barring his removal to El Salvador, there was no reason for him to seek it a second time. The party that was supposed to file a Motion to Reopen—and the party that would have born the burden of proof on such motion—was the government. 8 C.F.R. § 1208.24(f). Had they done this correctly, the parties could have taken the case back to the immigration judge, and then, as the government suggests in its fn.2, to the Board of Immigration

[7] Defendants' citation to *Mapoy v. Carroll*, 185 F.3d 224, 228 (4th Cir. 1999) does not change this outcome, as that case involved a dispute over whether the Board of Immigration Appeals was correct to deny a stay of removal. Here, again, Plaintiff won his case outright within the immigration court system; Defendants, convinced that he was an MS-13 gang member, decided to list him on a flight manifest and then put him on an airplane anyway.

Appeals and then ultimately the Fourth Circuit if necessary. But the government cut off that path by deporting him without lawful process in front of an immigration judge.

For the foregoing reasons, no jurisdictional bar prevents this Court from hearing and deciding Plaintiff's request for emergency injunctive relief.

III. Plaintiff's requested relief could be successful in returning him to the United States.

Plaintiff has requested that this Court order Defendants to request his return from the government of El Salvador: first, just ask them nicely to please give him back to us. It is inexplicable that Defendants have not done so already. Meanwhile, Plaintiff also asks this Court to order Defendants not to mix their messages by continuing to pay the government of El Salvador further compensation to hold on to him. Defendants' argument that this Court cannot order redress for their concededly unlawful removal of Plaintiff leaves a bitter aftertaste where the government has taken no voluntary steps in attempt to rectify what they themselves describe as an error.

As the Supreme Court explained in *Nken v. Holder*, 566 U.S. 418, 435 (2009), citing the government's brief which explained their successful track record in bringing noncitizens back to the United States, noncitizens who prevail in litigation challenging their removal "can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal." *See also Lopez-Sorto v. Garland*, 103 F.4th 242 (4th Cir. 2024) (ICE can bring a prevailing party back to the United States if that party prevails on their appeal).

The Fourth Circuit has held that the redressability requirement "is not onerous," that a plaintiff "need not show that a favorable decision will relieve their every injury," and that a plaintiff "need only show that they personally would benefit in a tangible way from the court's intervention." *Deal v. Mercer Co. Bd. of Ed.*, 911 F.3d 183, 189 (4th Cir. 2018). Here, there are no facts from which to conclude ICE cannot possibly be successful in bringing Plaintiff back to

the United States if they were ordered to try in good faith to do so, no specific reason to believe that the government of El Salvador would not simply hand Plaintiff over to the United States government upon our government's request. This is the same government of El Salvador that allowed Defendant Kristi Noem to enter its CECOT prison and take photographs with the detainees therein. Dkt. 10-3.[8] How can Defendants ask this Court to find as a matter of law that there is no possible redress for Plaintiff's injuries, when one Defendant stood within the same prison walls as him, after this action was filed, after this Court's first scheduling conference in this case, and made no effort to try? If anything, it is speculative to contend that simply asking the government of El Salvador *will likely not* be effective.[9]

For the foregoing reasons, it is wildly premature to hold that this Court can order no further redress for Plaintiff's injuries. Plaintiff's requested emergency injunctive relief should issue, and then if (and only if) it is unsuccessful, the parties can come back before this Court to make arguments as to why further efforts would be necessary or, to the contrary, futile.

IV. Plaintiff has adequately shown irreparable harm, and need not prove torture.

"It is well established that the deprivation of constitutional rights 'unquestionably constitutes irreparable injury.'" *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012), quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976).

Defendants' brief implies that Plaintiff cannot meet the *Winter v. NRDC* standard for irreparable harm unless he makes a showing that he is being tortured, which they claim he is not. Dkt. 11 at 14. Regardless of whether his treatment rises to the level of torture (Judge Boasberg

[8] Notably, Defendants also do not deny paying six million dollars to the Government of El Salvador to continue to detain Plaintiffs and others in CECOT; they merely note that "[t]here is no showing that any payment made to El Salvador is yet to occur." Dkt. 11 at 9.

[9] It is disturbing to consider that Defendants' redressability argument would logically seek to prevent this Court from issuing the requested relief even if Plaintiff were a U.S. citizen.

found that conditions in CECOT present "the risk of torture, beatings, and even death," *J.G.G. v. Trump*, 2025 WL 890401, at *16 (D.D.C. Mar. 24, 2025)), it certainly rises to the level of irreparable harm. *See* Dkt. 1-4 (photos of Plaintiff's harsh treatment in CECOT); Dkt. 10-2 at ¶ 3 ("People held in CECOT, as well as in other prisons in El Salvador, are denied communication with their relatives and lawyers[.]"); Dkt. 10-3 at ¶ 30 ("An analysis of the CECOT's design using satellite footage found that if the prison were to reach full supposed capacity of forty thousand, each prisoner would have less than two feet of space in shared cells—an amount the authors point out is less than half the space required for transporting midsized cattle under EU law."). Such treatment rises to the level of irreparable harm.

The government's argument that "this Court should defer to the government's determination that Abrego Garcia will not likely be tortured or killed in El Salvador," Dkt. 11 at 14, is particularly ironic given the facts of this case. It is immigration judges who determine whether individuals will or will not be tortured in a country of removal. 8 C.F.R. §§ 1208.16, 1208.17. Defendants do not claim to have performed that review prior to deporting Plaintiff to El Salvador in violation of an IJ's order and without seeking to reopen proceedings before the IJ; indeed, by so doing, they prevented that IJ review from happening at all. The last immigration judge who looked at Plaintiff's case determined that he *would* more likely than not face persecution in El Salvador. Dkt. 1-1.

For the foregoing reasons, Plaintiff has established irreparable harm under *Winter*.

V. Equities and the public interest support the supremacy of law over power.

Once Plaintiff is returned to the United States, this Court will not and cannot be the entity that decides whether he may continue to remain pursuant to a grant of withholding of removal, or whether that grant of withholding of removal is to be terminated; that role falls to the immigration

court (and then, ultimately, the U.S. Court of Appeals for the Fourth Circuit), with the government bearing the burden of proof that withholding of removal is no longer appropriate. 8 C.F.R. § 1208.24(f). It is also the immigration court that will decide whether Plaintiff may be at liberty or must remain detained while such proceedings are pending. 8 U.S.C. § 1226(a). Defendants' protestation that Plaintiff is an MS-13 member, their legal argument that he is estopped for arguing otherwise, and Plaintiff's contention that the gang allegations arise from the flimsiest of unreliable anonymous informants, will be properly addressed to that forum.

In this forum, "[t]here is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations." *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (internal citations omitted). As the Supreme Court stated in *Nken*, "[o]f course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm"; but this must be balanced against any injunctive relief that "permits and prolongs a continuing violation of United States law." 556 U.S. at 436, quoting *AADC*, 525 U.S. at 490. Here, however, the "continuing violation of United States law" is Plaintiff's *absence* from the United States, not his presence therein.

In the end, the public interest is best served by restoring the supremacy of laws over power. The Department of Homeland Security must obey the orders of the immigration courts, or else such courts become meaningless. Noncitizens—and their U.S.-citizen spouses and children—must know that if this nation awards them a grant protection from persecution, it will honor that commitment even when the political winds shift; and if the government seeks to rescind such a grant of protection, it will do so only by means of renewed judicial proceedings accordance with the rules of procedure as set forth in the Code of Federal Regulations, and the Due Process clause

of the Fifth Amendment. Plaintiff's deportation was carried out by force, not by law; the public interest favors righting that wrong.

Conclusion

For the foregoing reasons, this Court should enter a preliminary injunction as sought by Plaintiff. Dkt. 6-3.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: April 2, 2025

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Certificate of Service

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, as well as all attachments thereto, to this Court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all counsel of record.

Respectfully submitted,

//s// Simon Sandoval-Moshenberg Date: April 2, 2025

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND
GREENBELT DIVISION

KILMAR ARMANDO ABREGO GARCIA, et al.,

Plaintiff,

vs.

KRISTI NOEM, et al,

Defendant.

Docket Number 8:24-cv-00951-PX

TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE PAULA XINIS
UNITED STATES DISTRICT COURT JUDGE
FRIDAY, APRIL 4, 2025, AT 1:00 P.M.

APPEARANCES:

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ALSO PRESENT: Jennifer Vasquez Sura, Plaintiff

COMPUTER-AIDED TRANSCRIPTION OF STENOTYPED NOTES

P R O C E E D I N G S

(Court called to order.)

DEPUTY CLERK: All rise. The United States District Court for the District of Maryland is now in session. The Honorable Paula Xinis presiding.

THE COURT: Good afternoon everyone. You all can have a seat.

Mr. Ulander.

DEPUTY CLERK: The matter now pending before the court is Civil Action Number PX25-951, Kilmar Armando Abrego Garcia, et al. v. Kristi Noem, et al. The matter comes before this Court for a motions hearing.

Counsel, please identify yourselves for the record.

MR. SANDOVAL-MOSHENBERG: Good morning, Your Honor. Simon Sandoval-Moshenberg from the law firm Murray Osorio. With me is Jonathan Cooper from the law firm Quinn, Emmanuel, Urquhart, and Sullivan; and plaintiff Jennifer Vasquez Sura for the plaintiffs.

THE COURT: Okay.

MR. REUVENI: Good afternoon. Erez Reuveni from the Department of Justice.

THE COURT: I'm sorry. Can you speak up a little bit so I can hear you?

MR. REUVENI: Yes. Sorry, Your Honor.

Erez Reuveni from the Department of Justice, for

defendants.

THE COURT: Okay. Mr. Reuveni, am I saying your name right?

MR. REUVENI: You are. Thank you, Your Honor.

THE COURT: Okay. Great. Give me one second here.

Okay. All right. Counsel, at some point, I'm going to have to get my computer up and running, but let's begin.

This -- we're all here together today on a motion from the plaintiffs for a preliminary injunction. The motion was filed at ECF 10 and 11, and as you all know, the evidence has been produced, but I want to check in with each of you to make sure that you're not intending -- or if you are, intending to call any witnesses or put on any additional evidence from both sides, I would like to know it now.

So Mr. Sandoval-Moshenberg?

MR. SANDOVAL-MOSHENBERG: No, Your Honor, the facts of the case seem to be largely undisputed.

THE COURT: Okay. Well, we'll see about that. But I just wanted to make sure that there wasn't any additional evidence presentation that you wished for today.

MR. SANDOVAL-MOSHENBERG: That's right, Your Honor.

THE COURT: Okay.

Same question to you, Mr. Reuveni.

MR. REUVENI: Nothing further evidentiary-wise from the government, Your Honor.

THE COURT: Okay. Well, word of caution, with respect to questions of fact, if you're going to represent a fact, and you don't have evidence to back it up, then it is not a fact that the Court will recognize. That's just the way that it works in a court of law.

With respect to the law at issue, what I ask of both sides is if you're going to cite me to authority, one, it should be in your briefs already, but two, if not, it should be a rare case in which that happens that you give me the case, the citation, and -- and point me to the -- to the language you want me to look at. Because if these binders are any indication, we've been working overtime to make sure that we have considered all arguments from all sides and then some, and I do need your help in directing me to where you want me to look so that we make the best use of this time.

As I see it, there's some preliminary jurisdictional questions, and then there are the *Winter* factors. I intend to hear them all. It seems to me, best, to ask the movant to go first, addressing first jurisdiction and then the *Winter* factors, and then I'll turn to the government. Okay?

MR. SANDOVAL-MOSHENBERG: Thank you, Your Honor.

THE COURT: All right.

MR. SANDOVAL-MOSHENBERG: Your Honor, the government raises two jurisdictional bars to this case, first the core habeas argument that this was not filed as a habeas corpus

petition, and then 1252(g).

With regards to the core habeas argument, this is not a case challenging his detention by the United States, primarily. This is a case that was filed as a complaint for injunctive relief. It's challenging his deportation as having had -- not only no basis in law, but being actually directly prohibited by the governing law.

His detention for roughly a weekend prior to being deported was really incidental to this case and isn't really being challenged here. And --

THE COURT: I'm sorry. I'm sorry. Can I ask a question about that?

MR. SANDOVAL-MOSHENBERG: Of course, Your Honor.

THE COURT: Have you gotten any information, any document, any -- anything that we see in the ordinary course, when a person is arrested, to explain the basis for the arrest?

MR. SANDOVAL-MOSHENBERG: No, Your Honor.

THE COURT: So not a warrant, not a statement of probable cause, not a police report, nothing?

MR. SANDOVAL-MOSHENBERG: Nothing. The Cerna declaration is the only factual information that we've been given.

THE COURT: The Cerna declaration?

MR. SANDOVAL-MOSHENBERG: That's correct.

THE COURT: Okay. All right. Go ahead.

Sorry to interrupt.

MR. SANDOVAL-MOSHENBERG: So really we don't think the habeas corpus necessarily applies here. We have pled a cause of action for habeas corpus in the alternative on the theory of essentially constructive custody. I think there's, candidly, factual development that would need to be done in order for that claim to proceed, but we're really not relying on that here today. We're relying on the fact that this is a complaint for injunctive relief. We've stated causes of action under the withholding of removal statute, procedural due process, administrative procedural act.

THE COURT: Can I ask, with respect to that, there is one area in which I think jurisdiction and perhaps the remedy overlap.

MR. SANDOVAL-MOSHENBERG: Yes, Your Honor.

THE COURT: Because to the extent you are making the argument that I can and should order the government to return Mr. Abrego Garcia forthwith, immediately, because there is just no basis, it was conceded to be a mistake, what do you say in response to what I believe the argument will be that the United States no longer has control over him, so how can they bring him back?

MR. SANDOVAL-MOSHENBERG: Your Honor, Courts routinely order the United States to facilitate the return of individuals. We cited to the government's brief, to the

Supreme Court, and in the *Nken* case, in which the government represented to the Supreme Court that they do this all the time, and the Supreme Court relied on that.

Mindful of Your Honor's admonition not to bring new law into the matter, I do have one case I would like to cite to the Court. I can hand it up, if you would like, but it's *Ramirez v. Sessions*, it's 887 F.3d 693, which is a 2018 case from the Fourth Circuit.

I can hand that up, if would you like.

THE COURT: Okay.

MR. SANDOVAL-MOSHENBERG: But the Fourth Circuit granted an immigration appeal in a relatively routine case, and then the last paragraph says, "We therefore grant Ramirez's petition for review, vacate the order of removal, and remand with directions for the government to facilitate Ramirez's return to the United States for the purpose of participating in further proceedings."

So the Fourth Circuit issues orders of this nature all the time. I've got two others, but they are basically word for word the same.

It's pretty clear that Courts can order the government to facilitate the return of an individual who is wrongly departed.

THE COURT: And in these cases, obviously, what you're talking about is folks who have been deported to a country but not have actually been placed in a detention center

without any other independent lawful basis like Mr. Abrego Garcia has. These are just folks who are returned to their country of origin, and then the Fourth Circuit is saying, we command you, United States, to bring them back, to facilitate bringing them back. Is that the take-home point here?

MR. SANDOVAL-MOSHENBERG: I believe that to be correct. I think that this Court does have jurisdiction to order the government to facilitate the return of Mr. Abrego Garcia. I think that it would be premature for this Court to find that that cannot happen, that the government will be incapable of doing that.

And then I think the facts in the record show that there's significant coordination between the two governments with regards to operations at this prison, not least of which being defendant Kristi Noem being inside the walls of that prison on Wednesday of last week. So I think there's good reason to believe that the government will be successful in facilitating the return if so ordered.

We -- we understand that the government gets to take a first and fair crack at it. I'm -- the thing that flabbergasts me the most about this case is they haven't done so.

THE COURT: What do you mean by that?

MR. SANDOVAL-MOSHENBERG: Your Honor, candidly, I expected that between the time we filed this lawsuit and today,

they would be reaching out to me to say, all right, we agree that we messed this one up, here's what we're doing to try to bring him back. And then their argument before this Court will be something to the effect of, well, we're already working on it. You know, Judge, please don't get in the way, because we're already working on it.

I expected that that was going to be the tenor of their argument.

Instead, their argument is they've got no responsibility to do anything about this situation whatsoever. And furthermore, that the Court can't order them to do anything about the situation whatsoever.

Our position is that the Court does have jurisdiction to order them to facilitate his return, and what we would like is for the Court to enter that order and then enter a very -- relatively prompt status report ordering the government to update the Court as to its efforts to comply with the order.

We think the government should be put on a very short leash on this case with regards to how much time given --

THE COURT: And before get to remedy --

MR. SANDOVAL-MOSHENBERG: Of course, Your Honor.

THE COURT: -- can we make sure we've tagged all the bases with respect to the arguments --

MR. SANDOVAL-MOSHENBERG: Yes, Judge.

THE COURT: -- that the government makes?

The first is that this sounds, in habeas, it's a core habeas challenge. Frankly, I don't see it that way. I don't -- I think you have pled the case as you have chosen to plead the case, and that the first four counts, especially the statutory claim, the INA claim, the due process claim, all challenges the fact of the removal to a country in which the government was prohibited from removing Mr. Abrego Garcia to. Never mind putting him in a facility where he faces the very persecution of the persecutor that the IJ, also part of the government, found to be a reason why he's not to be deported there.

That's what you're challenging, correct? You're not challenging a condition of confinement or the fact of confinement. And frankly, the way I've been thinking about this, and I would like your input on it, as well as the government's, is you would be bringing the same challenge if Mr. Abrego Garcia were removed to El Salvador and were on the streets of El Salvador?

MR. SANDOVAL-MOSHENBERG: That's exactly right, Your Honor. We would be bringing the same case if he were at large.

The fact that he's detained in a CECOT prison goes certainly to irreparable harm, it goes to the speed at which the government should be ordered to carry out its remedy. And then issues on relationships between the government of the United States and the CECOT prison, you know, certainly would

be a defense to any claim of impossibility by the government. But the remedy that we're ordering would be the same if he were, you know, at large in El Salvador today.

THE COURT: Okay. So that handles that -- the question from -- if I'm getting it right, unless you have something else to add, to the this is not a core habeas action. The -- the argument that the INA prohibits me, strips me of jurisdiction, I believe, is the alternative argument that the government has made.

MR. SANDOVAL-MOSHENBERG: Yes, Your Honor.

Courts have generally held that Section 1252(g) applies to actions seeking judicial review of removals under the INA. This was not a removal under the INA, it was a removal entirely outside of the INA. The Courts hearing cases on the Alien Enemies Act removals, which this was not --

THE COURT: Right.

MR. SANDOVAL-MOSHENBERG: -- it was temporally proximate to the Alien Enemies Act removal, but it was not an Alien Enemies Act removal. Having agreed that 1252(g) doesn't bar challenges to removals under other legal authority. Likewise, the *Huisha-Huisha* court from the D.C. circuit, which we cited with the Title 42 expulsions during COVID, and several other cases that we've cited have all agreed that 1252(g) prohibits review of removals under this chapter, and on the facts of this case, it was not a removal under this chapter.

THE COURT: So the argument is, even though, first, I have to read that statute -- I don't read it expansively. That's what the Supreme Court has said. It has to fall into one of three discrete categories, the only conceivable one here would be the execution of a removal order. But one, it has to be a nondiscretionary -- it has to be a discretionary decision, but I think more to your point, it has to be a lawful one.

If the challenge is to an execution of a deportation order, which is, on its face, unlawful, then isn't that the very thing that a district court can hear in the first instance?

MR. SANDOVAL-MOSHENBERG: I would even take a step further -- step back further than that, Your Honor.

THE COURT: Okay.

MR. SANDOVAL-MOSHENBERG: And say that on the facts of this case, there was no removal order to El Salvador at all.

THE COURT: Because you haven't been -- you haven't been given one, right?

MR. SANDOVAL-MOSHENBERG: Correct. He --

THE COURT: Nothing? No warrant of removal, no -- nothing that you would otherwise see in the ordinary course, is that what you're saying?

MR. SANDOVAL-MOSHENBERG: Correct.

If they had chosen to remove him to Panama, we would have a very different case in front of us, and the 1252(g) argument

would -- we would still have a response to that, but I think it would certainly carry a lot more water. But in this case, there was no removal order El Salvador at all.

THE COURT: So what if the government gets up and says well, in 2019, in order to find withholding of removal, there had to be a removal order to begin with, and this was just a big mistake, that's the order that was executed, but there was a removal order. What's your response to that?

MR. SANDOVAL-MOSHENBERG: Your Honor, there is no such thing as a removal order to no country, right? So he is certainly removable to many, many countries on earth, El Salvador is simply not one of them.

THE COURT: Okay. So what you're saying, if I'm -- a very practical sense is, you have certainly not seen an executed removal order from the attorney general, am I getting that right? Or who --

MR. SANDOVAL-MOSHENBERG: I'm sure if there were one, they would have attached it to their pleadings.

THE COURT: And you have not seen a companion warrant for removal, meaning the very permission -- the very thing that would give the agents, at the time that they apprehended Mr. Abrego Garcia, permission to do so; am I right?

MR. SANDOVAL-MOSHENBERG: That's right, Your Honor.

THE COURT: And so you're saying, this just isn't a removal at all?

MR. SANDOVAL-MOSHENBERG: Correct. This was not a removal pursuant to a removal order in the INA because there was no removal order as to El Salvador. This was essentially the equivalent of a forcible expulsion.

THE COURT: And so it's -- yeah, the jurisdiction stripping provision of the INA just simply does not apply?

MR. SANDOVAL-MOSHENBERG: That's our contention, Your Honor.

THE COURT: Okay. How about, lastly, redressability? The government makes the argument that this case is not redressable because there's nothing they can do now. What do you say to that?

MR. SANDOVAL-MOSHENBERG: Yeah, Your Honor, I mean they are coming before this Court saying we have tried nothing and we're out of options. I think it's really premature for the government to ask this Court to find, as a matter of law, that there's no steps that could be taken that would result in Mr. Abrego Garcia being brought back to the United States.

We are not going to ask the Court to micromanage that process.

We are going to ask the Court to order that they do it. We are going to give them a fair chance to do it. But then we're also going to ask the Court to keep them on a very short leash, both due to the fact that they didn't get things started in the first place prior to today's hearing, and then also,

quite candidly, due to statements from the White House press secretary that, quote, he's not coming back to the United States, closed quote.

So we're not going to ask the Court, to, you know, order particular government functionaries to communicate particular messages to particular other government functionaries. And we do think that any foreign policy considerations can be adequately addressed by the government if it deemed so necessary, filing its status report under seal.

THE COURT: And I'm sorry, I didn't catch the last part of what you said was the basis to file it under seal.

MR. SANDOVAL-MOSHENBERG: Well, if the government so seeks. You know, if the government is worried that providing detailed explanations of their steps to get him back, essentially, how they are complying with what I hope this Court will order today, if the government is worried that revealing that information would reveal, you know, sensitive foreign policy information, then of course --

THE COURT: They haven't argued that, right?

MR. SANDOVAL-MOSHENBERG: Right, but if they do, plaintiffs won't object to them filing it under seal.

THE COURT: There's nothing in the pleadings.

Okay. All right. That's fine. Do you know to move to the *Winter* factors?

MR. SANDOVAL-MOSHENBERG: Sure, Your Honor. I think

that likelihood of success on the merits is practically established given that the facts are undisputed. They had -- they admit that they had no legal authorization to remove him to El Salvador. The parties quibble over whether it was negligent or reckless, but I don't think that really makes any difference at all to the ruling that we're asking this Court to enter today.

Irreparable harm, I think the government's argument that unless it rises to the level of torture, irreparable harm can't be found, I think, doesn't have any support in the case law. I think clearly we've shown evidence that he's subject to harsh treatment above and beyond the ordinary erroneous deportation, and that that is sufficient under the Fourth Circuit standard to meet the irreparable harm standard.

And then, finally, with regards to the equities in the public interest, I think the Fourth Circuit is fairly clear, the public interest lies in, you know, that the -- the government following the law, essentially, that the -- the substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations, that's a D.C. Circuit case; the Fourth Circuit has held similarly.

The government raises a lot of issues about, you know, their contention that this individual is an MS-13 gang member. We've provided evidence explaining why he isn't. But in any

event, that's a matter for the immigration court to decide on further proceedings once he's brought back to the United States.

THE COURT: I've been given -- again, I mean, that's just chatter, in my view. I haven't been given any evidence. I haven't been given any -- you know, in a court of law, when someone is accused of membership in such a violent and predatory organization, it comes in the form of an indictment, a complaint, a criminal proceeding that is then -- you know, has robust process so we can assess the facts.

I haven't yet, I'll hear from the government in a moment, heard any of those.

MR. SANDOVAL-MOSHENBERG: Your Honor --

THE COURT: Have you?

MR. SANDOVAL-MOSHENBERG: No, Your Honor, and I think it's right on the nose that Your Honor mentioned, indictment, because if he were indicted for any of these crimes, you know what they would be doing right now? They would be extraditing him from El Salvador to the United States.

So I think the fact that they do this, you know, all day every day, we extradite drug lords from Columbia prisons, we extradite cartel leaders from Mexican prisons, we've extradited MS-13 leaders from El Salvadorian prisons, this is not something that's outside of the government's power.

THE COURT: And likewise, you have not received any

information that the opposite is true, that there is some charge out in El Salvador for which there is an extradition treaty, and that your client is facing some other reason why he's being detained in El Salvador? You see what I'm saying?

MR. SANDOVAL-MOSHENBERG: Correct, Your Honor.

THE COURT: Okay.

MR. SANDOVAL-MOSHENBERG: The evidence indicates -- the evidence in the form of a tweet from the President of El Salvador, and the responsive tweet from the Secretary of State Rubio indicates that he is being detained at the direction of the United States, not detained -- detained in a CECOT prison at the direction of the United States, not due to any legal process in El Salvador.

THE COURT: Okay. All right.

MR. SANDOVAL-MOSHENBERG: Anything further, Your Honor?

THE COURT: No. But given that you're the movant, I'll certainly give you the last word.

MR. SANDOVAL-MOSHENBERG: Thank you, Judge.

THE COURT: Okay. Thank you.

All right. Mr. Reuveni, why don't we take it in the same order.

MR. REUVENI: Certainly, Your Honor. Thank you.

Just one housekeeping item, I have given -- I've given your court a notice of appearance today.

THE COURT: Okay.

MR. REUVENI: I've not actually been able to enter an appearance on the docket due to technical issues that I don't need to waste the Court's time with.

THE COURT: Yes. That's fine.

Mr. Ulander has told me he has received it and it's on the docket. So I do appreciate that.

MR. REUVENI: Thank you. My apologies for that.

So the facts are conceded. This person --

THE COURT: I'm sorry?

MR. REUVENI: The facts -- we concede the facts. This person should -- the plaintiff, Abrego Garcia, should not have been removed. That is not in dispute.

THE COURT: Okay. Let's -- okay. That's -- and I appreciate that. That's an important concession. Mr. Abrego Garcia should not have been removed, right?

MR. REUVENI: Yes.

THE COURT: Can you answer for me, then, on what authority was he seized? When he was -- when he was taken off the street, taken out of his car, what authority did those law enforcement officers have to do that?

MR. REUVENI: So, Your Honor, my answer to a lot of these questions is going to be frustrating. I am also frustrated that I have no answers for you on a lot of these questions.

THE COURT: Okay. And don't -- I'm not shooting the messenger, okay? Because I really do appreciate your candor in this respect, but I do take that answer seriously in that if there isn't a document, a warrant, a statement of probable cause, then there is no basis to have seized him in the first place. That's how I'm looking at it. So that's why I wanted to give you ample opportunity to be heard on that, because that's a very important, in my view, that -- that -- that supports everything that the plaintiff is saying, if even when he was picked up, this was a quote, unquote, mistake, that means from the moment he was seized, it was unconstitutional.

So I just -- I wanted to make sure there isn't any warrant of removal, you know, an IN -- what is it? What's the name of the form? I have it here that we're missing.

MR. REUVENI: I think you're thinking of the I-205, perhaps? Or I-200, an arrest warrant?

THE COURT: I can tell you -- right. Exactly. The arrest warrant that says it is a warrant of removal which gives the ICE officer the authority to seize the person pursuant to -- yep, ICE Form I-205. You're exactly right.

MR. REUVENI: So I have a couple of responses, and again, they are not going to be fully satisfactory.

We have the Cerna declaration from an ICE officer explaining how things got to this point.

But before we get to that, I should sort of push back just

a little bit on the characterization of an absence of removal order.

As plaintiffs' counsel noted, there is a final order of removal, it is -- but the individual -- Mr. Abrego Garcia cannot be removed to El Salvador due to the withholding grant he received.

THE COURT: Right.

MR. REUVENI: That final order of removal is still valid to remove Mr. Abrego Garcia anywhere else in the world so long as the procedure is followed.

THE COURT: Okay. That's fine. And I just -- I want to ask, though, the very specific question, if there is a final order of removal, what -- what document got this process started? There is no warrant for his arrest by an order of removal. There is no statement of probable cause. There's no charge. There's no report that says that anyone saw Mr. Abrego Garcia doing anything illegal or criminal. So what is the actual document that gave these officers the authority to start this process?

MR. REUVENI: That is not in the record, and the government has not put that into the record. And that's the best I can do.

THE COURT: All right. Well, that's helpful. Thank you.

MR. REUVENI: And so, really, all I can point the

Court to is Paragraphs 11 to 15 of the Cerna declaration. That's the only evidence before you explaining why Immigration and Customs Enforcement picked this -- picked plaintiff up on the date that he was picked up.

Paragraph 11 does not refer to any warrant, just refers to his alleged role in MS-13. It also refers earlier in the declaration to the events that led to the Alien Enemies flights that left the United States in the case now pending before Judge Boasberg in the District of Columbia. As I understand this declaration, and what this declaration says, is he was picked up as part of that. And that was --

THE COURT: Part of what?

MR. REUVENI: Of that group of individuals who were picked up under the Alien Enemies Act to be put on a plane and sent to El Salvador.

THE COURT: See, I read it differently. I read this -- and Mr. Cerna, or Officer Cerna, whatever we call him, Director Cerna, he is not here, right?

MR. REUVENI: He is not here.

THE COURT: Okay. So the way I read it from Page -- from Paragraph 6 is that there was a plane with Title 8 removal order detainees, which is its whole other kettle of fish, I should say. But my understanding is that Mr. Abrego Garcia was on that flight, correct?

MR. REUVENI: That is correct.

What I meant, Your Honor, that flight went out the same weekend. So he was picked up in that -- whatever ICE was doing that weekend to get these -- to get -- pick up a number of individuals that they believed they were -- had the authority to send to El Salvador, either under the Alien Enemies Act or under a Title 8 removal order.

THE COURT: Okay. So if there's a Title 8 removal order, there would be an order of removal that's being executed, and we don't have one for Mr. Abrego Garcia, right?

MR. REUVENI: We don't have that document in the record. That is the removal order from 2019 that cannot be executed as to El Salvador.

THE COURT: Got it.

And so when Mr. Cerna says, in that same paragraph, this removal was an error, I am to infer that that means because there was no valid executable removal order as to Mr. Abrego Garcia, am I right?

MR. REUVENI: I don't want to quite use those terms, because you'll see in a minute when we talk about 1252(g), but this order could not be used to send Mr. Abrego Garcia to El Salvador, that is correct.

THE COURT: What order?

MR. REUVENI: This removal order he has from 2019 of which he also has withholding of removal of, so --

THE COURT: Do you have that order?

MR. REUVENI: I do --

THE COURT: Is it in the record?

MR. REUVENI: I do not have that order. It is not in the record.

What we do have is the -- I think plaintiffs put this in, so we did not, it's Exhibit 1-1.

THE COURT: Okay.

MR. REUVENI: It is the decision --

THE COURT: Right.

MR. REUVENI: -- in removal proceedings that led to the withholding of removal decision. It's 13 pages. This is -- if you look at the last page, you can see what the decision was.

THE COURT: Yes.

MR. REUVENI: The government did not appeal that decision, so it is final.

THE COURT: Okay. And what that means, as a matter, if I'm getting it right, is that there may have been an order of removal which the immigration judge said must be withheld.

MR. REUVENI: As to El Salvador.

THE COURT: As to El Salvador.

MR. REUVENI: Correct.

THE COURT: And so that is pursuant to the INA, it's a law Congress passed, and that means that order cannot be executed, right?

MR. REUVENI: That is what that means.

THE COURT: As a matter of law?

MR. REUVENI: That is what that means.

THE COURT: Okay. All right. Very good. And there's not a factual question in that respect?

MR. REUVENI: There's no dispute that the order could not be used to send Mr. Abrego Garcia to El Salvador.

THE COURT: Okay. All right. Very good.

MR. REUVENI: So to go to the primary argument the government has, and I mean, I'll just say it up front, if you're not buying our jurisdictional arguments, like, we're done here, right. So our only arguments are jurisdictional. We have nothing to say on the merits. We concede he should not have been removed to El Salvador.

THE COURT: Okay.

MR. REUVENI: We have three arguments. I think starting with 1252(g), so I will also apologize, I have two cases for you that are not in our brief, that I think go to the heart of the dispute as to whether 1252(g) applies to a nonexecutable order, as Your Honor has put it.

There's a circuit split on this.

THE COURT: Well, can I -- can I just put sort of a bit of a finer point on it?

MR. REUVENI: Sure.

THE COURT: It's not just it was not executable, this

was an illegal act. I mean, you've conceded the merits. If you've conceded the merits, then you've conceded that the plaintiff is going to win on the acts of DHS, of the named defendants. Those acts were in violation of the Immigration and Nationality Act. That means that Congress said can't do it, they did it anyway.

So it's just not a matter of executing an unexecutable order or -- you know, this is -- this is -- this is orders of magnitude different in that regard.

MR. REUVENI: So here's why -- if the Court will indulge me for a moment --

THE COURT: Sure.

MR. REUVENI: -- why I think it does matter. And again, my apologies, these are not in the brief. We can give you a short supplemental pleading if you would like, but I can just give you the cases.

THE COURT: Why don't you give me the cases.

MR. REUVENI: There's a circuit split on this. There's cases that support plaintiff on this, and there's cases that support the government.

These are all cases wherein there was a stay --

THE COURT: I was just about to say. Are these the stay cases?

MR. REUVENI: These are the stay cases. If you have those already, I won't -- but just to get it in the record.

THE COURT: Mr. Jenkins, we have these, don't we? Yeah, but this is not a stay, right?

MR. REUVENI: It's the same practical effect. You cannot execute the order. And so the stay takes away the legal effect. The argument --

THE COURT: Can I ask you a question about that, though?

MR. REUVENI: Sure.

THE COURT: When there is a stay, is that a stay that either the immigration judge or the BIA or the Fourth Circuit issues, or is that a stay of another source of authority?

MR. REUVENI: It's one of those three that you've identified. So the one -- the one at issue in two of the cases, it's an automatic stay if you appeal your order to the Board of Immigration Appeals.

THE COURT: Okay.

MR. REUVENI: And I think this is in plaintiffs' brief, citing to *Nken*, the effect of the stay is to take away the legal effect of the removal order. So it has the same practical effect as a withholding of removal for purposes of whether, in our view, 1252(g) applies.

THE COURT: Although this is a different legal posture, in that it is not a stay, it's an outright violation of the Immigration and Nationality Act 1231, right, which says the attorney general may not deport or remove, I can't remember

that exact language, back to the country for which withholding of removal has been granted.

So can you ask -- answer for me why should I -- I mean this, is a highly unusual circumstance. I dare say unprecedented. Why am I looking to the stay cases for analogy, especially if there's a circuit split?

MR. REUVENI: We -- my job is to find the best authority for my client, and that's what I've done. That's what the brief has, these are the cases I've got.

THE COURT: Okay.

MR. REUVENI: There is no case directly on point to Your Honor's question.

THE COURT: Okay. All right. I understand.

And so your argument is, the stay has the same practical effect as what DHS did here?

MR. REUVENI: Yes. So if I can just briefly point to the same sort of arguments that were raised in the *Silva* case, 866 F.3d 938, that's the Eighth Circuit.

THE COURT: Yes, I've got it.

MR. REUVENI: And *Foster*, 243 F.3d 210, that's the Fifth Circuit case. And put it all out there, there's obviously a case going the other way, as I mentioned, in the Ninth Circuit, *Arce*, 899 F.3d 796.

And so the dispute between the parties in each of those cases is whether something that has no legal effect, if it's

unlawful from the get-go, whether the Court can review that before deciding whether the 1252(g) applies, and the Ninth Circuit says yes; the Eighth Circuit and the Fifth Circuit say no.

To me, that seems similar to the situation we have here.

Plaintiffs cite one other case out of Sixth Circuit, *Enriquez-Perdomo*, that's in the briefs, that sides with the Ninth Circuit on this issue in a slightly different context involving the wrongful removal of an individual by DACA. That's not quite this circumstance here as well.

But those are the cases. I know there's a couple of district court cases, one of which plaintiff cites in his brief that follows the Ninth Circuit. There's a couple of others that are not in our briefs that go the other way. So there's a circuit split and no controlling authority on this exact set of facts.

THE COURT: Okay. And just so I'm clear, in -- in *Silva*, in particular, there was an order from an immigration judge to deport, and Mr. Silva was fighting that deportation, right?

MR. REUVENI: That's correct.

THE COURT: He was appealing it.

MR. REUVENI: He appealed it, and by operation of a regulation that was applicable at the time. It may have changed, but it was the same sort of regulation now that stayed

the effect of the order.

THE COURT: But here we actually have an immigration judge making findings as to why the removal would be unlawful because Mr. Abrego Garcia would be subject. There was a clear probability, which means, what, more likely than not, that he would be subject to persecution and torture in El Salvador. I see that as distinct in that where Mr. Silva lost, essentially, before the IJ and the Court, was simply pressing pause before the execution of the order was lawfully obtained. Here, there's no lawful way that the United States could execute that order because of what the immigration judge had found.

So I -- again, I'm not even yet convinced that these cases, which I appreciate you saying they go both ways, would really apply because of the difference, the substantive difference in the decision that would -- that led to the withholding of that removal order.

MR. REUVENI: So I will push back a little bit on that. Yes, this order --

THE COURT: Okay.

MR. REUVENI: -- could not have been executed, as we've all agreed in this court today. But the text of 8 U.S.C. 1252(g) doesn't make so fine a distinction. It says simply execute an order of removal.

And the way I read *Silva* and the way I read *Foster*, it didn't matter to those Courts whether the underlying order

itself, there was no legal authority to execute it. And that's what made the difference.

The Ninth Circuit went the other way.

And there's a little bit of wrinkle, of course, you mentioned discretionary and versus nondiscretionary decisions earlier --

THE COURT: Correct, right.

MR. REUVENI: -- and we get that from *Reno*, I think. But I don't believe --

THE COURT: Well, we also don't get that from in our circuit. So there's *Bowrin* in the Fourth Circuit. My wonderful colleague, Judge Grimm, followed it in a case very similar in that when the detainee is challenging the execution of a removal order for which there was no discretion, and should not have happened, then it -- it goes to the heart of the -- of the legal question, it's a pure legal question, did the government violate the law. There's a companion question here. Did the government deny Mr. Abrego Garcia due process, and then did they violate the APA? All of which are -- because you've conceded the facts, are pure questions of law.

At least in our circuit, the way I read the cases, it would be not. My jurisdiction has not been stripped because what the plaintiff is challenging is the outright illegality. Not any sort of decision-making that -- in other words, this would be a different situation if the plaintiff was conceding

legality, but challenging the basis for the decision. That's at least how I read the cases in this circuit in my district.

Would you disagree with that?

MR. REUVENI: That is not an unreasonable reading.

I am not familiar with the Fourth Circuit case you mentioned. I didn't see it in plaintiffs' papers. But I believe you. And if there is controlling law in the Fourth Circuit that makes that discretionary/nondiscretionary distinction, then that seems to put the Fourth Circuit squarely with the Ninth Circuit on this point.

THE COURT: Well, what *Bowrin* says is that following *Reno*, that the Supreme Court reasoned that 1252(g) does not apply to, quote, all claims arising from deportation proceedings, because 1252 stripped federal courts of jurisdiction only to review challenges to the attorney general's decision to exercise her discretion to initiate or prosecute these three specific stages that we've talked about.

And so *Bowrin*, at least, suggests that -- well, I believe it holds that when the -- when the -- when the issue is a question of discretion, then my jurisdiction is stripped. But when the issue is a pure question of nondiscretionary law or of constitutional magnitude, whereas you say the facts are not disputed, then I have jurisdiction to hear the matter. So --

MR. REUVENI: So just to put the -- to respond to one of your points, to put our argument in the record and move on,

since I understand you can read it that way.

THE COURT: Sure. Okay.

MR. REUVENI: 1252(g) does cover constitutional claims, discretionary or otherwise. It says any cause or action, statutory and nonstatutory, regardless --

THE COURT: But isn't that what *Reno* said? You can't read it so expansively, because then that rule would swallow all questions of jurisdiction. I would never have jurisdiction to hear anything. And that's what all of these circuits, you know, have followed, and that's why we're having a conversation about a circuit split when it came to stays, right? I mean, you would agree with that? It's not -- it can't be read so expansively.

MR. REUVENI: *Reno* does say that.

THE COURT: Okay.

MR. REUVENI: I want to make clear our point, though, that we don't concede that just because it raises a constitutional claim, that takes it outside of 1252(g).

THE COURT: Understood.

MR. REUVENI: I understand Your Honor's discretionary and nondiscretionary distinction, and understand that if you view it that way, our argument doesn't work.

THE COURT: Okay. Got it. Thank you.

MR. REUVENI: I do have one other or two other points, I know just briefly, I'll touch on.

You mentioned in your colloquy with plaintiffs' counsel that you didn't view this as a habeas case, and that may be so, that may be right, because they pleaded in the alternative, and they asked one of their two forms of relief is for you to order the government to cease paying the country of El Salvador to detain Mr. Abrego Garcia, that, to me, sounds like an argument that he -- plaintiffs believes he's in the constructive custody of the United States. And that's why we've spent some time in our brief discussing habeas jurisdiction.

THE COURT: Well, isn't that, though, really a response to the argument, if I read your argument right, that, hey, there's nothing we can do about it now, he's -- he's in a -- he's in another country, somewhere else, we have no control to practically redress the injury?

MR. REUVENI: We made that argument in response to the opening papers in the complaint, which both made the argument, as I understood it, and if I misunderstood it, that's my fault, that they believed -- or plaintiffs believed that there's an argument to be made that Mr. Abrego Garcia is still in the constructive custody of the United States, because the United States, in plaintiffs' view, is paying for El Salvador to detain him.

THE COURT: Well, in what -- what basis is he held in CECOT? And I hope I'm saying that right. But what basis is he held? Why is he there of all places?

MR. REUVENI: This is where I'm going to respond in a frustrating way: I don't know.

THE COURT: You don't know?

MR. REUVENI: I don't know. That information has not been given to me. I don't know.

THE COURT: Okay. Well, then, again, for everyone here, that means there is no evidence that there is a basis to hold him in the very place, in the very country that this administration, that the -- the immigration judge was -- it was 2019, said should never have happened. So -- so we got that straight.

But let me ask you this: So there's not some other legal authority to hold him?

MR. REUVENI: I don't know.

THE COURT: Let --

MR. REUVENI: Oh, I'm sorry.

THE COURT: Can we talk about, then, just very practically, why can't the United States get Mr. Abrego Garcia back?

MR. REUVENI: Your Honor, I will say, for the Court's awareness, that when this case landed on my desk, the first thing I did was ask my clients that very question.

I've not received, to date, an answer that I find satisfactory.

THE COURT: Okay. Well, I, again, appreciate your

candor.

The way I see the record, though, is that there is an agreement between your clients and El Salvador where your clients are the payor of $6 million. And the payor to house individuals who, but a couple of weeks ago, were in the custody of immigration, just happened to be in the United States, but there's nothing to suggest that they are still not in the custody of DHS and immigration, they are just being housed in El Salvador.

And what is more, is that the named defendants in this case have told the public, and I can take note of this, that plaintiffs have put it in their pleadings, that the facility is one of the tools in the United States' tool kit that the United States will use if an individual commits crimes against the American people.

The Republic of El Salvador has confirmed that they will hold individuals for one year pending the United States' disposition -- decision on disposition; that the contract, or the agreement is renewable after one year. There were terms and conditions under which certain people were transported and certain people were returned.

The United States had the ability -- we know this from JGG, the United States had the ability and in fact returned certain people. They are affiants now in JGG. All of this points to a functional control, and that if the United States,

as a contracting party, can strike terms and conditions for the placement, then certainly they have the functional control to unwind that decision when -- the wrong decision when it comes to Mr. Abrego Garcia. Those are the facts -- the findings of fact that I'm prepared to make in terms of the practical implications of an order to -- to return him.

Tell me what the impediment is to that or why that's not the case.

MR. REUVENI: So just so I -- just to give you the correct line of argument here, I heard you say earlier to plaintiffs' counsel you didn't view this as a habeas case, but now what we're talking about is constructive control for purposes of finding this person to be in the custody of the United States constructively, which to me sounds like habeas.

THE COURT: No, because we're mixing apples and oranges. You made an argument that this is a challenge to confinement, and, therefore, the immediate custodian rule applies, full stop.

I'm saying the immediate custodian rule does not apply to the challenges at hand, but a habeas claim can proceed, especially in this case. The Supreme Court has said it, that this is for time and memorial, writs of habeas have to be flexible, and they have to handle those situations in which a person, the body, has been moved. And moved in ways in which the plaintiff can't -- can't catch up with the body.

And when you make claims of now we can't get him back when that's the -- the facts are belied by that, I do think that there is room for both to live in the same place.

The plaintiff can say we're not challenging the fact of confinement, however, the remedy is still that you have control enough to bring him back. I think those things can -- can live in the same space.

Or let me ask a more simple question, what if I say, you're right about the habeas, now we're just going under the *Winter* factors, there's likelihood of success on the merits of the other claims, why isn't the remedy still a very practical fact-bound question of bring him back? You can bring him back? That's what the facts show. Why isn't it as simple as that?

MR. REUVENI: So I have a couple of responses.

THE COURT: Okay.

MR. REUVENI: That was a lot.

I just want to make sure we get our argument in on this custody point.

I hear what you're saying. I understand what you -- where you're going with the factual discussion, but I don't think the facts, as you're describing the matter, given the law, and we cite these cases in our brief, the *Munaf* decision 553 U.S. 674, which I'll talk about in a moment, the *Kiyemba* decision from the D.C. Circuit, 561 F.3d 515, these are both cases that involved, not similar circumstances, but circumstances where

individuals were detained outside the territory of the United States. In the *Munaf* case, it was even a military base in Baghdad, Iraq; and in the *Kiyemba* case, it's Guantanamo.

THE COURT: Right.

MR. REUVENI: The *Munaf* decision defined habeas jurisdiction, but only because they were American citizens held overseas by American soldiers subject to a United States chain of command. That's not what we have here. We have an individual in the custody of El Salvador, a foreign sovereign nation.

THE COURT: Is that the only exclusive way I can do it? Because didn't *Munaf* also say 2241(c)(1), that section of the habeas statute applies to persons, quote, held in custody or under -- or by color of the authority of the United States, an individual is held in custody by the United States when the United States official charged with his detention has the power to produce him. That's the law.

MR. REUVENI: Yeah, that --

THE COURT: So I don't have to find that's only satisfied in one particular way. If I do find from the facts, that are given to me, you certainly have the power to produce him. You had the power to produce him there. The facts lead to the logical inference that they are still -- they are still wards of the United States. You haven't relinquished them. There's no facts that you've relinquished those detainees.

MR. REUVENI: I don't think it's in dispute that he is in the custody of a foreign country. I don't think anyone disputes that.

THE COURT: Right.

MR. REUVENI: I think the dispute is whether the United States can pick up a phone and call someone in El Salvador and say, give us our guy back.

THE COURT: But that's *Munaf*, right? That's *Munaf*. There were two potential custodians in *Munaf*, the United States and Iraq. Right?

MR. REUVENI: The distinction, however, is that it was a U.S. military base controlled by the United States, not a foreign sovereign entity not in any way controlled by the United States. And I will, then, point the Court to *Kiyemba*, if I may.

THE COURT: Let's not get away from this quite yet.

MR. REUVENI: Sure.

THE COURT: Because this is a Supreme Court case, and I do want to make sure I understand it.

There is no dispute that there is a contract, right, by which the United States paid money for a particular service.

MR. REUVENI: That is -- that is in dispute.

THE COURT: That is in dispute?

MR. REUVENI: There's nothing in the record that shows a contract.

THE COURT: Well, no that's because you didn't want to produce it or didn't produce it, but there's certainly in the record, we have an agreement with El Salvador. I believe that's what Secretary of State Rubio said, as well as Secretary Noem, right?

MR. REUVENI: I can't speak to where they got their information from. I --

THE COURT: But they are the named defendants.

MR. REUVENI: I understand. I understand, Your Honor, but neither of them said there was a contract.

THE COURT: Okay. So they may not have used the word "contract," but agreement sounds a lot like contract, where we paid $6 million, which is a really -- you know, to house, I believe that's what was said, and that we have President Bukele saying this is -- someone said it's pennies on the dollar, and that President Bukele said this is a good deal for us.

So I think I can draw the logical inference that there is an agreement in which the United States is the payor to house these individuals.

If you would -- if you wanted to present contrary evidence or evidence which shines a different light on this, you certainly had that opportunity. So I don't have it.

MR. REUVENI: That is -- that is correct. And I will say again, the government made a choice here to produce no evidence. So --

THE COURT: Okay. So -- so I see, you know, with *Munaf*, you read it strictly as it has to be the custody of the United States military. I don't know if I agree with that reading. I think that the power to produce is the critical legal issue. But in any event, you said you wanted me to look at another case.

MR. REUVENI: Yes, two other cases, actually, also *Boumediene*, another Supreme Court case, which extended habeas jurisdiction to Guantanamo, notwithstanding Guantanamo not technically a part of the United States. It extended there because, and I'll quote there, it was under the, quote, complete and total control of our government, end quote, so another thing that is different between the situation here and the situation in a prior Supreme Court decision extending habeas outside the territory of the United States.

I go back to *Munaf* for a moment as well, that Court did find habeas jurisdiction over U.S. citizens and U.S. custody abroad, but it did not grant habeas relief, because the Court decided that article three courts have no authority to prevent the United States from transferring even U.S. citizens to a foreign government. So it didn't grant habeas relief. It had jurisdiction, but said there was no remedy.

THE COURT: Right. But in that case there was actually some basis to believe that those individuals should be in foreign jurisdiction. That's why I asked the question of,

do you know why he's in the detention facility in El Salvador? Is there any evidence he's there because the El Salvadorans want him? And the answer is no. Which leads to the logical inference that he's there because the United States wants him there, although there's no legal basis for that either. So different -- different, I believe, than *Munaf*, although I'll take a close look at it.

MR. REUVENI: I appreciate that, Your Honor.

One other case I would like to point you to is *Kiyemba*. It's a D.C. Circuit case, so not a Fourth Circuit case, but many of the big habeas decisions come out of the D.C. Circuit given that Guantanamo jurisdiction goes there.

THE COURT: I'm sorry. Can you slow down just a little bit and let me get the citation from you?

MR. REUVENI: Yes. It's 561 F.3d at 515.

THE COURT: All right. And you did cite this in your brief?

MR. REUVENI: We did, Your Honor.

THE COURT: Give me the -- it's *Kiyemba*, is that right?

MR. REUVENI: *Kiyemba*, K-I-Y-E-M-B-A.

THE COURT: Okay.

MR. REUVENI: And that was a decision explaining that once an individual in U.S. custody or in U.S. territory, I should say, was transferred to another sovereign, quote, the --

after the transfer, quote, would be effected by the foreign government pursuant to its own laws and not on behalf of the United States, end quote.

The dissent in that decision was inclined to adopt a view that it sounds like you might be inclined to adopt, Your Honor, but the majority in that case rejected that as a basis for finding habeas jurisdiction.

Another --

THE COURT: I'm sorry, what is the basis? You -- you're moving real fast for me. Okay? And I want to slow it down so I understand it.

MR. REUVENI: The individual began in the United States custody and then ended up in the custody of a foreign government.

THE COURT: Okay. And?

MR. REUVENI: That case goes on to respond, I think, to some of the questions you and I are talking about today. At Page 515, so after the release from U.S. custody --

THE COURT: Okay. Hold on. *Kiyemba* was about enemy combatants and the entire statutory scheme regarding enemy combatants, am I right?

MR. REUVENI: Not exactly. It was based on habeas jurisdiction because it found the jurisdiction stripping provision that Congress had put into effect was unconstitutional as to --

THE COURT: Right. But it says while this appeal was pending, that Congress passed the Military Commissions Act of which provided no Court shall have jurisdiction to hear or consider an application for writ of habeas corpus filed by or on behalf of an alien detained by the United States who has been determined by the United States to have been properly detained as an enemy combatant or is awaiting such determination.

Am I right about that?

MR. REUVENI: I don't think so, Your Honor. That's the provision that *Boumediene* declared unconstitutional.

THE COURT: Okay. I'm reading from *Kiyemba.*

MR. REUVENI: *Kiyemba* predates *Boumediene.*

THE COURT: I'm sorry?

MR. REUVENI: This particular *Kiyemba* decision predates *Boumediene.*

THE COURT: This predates *Boumediene*?

MR. REUVENI: That's my understanding. There's a follow on *the Kiyemba* case that deals with *Boumediene* on remand, but that's not the case we're relying on here.

THE COURT: Okay. Then this was your -- from your brief, *Kiyemba v. Obama* that -- I'm pulling up the case according to --

MR. REUVENI: Yes, this is from our brief.

THE COURT: Okay.

MR. REUVENI: And what that case goes on to discuss, after an individual is transferred from the sovereign territory of the United States to the sovereign territory of another country, and recites this longstanding principle from a Supreme Court case from 1812, the jurisdiction of a nation within its own territory is necessarily exclusive and absolute, and then it went on to explain why the Court can't order habeas relief in that context.

THE COURT: Can you give me the -- first of all, give me the cite so I know I'm looking at the right case.

MR. REUVENI: Absolutely. 561 F.3d at 515.

THE COURT: And where are you reading from?

MR. REUVENI: It's a document in which I have the quote, but it's Page 515 in the F.3d reports.

THE COURT: 515?

And what was the grounds on which these individuals were held?

MR. REUVENI: They were enemy combatants.

THE COURT: Enemy combatants.

So a moment ago when I asked you about enemy combatants, you told me I had the wrong -- wrong part of the case, right?

MR. REUVENI: No. I was saying the Court nevertheless reviewed their claims in habeas under Section 2241, 28 U.S.C. 2241.

THE COURT: Okay. But the point I'm trying to make,

just real basic, is Mr. Abrego Garcia is not an enemy combatant. He has not been designated as such, and those facts matter in these analyses, don't they?

MR. REUVENI: No, I don't think so. It's different, yes. He's not an enemy combatant, no one contends that today.

The principle that we're saying those cases provide and that the other cases all provide, is that once an individual has been transferred to the custody of another sovereign, the habeas remedy does not lie.

THE COURT: Okay. But you will agree with me, just so when I'm looking at this case, that there is just no factual basis right now that anyone can hold Mr. Abrego Garcia, the United States or El Salvador, there's just nothing. At least in this case, there was some showing that the individuals were held pursuant to a Congressional act that allows certain acts to be taken against alleged enemy combatants? You know, there's some framework. Where here, we've got -- we've got nothing. I just don't have any -- any facts on what authority Mr. Abrego Garcia is being held anywhere.

MR. REUVENI: I also do not know, and therefore, cannot answer your question as to what authority Mr. Abrego Garcia is being held by in El Salvador.

THE COURT: Okay. All right. I'll take a close look at this case.

MR. REUVENI: The last point, Your Honor, of the

threshold issues, then I'm happy to sit down, is on redressability. And I think you discussed this a bit with plaintiffs' counsel. Our position from our brief, citing a case out of the D.C. Circuit, *Lin*, which also has other cases it cites there for the same proposition, is where relief depends on the actions of a foreign government not before the Court. The case lacks redressability. So we don't -- we don't -- I know the question you've asked is why can't I order you just to -- your clients, my clients, to ask the question, and we think those cases stand for the proposition you can't order even that.

THE COURT: But, again, I think I'm taking a different view of this, as the case has evolved, and we've all had an opportunity to look at the evidence, is that this isn't an ask. This is in the absence of you showing otherwise, you have an agreement with this facility where you're paying the money to perform a certain service. And so it stands to reason that you can go to the payee and say, we need one of our detainees back, especially when the payee says we're only holding them for a period of time until the United States figures out what they want to do.

MR. REUVENI: I understand.

THE COURT: So all of which suggests that the terms of the agreement -- you know, I have the authority to review and interpret agreements. That's what treaties are. That's

what contracts -- that's what they are. So I'm happy to take a look at it, if you wish to produce it.

But otherwise, based on the facts, I'm going to have to make certain inferences. I think those are logical ones.

MR. REUVENI: I understand, Your Honor. My clients also understand that the absence of evidence speaks for itself.

THE COURT: Got it. Okay.

So that handles redressability. I think it also handles the practical implications of any potential remedy, which I would, again, and I fully acknowledge, injunctive relief is extraordinary. I'm looking at the most -- the narrowest relief if I do enjoin, to issue the injunction, that it be narrow.

What have we not addressed, Mr. Reuveni, that you believe we should?

MR. REUVENI: I don't have much more to say on the equities, we haven't addressed that. But our brief says what it has to say, and I don't have much more to add to it.

THE COURT: On the merits.

MR. REUVENI: That's right. Nothing on the merits, nothing on the equities.

THE COURT: All right. I appreciate that. Very good.

MR. REUVENI: I would suggest one thing.

THE COURT: Yeah, sure.

MR. REUVENI: Although this is sort of is the boy who

cried wolf a little bit here, that's the wrong metaphor, but I would ask the Court to give us, the defendants, one more chance to do this without Court superintendence here.

THE COURT: Without what? Without what?

MR. REUVENI: Give us 24 hours to --

THE COURT: You want to try to work it out to get Mr. Abrego Garcia here, you got it.

MR. REUVENI: That's my recommendation to my clients, but, of course, that's why that hasn't happened.

THE COURT: Okay. And, Mr. Reuveni, I very much appreciate your candor to the Court. Good clients listen to their lawyers.

I'll -- I'll turn to the plaintiffs and see if they are amenable.

MR. REUVENI: Thank you, Your Honor.

THE COURT: The practical reality is, I'm going to try to get out an order as quickly as possible and then write, if I need to, to explain the order, but Mr. Reuveni has asked for 24 hours.

MR. SANDOVAL-MOSHENBERG: By all means, Your Honor, if the defendants can produce Mr. Abrego Garcia in this court on Monday, we're -- we're more than happy to accept that.

THE COURT: Okay.

MR. SANDOVAL-MOSHENBERG: I have a -- not much to say at this point. Just essentially, very small point to make with

regards to this Court's remedial order to the extent that I sincerely hope Mr. Reuveni is able to persuade his clients, but in case he's not, given the defendants' course of dealing in this matter, and the matter in which they have chosen to litigate this case, at least today it doesn't appear that they are taking it seriously. And so for that reason, I think that to the extent that the Court orders any sort of status reports or any sort of essentially the defendants to inform the Court as to what the defendants are doing in order to carry out the Court's order, I would request that the Court order that the declarations be provided by individuals with personal knowledge.

What we've seen is -- for example, if you look at the Cerna declaration, and this is very typical of these ICE declarations generally, is that it's a hearsay declaration, and it doesn't specify what he knows versus what his -- I'm looking at Paragraph 4 here specifically, it doesn't specify what he knows versus what is his reasonable inquiry, versus what is the information obtained from various records, systems, databases, other DHS employees, et cetera.

COURT REPORTER: I'm sorry. I'm sorry.

THE COURT: Slow down.

MR. SANDOVAL-MOSHENBERG: Apologies.

Essentially, Your Honor, to the extent that Your Honor is going to order that anyone within the government provide this

Court with ongoing information about the government's remedial steps, we would request that the Court specify that the person who provides that declaration is a person with personal knowledge and that they state the basis of their personal knowledge, not these sort of generic 30(b)(6) declarations.

Thank you, Your Honor.

THE COURT: Okay. All right. Well, if you would all indulge me for a few minutes, I want to take a brief recess. I'll be back in ten.

THE DEFENDANT: All rise. This Honorable Court now stands in recess.

(Recess taken from 2:05 p.m. to 2:43 p.m.)

DEPUTY CLERK: All rise. This Honorable Court now resumes in session.

THE COURT: All right, everyone. You can have a seat.

All right. I want to thank all counsel here for your attention to this matter, for your professionalism, for your candor. It's very much appreciated.

I also want to thank everyone who has come out today, because this case is certainly important to Mr. Abrego Garcia and his family. It's also very important to you all.

And in recognition of that, I feel like I can't wait on giving my order. I will write a formal opinion to support the order, but my plan right now is to read the order itself based

on the record, all of the evidence, and the argument as I see it into the record. I will sign it. And it will be on the docket immediately.

So I am going to grant the motion for preliminary injunction. I've reviewed -- and I'll read this word for word so that there is no dispute that the oral order is the written order.

The Court has reviewed plaintiffs' motion for injunctive relief pursuant to Rule 65 of the Federal Rules of Civil Procedure, along with supporting memoranda, reply briefs, and the record in this case.

The defendants named in this suit are the United States Secretary of Homeland Security; the Attorney General of the United States; the United States Secretary of State; the acting director of U.S. Immigration and Customs Enforcement, ICE; the Acting Executive Associate Director of ICE Enforcement and removal operations; and the director of ICE's Baltimore field office, collectively, the defendants.

Kilmar Armando Abrego Garcia -- Abrego Garcia, a native of El Salvador, was granted withholding of removal in 2019 which prohibited his removal to El Salvador. The record reflects that Abrego Garcia was apprehended in Maryland without legal basis on March 12, 2025, and without further process or legal justification was removed to El Salvador by March 15th, 2025.

Abrego Garcia is detained in El Salvador's terrorism

confinement center, Centro de Confinamiento del Terrorismo, or CECOT. Plaintiffs contend that his removal violated 8 U.S.C. Section 1231(b)(3)(A), and it's implementing regulations, as well as the Fifth Amendment to the United States Constitution, the Administrative Procedures Act, 5 U.S.C. 706(2)(A), and other applicable legal protections. Based on the record before the Court, I find that this Court retains subject matter jurisdiction.

I further find that, first, plaintiffs are likely to succeed on the merits because Abrego Garcia was removed to El Salvador in violation of the Immigration and Nationality Act, specifically U.S.C. Section 1231(b)(3)(A), and without any legal process; his continued presence in El Salvador for obvious reasons constitutes irreparable harm; the balance of equities and the public interest weigh in favor of returning him to the United States; and last, fourth, the issuance of a preliminary injunction without further delay is necessary to maintain the status quo, I should say restore him to the status quo, and to avoid ongoing irreparable harm resulting from Abrego Garcia's unlawful removal.

For the reasons stated above, the Court hereby directs defendants to return Abrego Garcia to the United States no later than 11:59 p.m. on April 7th, 2025.

A memorandum opinion further setting forth the basis for this ruling will be issued in due course. Accordingly, it is

this 4th day of April, 2025, by the United States District Court for the District of Maryland, hereby ordered that, one, plaintiffs' motion ECF Number 6 construed as one for preliminary injunction relief is granted; two, defendants are here by ordered to facilitate and effectuate the return of plaintiff Kilmar Armando Abrego Garcia to the United States by no later than 11:59 p.m. on Monday, April 7, 2025; three, this preliminary relief is issued to restore the status quo and to preserve Abrego Garcia's access to due process in accordance with the Constitution and governing immigration statutes; fourth, the clerk is directed to transmit copies of this order to the parties.

I will sign it, and I will get it filed.

Is there anything else that we need to discuss today, Counsel?

MR. SANDOVAL-MOSHENBERG: Nothing further for the plaintiff, Your Honor.

THE COURT: Mr. Reuveni?

MR. REUVENI: Nothing further.

Just one housekeeping matter. You said it twice, I just want to make sure I have it correct when I leave the courtroom, 11:59 p.m., April 7th?

THE COURT: That's right, Monday, April 7th. I did do the calendar right, Monday, April 7th, 11:59 p.m.

MR. REUVENI: Thank you.

THE COURT: All right. Thank you all.

DEPUTY CLERK: All rise. This Honorable Court now stands adjourned.

(Proceedings were concluded at 2:48 p.m.)

CERTIFICATE OF OFFICIAL REPORTER

I, Paula J. Leeper, Federal Official Court Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 4th day of April 2025.

/S/ Paula J. Leeper

Paula J. Leeper, RPR, CRR
Federal Official Reporter

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

Abrego Garcia, et al. *

*

v. **Case No.** 25-cv-00951

Noem, et al. *

*

NOTICE OF APPEAL

Notice is hereby given that Kristi Noem, Todd Lyons, Kenneth Genalo, Nikita Baker, Pamela Bondi, and Marco Rubio,
(fill in names of **all** parties who are appealing)

Defendants in the above captioned case, hereby appeals to the
(indicate plaintiff/s or defendant/s)

United States Court of Appeals for the Fourth Circuit the order
(indicate order or judgment)

entered in this case on Apr. 4, 2025.

Apr. 4, 2025
Date

s/Erez Reuveni
Signature

Erez Reuveni, #
Printed Name and Bar Number

P.O. Box 878, Ben Franklin Station, Washington, D.C. 20044-0878
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Email Address

(202) 307-4293
Telephone Number

Fax Number

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KILMAR ARMANDO ABREGO GARCIA, *et al.*, *

Plaintiffs, *

Civil Action No. 8:25-cv-00951-PX

v. *

KRISTI NOEM, Secretary, United States Department of Homeland Security, *et al.*, *

Defendants. *

***

MEMORANDUM OPINION

In 2019, an immigration judge—acting under the authority delegated by the United States Attorney General and pursuant to powers vested by Congress—granted Plaintiff Kilmar Armando Abrego Garcia ("Abrego Garcia") withholding of removal, thereby protecting him from return to his native country, El Salvador. ECF No. 1 ¶ 41; ECF No. 1-1. Such protection bars the United States from sending a noncitizen to a country where, more likely than not, he would face persecution that risks his "life or freedom." *See* Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16–.18 & .24 (setting forth the standard for withholding of removal and the procedures required for its termination).

Six years later, without notice, legal justification, or due process, officers from U.S. Immigration and Customs Enforcement ("ICE"), a subagency of the Department of Homeland Security ("DHS"), put him on a plane bound for the Terrorism Confinement Center ("CECOT")

in El Salvador. ECF No. 1¶ 59. [1] Neither the United States nor El Salvador have told anyone why he was returned to the very country to which he cannot return, or why he is detained at CECOT.[2] *See* Hr'g Tr., Apr. 4, 2025, 25: 13–14 (Mr. Reuveni: "We have nothing to say on the merits. We concede he should not have been removed to El Salvador."); *see* Hr'g Tr., Apr. 4, 2025, 34:25–35:5 (The Court: "[W]hat basis is he held? Why is he [in CECOT] of all places?" . . . Mr. Reuveni: "I don't know. That information has not been given to me. I don't know.").

That silence is telling. As Defendants acknowledge, they had no legal authority to arrest him, no justification to detain him, and no grounds to send him to El Salvador[3]—let alone deliver him into one of the most dangerous prisons in the Western Hemisphere.[4] Having confessed grievous error, the Defendants now argue that this Court lacks the power to hear this case, and they lack the power to order Abrego Garcia's return. ECF No. 11 at 3. For the following reasons, their jurisdictional arguments fail as a matter of law. Further, to avoid clear irreparable harm, and because equity and justice compels it, the Court grants the narrowest, daresay only, relief warranted: to order that Defendants return Abrego Garcia to the United States.

I. Background

Abrego Garcia was born and raised in Los Nogales, El Salvador. ECF No. 1-1 at 2. His family owned a small and successful pupuseria. *Id.* For years, they were subject to extortion and

[1] Louis Casiano, *U.S. Paid El Salvador to Take Venezuelan Tren de Aragua Members for 'Pennies on the Dollar,' White House Says*, FOX NEWS (Mar. 26, 2025), https://www.foxnews.com/politics/us-paid-el-salvador-take-venezuelan-tren-de-aragua-members-pennies-dollar-white-house-says.

[2] Defendants did not assert—at any point prior to or during the April 4, 2025, hearing—that Abrego Garcia was an "enemy combatant," an "alien enemy" under the Alien Enemies Act, 50 U.S.C. § 21, or removable based on MS-13's recent designation as a Foreign Terrorist Organization under 8 U.S.C. § 1189. Invoking such theories for the first time on appeal cannot cure the failure to present them before this Court. In any event, Defendants have offered no evidence linking Abrego Garcia to MS-13 or to any terrorist activity. And vague allegations of gang association alone do not supersede the express protections afforded under the INA, including 8 U.S.C. §§ 1231(b)(3)(A), 1229a, and 1229b.

[3] ECF No. 11-3 at 3 ("Through administrative error, Abrego-Garcia was removed from the United States to El Salvador. This was an oversight . . . ."); Hr'g Tr., Apr. 4, 2025, 19:11–13 (Mr. Reuveni: "This person should -- the plaintiff, Abrego Garcia, should not have been removed. That is not in dispute.").

[4] ECF No. 1-4; ECF No. 10-2; ECF No. 10-3.

threats of death by one of El Salvador's most notorious gangs, Barrio 18. *Id.* at 2. The gang used Abrego Garcia as a pawn in its extortion, demanding that his mother give Abrego Garcia over to the gang or he and others in their family would be killed. *Id.* at 3. Attempting to escape the gang's reach, the family moved three times without success. *Id.* To protect Abrego Garcia, they ultimately sent him to the United States to live with his older brother, a U.S. citizen, in Maryland. ECF No. 1 ¶ 22.

Abrego Garcia lived in Maryland for many years without lawful status. *Id.* In early 2019, while waiting at the Home Depot in Hyattsville, Maryland, to be hired as a day laborer, Abrego Garcia was arrested. *Id.* ¶¶ 25–26. The Prince George's County Police Department questioned him about gang affiliation, but nothing came of it. *Id.* ¶ 27. He was then turned over to ICE custody. *Id.* ¶ 28.

On March 29, 2019, DHS initiated removal proceedings against Abrego Garcia pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). ECF No. 1 ¶ 29. On April 24, 2019, Abrego Garcia appeared before an immigration judge ("IJ") where he conceded his deportability and applied for asylum, withholding of removal, and protection under the Convention Against Torture. ECF No. 1-1.

Pending resolution of the requested relief, DHS argued for Abrego Garcia to be detained in ICE custody. ECF No. 1 ¶ 30. DHS relied principally on a singular unsubstantiated allegation that Abrego Garcia was a member of MS-13.[5] The IJ ultimately detained Abrego Garcia pending the outcome of his requested relief from deportation, a decision affirmed by the Board of Immigration Appeals. ECF Nos. 11-1 & 11-2.

October 10, 2019, following a full evidentiary hearing, the IJ granted Abrego Garcia

[5] The "evidence" against Abrego Garcia consisted of nothing more than his Chicago Bulls hat and hoodie, and a vague, uncorroborated allegation from a confidential informant claiming he belonged to MS-13's "Western" clique in New York—a place he has never lived. ECF No. 31.

withholding of removal to El Salvador pursuant to 8 U.S.C. § 1231(b)(3)(A). As a matter of law, withholding of removal prohibits DHS from returning an alien to the specific country in which he faces clear probability of persecution. In Abrego Garcia's case, the IJ concluded that he was entitled to such protection because the Barrio 18 gang had been "targeting him and threatening him with death because of his family's pupusa business." ECF No. 1-1 at 2. DHS never appealed the grant of withholding of removal, and so the decision became final on November 9, 2019.[6] *See* Hr'g Tr., Apr. 4, 2025, 24:15–16 (Mr. Reuveni: "The government did not appeal that decision, so it is final."). Accordingly, as Defendants have repeatedly admitted, they were legally prohibited from deporting Abrego Garcia to El Salvador. *See* Hr'g Tr., Apr. 4, 2025, 25:6–7 (Mr. Reuveni: "There's no dispute that the order could not be used to send Mr. Abrego Garcia to El Salvador.").

For the next six years, Abrego Garcia lived in Maryland with his wife and their three children. ECF No. 1 ¶¶ 24–25. He complied fully with all directives from ICE, including annual check-ins, and has never been charged with or convicted of any crime. ECF No. 1-3, ECF No. 1 ¶ 45.

On March 12, 2025, while driving home from work with his young son in the car, Abrego Garcia was stopped by ICE agents. *Id.* ¶¶ 48–49. The officers had no warrant for his arrest and no lawful basis to take him into custody; they told him only that his "status had changed." *Id.* ¶ 50. He was first transported to an ICE facility in Baltimore, Maryland. *Id.* ¶¶ 51–53. Next, ICE agents shuttled him to detention facilities in Louisiana and La Villa, Texas. *Id.* ¶¶ 54–57. He was allowed a handful of calls to his wife. He said that he was told he would see a judge soon. *Id.* But

[6] A decision by an IJ becomes final "upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken within that time." 8 C.F.R. § 1003.39. The deadline for filing an appeal to the Board of Immigration Appeals is 30 days from the date of the decision. *See* 8 C.F.R. § 1003.38(b). Once final, a grant of withholding of removal prohibits removal to the country of feared persecution absent formal reopening and termination of that protection. *See* 8 C.F.R. § 208.24.

that never happened.

Three days later, on March 15, 2025, without any notice, legal process, or hearing, ICE forcibly transported Abrego Garcia to the Terrorism Confinement Center ("CECOT") in El Salvador, a notorious supermax prison known for widespread human rights violations. ECF No. 1 ¶ 59; ECF No. 11-3 at 2; ECF No. 10-2. On that day, two planes carried over 100 aliens to CECOT purportedly pursuant to the Alien Enemies Act, ECF No. 11-3 at 2, the legality of which is the subject of separate litigation. *See J.G.G. v. Trump,* No. 1:25-cv-766 (JEB), 2025 WL 890401 (D.D.C. Mar. 24, 2025). A third plane included "aliens with Title 8 removal orders;" many of them were in ICE custody awaiting asylum and other protective hearings in the United States. ECF No. 11-3 at 2; *see J.G.G. v. Trump,* No. 1:25-cv-766 (JEB), ECF Nos. 67-5–67-20.

Once the planes arrived in El Salvador, the male detainees[7] were stripped and shackled. Their heads were shaved, and they were marched into CECOT to join nearly 40,000 other prisoners held in some of the most inhumane and squalid conditions known in any carceral system. ECF No. 10-3. Since then, no one has heard from Abrego Garcia. ECF No. 1 ¶ 41.

To effectuate a mass relocation of those detained by the United States, the federal government struck an agreement with El Salvador whereby it would pay the Salvadoran government six-million dollars for placement of the detainees in "very good jails at a fair price that will also save our taxpayer dollars." Marco Rubio (@SecRubio), X (Mar. 16, 2025, 7:59 AM), https://x.com/SecRubio/status/1901241933302825470. El Salvador's President, Nayib Bukele, has publicly touted the agreement terms: "We are willing to take in only convicted criminals (including convicted U.S. citizens) into our mega-prison (CECOT) in exchange for a

[7] Female detainees were returned to the United States because the prison would not accept them. *See, e.g.*, *J.G.G. v. Trump*, No. 1:25-cv-766 (JEB), ECF No. 55-1.

fee."[8] ECF No. 10-5; Nayib Bukele (@nayibbukele), X (Apr. 4, 2025, 10:23 AM), https://x.com/nayibbukele/status/1901245427216978290. According to a memorandum issued by El Salvador's Ministry of Foreign Affairs, the agreement provides that the detainees will be held "for one (1) year, pending the United States' decision on [their] long term disposition." *See* Matthew Lee & Regina Garcia Cano, *Trump Officials Secretly Deported Venezuelans and Salvadorans to a Notorious Prison in El Salvador*, ASSOCIATED PRESS (Mar. 15, 2025), https://apnews.com/article/trump-deportations-salvador-tren-aragua-64e72142a171ea57c869c3b35eeecce7.

After Abrego Garcia was transferred to CECOT, Defendant, DHS Secretary, Kristi Noem, personally toured the facility alongside senior Salvadoran officials. U.S. Dep't of Homeland Sec., *Inside the Action: Secretary Noem's Visit to El Salvador*, DHS, https://www.dhs.gov/medialibrary/assets/video/59108 (last visited Apr. 4, 2025). From inside the prison walls, Secretary Noem declared that transferring individuals previously detained on U.S. soil to CECOT remains "one of the tools in *our* [the United States'] toolkit that we will use if you commit crimes against the American people." U.S. Dep't of Homeland Sec., *How It's Going*, DHS, https://www.dhs.gov/medialibrary/assets/video/59108 (last visited Apr. 4, 2025) (emphasis added).

Although the legal basis for the mass removal of hundreds of individuals to El Salvador remains disturbingly unclear, Abrego Garcia's case is categorically different—there were no legal grounds whatsoever for his arrest, detention, or removal. Nor does any evidence suggest that Abrego Garcia is being held in CECOT at the behest of Salvadoran authorities to answer for crimes in that country. Rather, his detention appears wholly lawless.

[8] It is unclear what qualifies as a "convicted criminal" under the terms of the agreement, but Abrego Garcia has not been convicted of any crime.

Based on these events, Abrego Garcia, through counsel, and along with his wife, Jennifer Stefania Vasquez Sura, and their son, A.A.V., by and through his mother and next friend, [9] filed suit in this Court on March 24, 2025, against DHS Secretary Noem; Acting Director of U.S. Immigration and Customs Enforcement, Todd Lyons; Acting Executive Associate Director of ICE Enforcement and Removal Operations, Kenneth Genalo; ICE Baltimore Field Office Director, Nikita Baker; Attorney General, Pamela Bondi; and Secretary of State, Marco Rubio (collectively "Defendants"). Abrego Garcia specifically alleges that his removal to El Salvador violated the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(A)(Count I); the Due Process Clause of the Fifth Amendment (Count II); and the Administrative Procedure Act, 5 U.S.C. § 706(2) (Count III); and, pleaded in the alternative, qualifies him for habeas relief pursuant to 28 U.S.C. § 2241 (Count V). ECF No. 1. The matter is now before the Court on Plaintiffs' motion for preliminary injunction, ECF No. 6, following full briefing and a hearing held on April 4, 2025. This Memorandum Opinion sets forth the Court's findings in support of the Order entered on April 4, 2025.

II. Jurisdictional Challenges

The Defendants' only meaningful challenge to the motion is that this Court lacks the power to hear this case. They advance three arguments. The Court considers each in turn.

A. The Court lacks Jurisdiction Because the "Core" of the Claims Sound in Habeas

Defendants first argue that because Abrego Garcia challenges his confinement in CECOT, the "core" of his claims sound only in habeas brought pursuant to 28 U.S.C. § 2241 *et seq*. ECF No. 11 at 7, citing *DHS v. Thuraissigiam*, 591 U.S. 103, 117 (2020) ("habeas…is the appropriate

[9] Vasquez Sura and A.A.V's claims are not the subject of this decision, and so for clarity, the Court refers solely to Plaintiff Abrego Garcia.

remedy to ascertain…whether any person is rightfully in confinement or not."). And as such, suit is proper only against the immediate "custodian" (the Warden of CECOT) and in the jurisdiction where Abrego Garcia is confined (El Salvador). *Id.* at 9.

Defendants are wrong on several fronts. Abrego Garcia exclusively challenges his lawless return to El Salvador, not the fact of his confinement. ECF No. 1 at 16-20. This is the core of his claim, as Defendants concede, which is why his suit would remain equally strong had Defendants released Abrego Garcia to the streets of El Salvador instead of CECOT. Hr'g. Tr., Apr. 4, 2025, at 19. As Defendants did in *J.G.G. v. Trump*, Civil Action No. 25-766 (JEB), 2025 WL 890401, at *7–8 (D.D.C. Mar. 24, 2025), they fundamentally ignore the difference between challenging legality of *removal* as opposed to confinement. *Id.*[10] For purposes of this decision, however, Abrego Garcia simply does not challenge his confinement. The removal itself lies at the heart of the wrongs. Thus, the Court need not wade into the murky jurisdictional implications that flow from such a challenge.

But even if the Court considers the thorny question of "custody" as it pertains to Abrego Garcia's habeas claim (Count V), the Defendants are not out of the woods. They do indeed cling to the stunning proposition that they can forcibly remove any person—migrant and U.S. citizen alike —to prisons outside the United States, and then baldly assert they have no way to effectuate return because they are no longer the "custodian," and the Court thus lacks jurisdiction. As a practical matter, the facts say otherwise.

The facts are that the United States exerts control over each of the nearly 200 migrants sent to CECOT. The Defendants detained them, transported them by plane, and paid for their

[10] In this context, habeas claims need not be brought to the exclusion of all other claims. *See R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 185–186 (D.D.C. 2015) (noting that "APA and habeas claims may coexist" where aliens challenge their detention in violation of removal procedures).

placement in the mega-jail until "the United States" decides "their long-term disposition."[11] Against this backdrop, Defendants have produced *no evidence* to suggest they cannot secure one such detainee, Abrego Garcia, for return to the United States. Equally important, to credit Defendants' argument would permit the unfettered relinquishment of any person regardless of immigration status or citizenship to foreign prisons "for pennies on the dollar."[12]

Nor do the Defendants cite any authority to support this eye-popping proposition. Sure, they point the Court to *Munaf v. Green*, 553 U.S. 674 (2008), but that decision has little bearing here. In *Munaf*, the Court reviewed whether plaintiffs, American citizens who voluntarily traveled to Iraq and were subsequently detained for violations of Iraqi law, could challenge their detention. The Court concluded that while the district court retained jurisdiction in the first instance, *id.* 686, the merits of the habeas challenge failed because "Iraq has the sovereign right to prosecute Omar and Munaf for *crimes committed on its soil*." *Id.* at 695 (emphasis added).

Here, by contrast, Abrego Garcia is *not* being held for crimes committed in or against El Salvador, the United States, or anywhere else for that matter. His claims do not implicate any question of competing sovereign interests, and so, *Munaf* offers little guidance.[13] Thus, while the

[11] *See* Matthew Lee & Regina Garcia Cano, *Trump Officials Secretly Deported Venezuelans and Salvadorans to a Notorious Prison in El Salvador*, ASSOCIATED PRESS (Mar. 15, 2025), https://apnews.com/article/trump-deportations-salvador-tren-aragua-64e72142a171ea57c869c3b35eeecce7.

[12] *Louis Casiano, U.S. Paid El Salvador to Take Venezuelan Tren de Aragua Members for 'Pennies on the Dollar,' White House Says*, FOX NEWS (Mar. 26, 2025), https://www.foxnews.com/politics/us-paid-el-salvador-take-venezuelan-tren-de-aragua-members-pennies-dollar-white-house-says.

[13] Defendants also urged this Court to follow *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), wherein the United States Court of Appeals for the District of Columbia held that a claim could not sound in habeas where the plaintiff sought relief to avoid "torture" in the receiving country. The *Kiyemba* Court held that because a "district court may not question the Government's determination that that a potential recipient country is not likely to torture a detainee," the habeas claims fail on the merits. *Id.,* citing *Munaff*, 553 U.S. at 514. That is not this. Defendants have already determined that Abrego Garcia must not be returned to El Salvador because he had established under the INA that he faces persecution from Barrio18. ECF No. 1-1. Defendants remain bound to that decision just as much today as they were when they decided not to appeal that determination. Defendants' violation of the INA in detaining Abrego Garcia in El Salvador does not implicate United States' policy decisions as to El Salvador's possible propensity to violate the Convention Against Torture writ large. ECF No. 11 at 16 (this Court should defer to the Defendants' determination that Abrego Garcia will not likely be tortured or killed in El Salvador, this implicating Executive policy decisions). Accordingly, *Kiyemba* does not counsel a different outcome.

success of Abrego Garcia's preliminary injunction motion does not depend on the success of his habeas claim, Defendants also fail to convince this Court that the claim will not survive in the end. For purposes of this decision, suffice to say the Court retains jurisdiction because Abrego Garcia challenges his removal to El Salvador, not the fact of confinement.

B. Redressability

Defendants next make a narrow standing argument, contending that because the claims are not redressable, this Court lacks the power to hear the case. ECF No. 11 at 10. Federal courts are ones of limited jurisdiction, hearing only live "Cases" and "Controversies." U.S. Const. art. III, § 2. A party's standing to maintain an action "is an essential and unchanging part of the case-or-controversy requirement of Article III." *Davis v. Fed. Election Comm.*, 554 U.S. 724, 733 (2008) (citations omitted). To satisfy Article III standing, the plaintiff must make plausible that he "(1)[] has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000).

The Defendants' redressability argument, simply put, is that their placement of Abrego Garcia in an El Salvadoran prison deprives them of any power to return him. Thus, they say, even if Abrego Garcia succeeds on the merits, Defendants are powerless to get him back. The facts demonstrate otherwise.

First, Defendants can and do return wrongfully removed migrants as a matter of course. This is why in *Lopez-Sorto v. Garland*, 103 F.4th 242, 248–53 (4th Cir. 2024), the Fourth Circuit concluded that the Defendants could redress wrongful removal to El Salvador by facilitating the

plaintiff's return per DHS' own directives. *Id.* at 253*; see also Nken v. Holder*, 556 U.S. 418, 436 (2009) ("Aliens who are removed may continue to pursue their petitions for review, and those that prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal.").

Second, Defendants unilaterally placed hundreds of detainees behind the walls of CECOT without ceding control over the detainees' fates, as the detainees are in CECOT "*pending the United States' decision on their long-term disposition.*" *See* Matthew Lee & Regina Garcia Cano, *Trump Officials Secretly Deported Venezuelans and Salvadorans to a Notorious Prison in El Salvador*, ASSOCIATED PRESS (Mar. 15, 2025), https://apnews.com/article/trump-deportations-salvador-tren-aragua-64e72142a171ea57c869c3b35eeecce7. Unlike Abrego Garcia, for whom *no* reason exists to detain him, Defendants transported many individuals who had been detained in the United States while awaiting immigration proceedings.[14] Yet, despite Defendants' power to transfer those awaiting hearings to CECOT for a "good price," Defendants disclaim any ability to secure their return, including Abrego Garcia. ECF No. 11 at 11. Surely, Defendants do not mean to suggest that they have wholesale erased the substantive and procedural protections of the INA in one fell swoop by dropping those individuals in CECOT without recourse. Instead, the

[14] *See, e.g.,* 25-cv-766-JEB, ECF No. 55-1 (Declaration of S.Z.F.R., a female detainee formerly held at Webb County Detention Center in Laredo, Texas awaiting a merits hearing on her asylum claims was part of the mass transport to CECOT but ultimately returned to the United States because CECOT would not accept females); ECF 67-10 (Declaration of immigration attorney for Jose Hernandez Romero, who had been detained at Otay Mesa Detention Center pending his asylum hearing at time was transported to CECOT); ECF No. 67-11 (Declaration of immigration attorney for detainee, G.T.B., a native of Venezuela who had been detained at Aurora Contract Detention Facility awaiting deportation proceedings when transported to CECOT without warning. ICE ultimately returned her to the United States); ECF No. 67-11 (Declaration of immigration attorney for detainee, Jerce Reyes Barrios, who had been housed at Otay Mesa Detention Center awaiting hearing on protected status, prior to transport to CECOT); ECF No. 67-14 (Declaration of immigration attorney for detainee, E.V., who had been housed at Moshannon Valley Processing Center in Philipsburg, Pennsylvania awaiting hearing on final order of removal when transported to CECOT); ECF No. 67-16 (Declaration of immigration attorney for detainee J.A.B.V, who had been detained domestically prior to his removal hearing scheduled for April 7, 2025 was transported to CECOT); ECF No. 67-17 (Declaration of immigration attorney for detainee, L.G., who had been detained at Moshannon Valley Processing Center in Philipsburg, Pennsylvania, awaiting removal proceedings prior to transfer to CECOT).

record reflects that Defendants have "outsource[d] part of the [United States'] prison system."[15] *See also* U.S. Dep't of Homeland Sec., *How It's Going*, DHS, https://www.dhs.gov/medialibrary/assets/video/59108 (last visited Apr. 4, 2025) (quoting Defendant Noem: "This facility is one of the tools in our toolkit that we will use")."[16] Thus, just as in any other contract facility, Defendants can and do maintain the power to secure and transport their detainees, Abrego Garcia included.

In the end, Defendants' redressability argument rings hollow. As their counsel suggested at the hearing, this is not about Defendants' *inability* to return Abrego Garcia, but their lack of desire.

> THE COURT: Can we talk about, then, just very practically, why can't the United States get Mr. Abrego Garcia back?
>
> MR. REUVENI: Your Honor, I will say, for the Court's awareness, that when this case landed on my desk, the first thing I did was ask my clients that very question. I've not received, to date, an answer that I find satisfactory.

Hr'g Tr., Apr. 4, 2025, at 35–36. *See also id.* at 50 (counsel seeking 24 hours to persuade Defendants to secure Abrego Garcia's return). Flat refusal, however, does not negate redressability. The record reflects that the remedy is available. Abrego Garcia maintains standing to sue.

C. Section 1252(g) of the INA Does Not Strip the Court's Jurisdiction in this Case

Lastly, Defendants argue that 8 U.S.C. § 1252(g) ("Section 1252(g)") deprives the Court of jurisdiction to review this matter. The statute reads:

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[15] Nayib Bukele (@nayibbukele), X (Mar. 19, 2025, 8:12 PM), https://x.com/nayibbukele/status/1886606794614587573

[16] U.S. Dep't of Homeland Sec., *How It's Going*, DHS, https://www.dhs.gov/medialibrary/assets/video/59108 (last visited Apr. 4, 2025) (quoting Defendant Noem: "This facility is one of the tools in our toolkit that we will use").

> Except as provided in this section and notwithstanding any other provision of law (statutory or non-statutory), 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 General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).

Defendants concede that *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999), commands a narrow construction of Section 1252(g), limiting application solely to the Attorney General's exercise of lawful discretion to (1) commence proceedings; (2) adjudicate cases; or (3) execute removal orders. *Id.* ("It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings."). *See also Bowrin v. U.S. I.N.S.*, 194 F.3d 483, 488 (4th Cir. 1999) (noting that Section 1252(g) only stripped federal courts of jurisdiction to review the "Attorney General's decision to exercise her *discretion* to initiate or prosecute the specific stages in the deportation process."). As the *Reno* Court explained, "there was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's *discrete acts* . . . which represent the initiation or prosecution of various stages in the deportation process." *Id.* (emphasis added). Thus, this Court is deprived of jurisdiction only for the discretionary decisions made concerning the three stages of the deportation process. *See Bowrin*, *v. U.S. INS,* 194 F.3d 483, 488 (4th Cir. 1999); *U.S. v. Hovsepian,* 359 F.3d 1144, 1155 (9th Cir. 2004); *Coyotl v. Kelly*, 261 F. Supp. 3d 1328, 1339–1341 (N.D. Ga. 2017); *Gondal v. U.S. Dep't of Homeland Sec.*, 343 F. Supp. 3d 83, 92 (E.D.N.Y. 2018). *But see Silva v. United* States, 866 F.3d 938 (8th Cir. 2017).

Defendants press that Section 1252(g) precludes jurisdiction here because the claims concern Defendants' "execution of his removal order." ECF No. 11 at 13. The argument fails in both fact and law.

First, the Court cannot credit that Defendants removed Abrego Garcia pursuant to an "executed removal order" under the INA. Defendants have not produced *any* order of removal as to Abrego Garcia, executed or otherwise, or submitted any proof that they had removed him pursuant to one. Hr'g Tr. Apr. 4, 2025, at 20 (counsel admitting no order of removal is part of the record); *see also id*. at 22 (counsel confirming that "the removal order" from 2019 "cannot be executed" and is not part of the record). Nor have any other corollary documents surfaced, such as a "warrant for removal/deportation" customarily served on an alien as part of a lawful deportation or removal. *Id.*[17] From this, the Court cannot conclude that Abrego Garcia was spirited to CECOT on an "executed removal order" such that Section 1252(g) is implicated.

Second, even if there were an executed order of removal for Abrego Garcia, his claims do not seek review of any discretionary decisions. He is not asking this Court to review the wisdom of the Attorney General's lawful exercise of authority. Rather, he asks that the Court determine whether his return to El Salvador violated the INA. In this circumstance, the Fourth Circuit has spoken.

Bowrin v. U.S. INS, 194 F.3d 483 (4th Cir. 1999) made plain that review of agency decisions involving pure questions of law "do not fall into any of the three categories enumerated in § 1252(g)." *Bowrin*, 194 F.3d at 488. Section 1252(g), the *Bowrin* Court emphasized, "does not apply to all claims arising from deportation proceedings, because §

[17] *See* sample warrant for removal at https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF

1252(g) stripped the federal courts of jurisdiction only to review challenges to the Attorney General's decision to *exercise her discretion* to initiate or prosecute these specific stages in the deportation process." *Id.* (citing *American-Arab Anti-Discrimination Committee*, 525 U.S. at 482) (emphasis added). *See also Hovsepian*, 359 F.3d at 1155 ("The district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question . . . forms the backdrop against which the Attorney General later will exercise discretionary authority."); *Siahaan v. Madrigal*, Civil No. PWG-20-02618, 2020 WL 5893638, at *5 (D. Md. Oct. 5, 2020) ("To insist, as the Respondents do, that this Court lacks jurisdiction because of § 1252(g) to determine the purely legal questions of whether his removal under these circumstances violates the statutory and constitutional provisions that his habeas petition has raised runs contrary to the consistent rulings of the Supreme Court for at least twenty years."); *Coyotl*, 261 F. Supp. 3d at 1339–41. Accordingly, and after exhaustive analysis, *Bowrin* concluded that "absent express congressional intent . . . to eliminate the general federal habeas corpus review pursuant to 28 U.S.C.A. § 2241, the remedy remains available to Bowrin and other aliens similarly situated." *Bowrin*, 194 F.3d at 489 (collecting cases).

Like *Bowrin*, Abrego Garcia presents to this Court a pure question of law: whether Defendants exceeded their authority in returning him to El Salvador, in violation of the 8 U.S.C. § 1231(b)(3)(A). Hr'g Tr., Apr. 4, 2025, at 24. In this Court's view, no plainer question of statutory interpretation could be presented. Thus, Section 1252(g) does not deprive the Court of jurisdiction over the claims.

In sum, the Court retains jurisdiction over this case. And even though Defendants concede that if this Court retains jurisdiction, Abrego Garcia prevails on the merits of his preliminary injunction,[18] for the benefit of all, the Court briefly addresses why this concession makes sense.

III. Merits of Preliminary Injunctive Relief

A preliminary injunction is an extraordinary remedy that should be granted only upon "a clear showing that the plaintiff is entitled to relief." *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011) (internal quotation marks omitted) (quoting *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008)). Generally, injunctions are sought to "preserve the status quo so that a court can render a meaningful decision after a trial on the merits." *Hazardous Waste Treatment Council v. State of S.C.*, 945 F.2d 781, 788 (4th Cir. 1991) (quotation omitted); *see also United States ex rel. Rahman v. Oncology Assocs., P.C.*, 198 F.3d 489, 498 (4th Cir. 1999). By contrast, injunctions which alter the status quo, known as "mandatory injunctions," are highly disfavored, *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980), and should be granted only when "necessary both to protect against irreparable harm in a deteriorating circumstance created by the defendant and to preserve the court's ability to enter ultimate relief on the merits of the same kind," *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 526 (4th Cir. 2003), *abrogation on other grounds recognized in Bethesda Softworks, LLC v. Interplay Entm't Corp.*, 452 F. App'x 351, 353–54 (4th Cir. 2011); *see also Pierce v. N. Carolina State Bd. of Elections*, 97 F.4th 194, 209 (4th Cir. 2024). Abrego Garcia requests relief designed to retore the status quo ante, or the "last uncontested status between the parties which preceded the controversy." *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014). That is, to return him to where he was on March 12, 2025, before he was apprehended by ICE and spirited away to

[18] *See* Hr'g Tr., Apr. 4., 2025, at 25:10–14 (Mr. Reuveni: "if you're not buying our jurisdictional arguments, like, we're done here . . . . We have nothing to say on the merits.").

CECOT.

To receive the benefit of injunctive relief, Abrego Garcia must demonstrate by preponderant evidence four well-established factors: (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor; and (4) that issuing the injunction is in the public interest. *See Winter*, 555 U.S. at 20. The Court considers each factor separately.

A. Likelihood of Success of the Merits

As to likelihood of success on the merits, Abrego Garcia need only demonstrate a likelihood of success on one cause of action. *See Mayor & City Council of Baltimore v. Azar*, 392 F. Supp. 3d 602, 613 (D. Md. 2019). Defendants concede success as to Count I, their violation of the INA. The Court agrees.

An alien "may seek statutory withholding under [8 U.S.C.] § 1231(b)(3)(A), which provides that 'the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.'" *Johnson v. Guzman Chavez*, 594 U.S. 523, 530 (2021)). "If an alien is granted withholding-only relief, DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated. 8 C.F.R. §§ 208.22, 1208.22. The withholding of removal is country-specific and more stringent than other forms of relief from deportation because once the noncitizen "establishes eligibility for withholding of removal, the grant is mandatory." *Amaya v. Rosen*, 986 F.3d 424, 427 (4th Cir. 2021), *as amended* (Apr. 12, 2021) (quoting *Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 353–54 (4th Cir. 2006)).

Accordingly, pursuant to Section 1231(b)(3)(A), once an alien is granted withholding of

removal, the Defendants "may not" remove the alien to the identified country. It is undisputed that "Abrego Garcia, was removed to El Salvador despite a grant of withholding of removal to that country." ECF No. 11. Even more disturbing, the Defendants concede that it cannot even produce the documents which reflect *any* authority, lawful or otherwise, to transfer him to El Salvador. Thus, the record plainly reflects that Defendants' forced migration to El Salvador violates Section 1231(b)(3)(A). He is guaranteed success on the merits of Count I.

Next as to Count II, the procedural due process claim, Abrego Garcia alleges that Defendants forced removal to El Salvador without *any process* constitutes a clear constitutional violation. This the Defendants also concede. But for completeness, the Court briefly addresses why the parties are correct. To succeed on a Fifth Amendment due process claim, the plaintiff must show that he possesses "a constitutionally cognizable life, liberty, or property interest"; that he was deprived of that interest because of "some form of state action"; and "that the procedures employed were constitutionally inadequate." *Sansotta v. Town of Nags Head*, 724 F.3d 533, 540 (4th Cir. 2013).

Abrego Garcia has demonstrated that he had a liberty interest by virtue of the INA in avoiding forcible removal to El Salvador. "In order for a statute to create a vested liberty or property interest giving rise to procedural due process protection, it must confer more than a mere expectation (even one supported by consistent government practice) of a benefit." *Mallette v. Arlington County Employees' Supplemental Ret. Sys. II*, 91 F.3d 630, 635 (4th Cir.1996). There must be entitlement to the benefit as directed by statute, and the statute must "'act to limit meaningfully the discretion of the decision-makers.'" *Id.* (quoting *Board of Pardons v. Allen*, 482 U.S. 369, 382 (1987) (O'Connor, J., dissenting))." Here, the statutory scheme which conferred withholding of removal also entitled Abrego Garcia to not be returned to El Salvador absent

process. Further, the statutes at issue eliminated the discretion altogether. Thus, this element is easily met.

As to the third element, Defendants deprived Abrego Garcia of this right without *any procedural protections* due to him. Indeed, nothing in the record suggests that Abrego Garcia received any process at all. Accordingly, he is likely to succeed on the merits of Count II.

Last, and for similar reasons, Abrego Garcia is likely to succeed on the merits of the APA claim, Count III. The APA mandates that "agency action must be set aside if the action was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 414(1971), *abrogated by Califano v. Sanders*, 430 U.S. 99; 5 U.S.C. § 706(2); *W. Virginia v. Thompson*, 475 F.3d 204, 209 (4th Cir. 2007). An agency action is arbitrary and capricious when the agency disregards rules or regulations still in effect or departs from a prior policy without "articulat[ing] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *See Sierra Club v. Dep't of the Interior*, 899 F.3d 260, 293 (4th Cir. 2018). In short, an agency may not "depart from a prior policy sub silentio or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

The Defendants do not dispute that its expulsion of Abrego Garcia to El Salvador constitutes a final agency action. Nor do they dispute that the decision was without any lawful authority whatsoever. Nor have Defendants articulated any rationale for taking such action. Their action was lawless, and thus in violation of the APA.

Abrego Garcia, as all who have touched this case recognize, is likely to succeed on the merits of these claims. The first *Winter* factor is thus satisfied.

B. Irreparable Harm

Regarding the second *Winter* factor, Abrego Garcia must show that he will be irreparably harmed in the absence of preliminary injunctive relief. *See Winter*, 555 U.S. at 20. This standard requires more than the mere "possibility" of irreparable harm; rather, the plaintiff must "demonstrate that irreparable injury is likely in the absence of an injunction." *Id.* at 21.

Obviously, "the risk of torture, beatings, and even death clearly and unequivocally supports a finding of irreparable harm." *J.G.G.,* 2025 WL 890401, at *16*, citing United States v. Iowa*, 126 F.4th 1334, 1352 (8th Cir. 2025) (torture); *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (physical abuse). Perhaps this is why Defendants anemically suggested that Abrego Garcia failed to show he would be "harmed" in CECOT, but then abandoned that contention at the preliminary injunction hearing. Certainly as to Abrego Garcia, the IJ found that returning him to El Salvador *at all* would likely subject him to persecution at the hands of Barrio 18, to include the risk of death. ECF No. 1-1 at 7.

More fundamentally, Defendants do not dispute that their placement of Abrego Garcia at CECOT invites this very harm. Defendants effectuated his detention in one of the most notoriously inhumane and dangerous prisons in the world. Defendants even embrace that reality as part of its well-orchestrated mission to use CECOT as a form of punishment and deterrence. ECF No. 10-5 at 4 (Defendant Noem announcing while standing in front of caged prisoners at CECOT "if an immigrant commits a crime, this is one of the consequences you could face . . . . You will be removed and you will be prosecuted.").

But particular to Abrego Garcia, the risk of harm shocks the conscience. Defendants have forcibly put him in a facility that intentionally mixes rival gang members without any regard for protecting the detainees from "harm at the hands of the gangs." ECF No. 10-3 at 15. Even worse,

Defendants have claimed—without any evidence—that Abrego Garcia is a member of MS-13 and then housed him among the chief rival gang, Barrio 18. Not to mention that Barrio 18 is the very gang whose years' long persecution of Abrego Garcia resulted in his withholding from removal to El Salvador. To be sure, Abrego Garcia will suffer irreparably were he not accorded his requested relief. He has satisfied the second *Winter* factor.

C. Balance of Equities and Public Interest

The Court considers the last two factors in tandem because "the balance of the equities and the public interest . . . 'merge when the Government is the opposing party.'" *Antietam Battlefield KOA v. Hogan*, 461 F. Supp. 3d 214, 242 (D. Md. 2020) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). As to the balance of the equities, "courts 'must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.'" *Winter*, 555 U.S., at 24 (quoting *Amoco Prod. Co. v. Gambell, AK*, 480 U.S. 531, 542 (1987)). When considering the public interest, the Court "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Id.* (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). The Court is mindful that it may not collapse this inquiry with the first *Winter* factor. *See USA Farm Lab., Inc. v. Micone*, No. 23-2108, 2025 WL 586339, at *4 (4th Cir. Feb. 24, 2025) (explaining that it is "circular reasoning" to argue that a government "program is against the public interest because it is unlawful" and that such argument "is nothing more than a restatement of their likelihood of success").

"Of course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken,* 416 U.S. at 436. Equally important, the public remains acutely interested in "seeing its governmental institutions follow the law. . . ." *Roe v. Dep't of Def.*, 947 F.3d at 230–31 (4th Cir. 2020) (internal quotation

marks and citation omitted). The absence of injunctive relief places this interest in greatest jeopardy, as demonstrated by Abrego Garcia's experience over the past three weeks.

Defendants seized Abrego Garcia without any lawful authority; held him in three separate domestic detention centers without legal basis; failed to present him to any immigration judge or officer; and forcibly transported him to El Salvador in direct contravention of the INA. Once there, U.S. officials secured his detention in a facility that, by design, deprives its detainees of adequate food, water, and shelter, fosters routine violence; and places him with his persecutors, Barrio 18. In short, the public interest and companion equities favor the requested injunctive relief.[19]

IV. Conclusion

Based on the foregoing, the Court retains jurisdiction to hear this case. Abrego Garcia has also demonstrated that he is entitled to the injunctive relief sought. The Court's April 4, 2025 Order thus remains in full force and effect.[20]

Date: April 6, 2025

/S/
Paula Xinis
United States District Judge

[19] Defendants suggested in their response that the public retains an interest in not returning Abrego Garcia to the United States because "he is a danger to the community," ECF No. 11, only to abandon this position at the hearing. Again, with good reason. No evidence before the Court connects Abrego Garcia to MS-13 or any other criminal organization.

[20] For these same reasons, the Court denies Defendants' Motion to Stay the Court's April 4, 2025 Order. ECF No. 29.

U.S. District Court

District of Maryland

Notice of Electronic Filing

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Case Name:	Abrego Garcia et al v. Noem et al
Case Number:	8:25-cv-00951-PX
Filer:	
Document Number:	32(No document attached)

Docket Text:
PAPERLESS ORDER: for the reasons stated in [31] Memorandum Opinion, [29] Motion to Stay is denied. Signed by Judge Paula Xinis on 4/6/2025. (jf3s, Deputy Clerk)

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MARYLAND

KILMAR ARMANDO ABREGO GARCIA, *et al.*,	*	
Plaintiffs,	*	
		Civil Action No. 8:25-cv-00951-PX
v.	*	
KRISTI NOEM, Secretary, United States Department of Homeland Security, *et al.*,	* * *	
Defendants.	*	

***

MEMORANDUM OPINION

In 2019, an immigration judge—acting under the authority delegated by the United States Attorney General and pursuant to powers vested by Congress—granted Plaintiff Kilmar Armando Abrego Garcia ("Abrego Garcia") withholding of removal, thereby protecting him from return to his native country, El Salvador. ECF No. 1 ¶ 41; ECF No. 1-1. Such protection bars the United States from sending a noncitizen to a country where, more likely than not, he would face persecution that risks his "life or freedom." *See* Immigration and Nationality Act ("INA"), 8 U.S.C. § 1231(b)(3)(A); *see also* 8 C.F.R. §§ 208.16–.18 & .24 (setting forth the standard for withholding of removal and the procedures required for its termination).

Six years later, without notice, legal justification, or due process, officers from U.S. Immigration and Customs Enforcement ("ICE"), a subagency of the Department of Homeland Security ("DHS"), put him on a plane bound for the Terrorism Confinement Center ("CECOT")

in El Salvador. ECF No. 1¶ 59. [1] Neither the United States nor El Salvador have told anyone why he was returned to the very country to which he cannot return, or why he is detained at CECOT.[2] *See* Hr'g Tr., Apr. 4, 2025, 25: 13–14 (Mr. Reuveni: "We have nothing to say on the merits. We concede he should not have been removed to El Salvador."); *see* Hr'g Tr., Apr. 4, 2025, 34:25–35:5 (The Court: "[W]hat basis is he held? Why is he [in CECOT] of all places?" . . . Mr. Reuveni: "I don't know. That information has not been given to me. I don't know.").

That silence is telling. As Defendants acknowledge, they had no legal authority to arrest him, no justification to detain him, and no grounds to send him to El Salvador[3]—let alone deliver him into one of the most dangerous prisons in the Western Hemisphere.[4] Having confessed grievous error, the Defendants now argue that this Court lacks the power to hear this case, and they lack the power to order Abrego Garcia's return. ECF No. 11 at 3. For the following reasons, their jurisdictional arguments fail as a matter of law. Further, to avoid clear irreparable harm, and because equity and justice compels it, the Court grants the narrowest, daresay only, relief warranted: to order that Defendants return Abrego Garcia to the United States.

I. Background

Abrego Garcia was born and raised in Los Nogales, El Salvador. ECF No. 1-1 at 2. His family owned a small and successful pupuseria. *Id.* For years, they were subject to extortion and

[1] Louis Casiano, *U.S. Paid El Salvador to Take Venezuelan Tren de Aragua Members for 'Pennies on the Dollar,' White House Says*, FOX NEWS (Mar. 26, 2025), https://www.foxnews.com/politics/us-paid-el-salvador-take-venezuelan-tren-de-aragua-members-pennies-dollar-white-house-says.

[2] Defendants did not assert—at any point prior to or during the April 4, 2025, hearing—that Abrego Garcia was an "enemy combatant," an "alien enemy" under the Alien Enemies Act, 50 U.S.C. § 21, or removable based on MS-13's recent designation as a Foreign Terrorist Organization under 8 U.S.C. § 1189. Invoking such theories for the first time on appeal cannot cure the failure to present them before this Court. In any event, Defendants have offered no evidence linking Abrego Garcia to MS-13 or to any terrorist activity. And vague allegations of gang association alone do not supersede the express protections afforded under the INA, including 8 U.S.C. §§ 1231(b)(3)(A), 1229a, and 1229b.

[3] ECF No. 11-3 at 3 ("Through administrative error, Abrego-Garcia was removed from the United States to El Salvador. This was an oversight . . . ."); Hr'g Tr., Apr. 4, 2025, 19:11–13 (Mr. Reuveni: "This person should -- the plaintiff, Abrego Garcia, should not have been removed. That is not in dispute.").

[4] ECF No. 1-4; ECF No. 10-2; ECF No. 10-3.

threats of death by one of El Salvador's most notorious gangs, Barrio 18. *Id.* at 2. The gang used Abrego Garcia as a pawn in its extortion, demanding that his mother give Abrego Garcia over to the gang or he and others in their family would be killed. *Id.* at 3. Attempting to escape the gang's reach, the family moved three times without success. *Id.* To protect Abrego Garcia, they ultimately sent him to the United States to live with his older brother, a U.S. citizen, in Maryland. ECF No. 1 ¶ 22.

Abrego Garcia lived in Maryland for many years without lawful status. *Id.* In early 2019, while waiting at the Home Depot in Hyattsville, Maryland, to be hired as a day laborer, Abrego Garcia was arrested. *Id.* ¶¶ 25–26. The Prince George's County Police Department questioned him about gang affiliation, but nothing came of it. *Id.* ¶ 27. He was then turned over to ICE custody. *Id.* ¶ 28.

On March 29, 2019, DHS initiated removal proceedings against Abrego Garcia pursuant to 8 U.S.C. § 1182(a)(6)(A)(i). ECF No. 1 ¶ 29. On April 24, 2019, Abrego Garcia appeared before an immigration judge ("IJ") where he conceded his deportability and applied for asylum, withholding of removal, and protection under the Convention Against Torture. ECF No. 1-1.

Pending resolution of the requested relief, DHS argued for Abrego Garcia to be detained in ICE custody. ECF No. 1 ¶ 30. DHS relied principally on a singular unsubstantiated allegation that Abrego Garcia was a member of MS-13.[5] The IJ ultimately detained Abrego Garcia pending the outcome of his requested relief from deportation, a decision affirmed by the Board of Immigration Appeals. ECF Nos. 11-1 & 11-2.

October 10, 2019, following a full evidentiary hearing, the IJ granted Abrego Garcia

[5] The "evidence" against Abrego Garcia consisted of nothing more than his Chicago Bulls hat and hoodie, and a vague, uncorroborated allegation from a confidential informant claiming he belonged to MS-13's "Western" clique in New York—a place he has never lived. ECF No. 31.

withholding of removal to El Salvador pursuant to 8 U.S.C. § 1231(b)(3)(A). As a matter of law, withholding of removal prohibits DHS from returning an alien to the specific country in which he faces clear probability of persecution. In Abrego Garcia's case, the IJ concluded that he was entitled to such protection because the Barrio 18 gang had been "targeting him and threatening him with death because of his family's pupusa business." ECF No. 1-1 at 2. DHS never appealed the grant of withholding of removal, and so the decision became final on November 9, 2019.[6] *See* Hr'g Tr., Apr. 4, 2025, 24:15–16 (Mr. Reuveni: "The government did not appeal that decision, so it is final."). Accordingly, as Defendants have repeatedly admitted, they were legally prohibited from deporting Abrego Garcia to El Salvador. *See* Hr'g Tr., Apr. 4, 2025, 25:6–7 (Mr. Reuveni: "There's no dispute that the order could not be used to send Mr. Abrego Garcia to El Salvador.").

For the next six years, Abrego Garcia lived in Maryland with his wife and their three children. ECF No. 1 ¶¶ 24–25. He complied fully with all directives from ICE, including annual check-ins, and has never been charged with or convicted of any crime. ECF No. 1-3, ECF No. 1 ¶ 45.

On March 12, 2025, while driving home from work with his young son in the car, Abrego Garcia was stopped by ICE agents. *Id.* ¶¶ 48–49. The officers had no warrant for his arrest and no lawful basis to take him into custody; they told him only that his "status had changed." *Id.* ¶ 50. He was first transported to an ICE facility in Baltimore, Maryland. *Id.* ¶¶ 51–53. Next, ICE agents shuttled him to detention facilities in Louisiana and La Villa, Texas. *Id.* ¶¶ 54–57. He was allowed a handful of calls to his wife. He said that he was told he would see a judge soon. *Id.* But

[6] A decision by an IJ becomes final "upon waiver of appeal or upon expiration of the time to appeal if no appeal is taken within that time." 8 C.F.R. § 1003.39. The deadline for filing an appeal to the Board of Immigration Appeals is 30 days from the date of the decision. *See* 8 C.F.R. § 1003.38(b). Once final, a grant of withholding of removal prohibits removal to the country of feared persecution absent formal reopening and termination of that protection. *See* 8 C.F.R. § 208.24.

that never happened.

Three days later, on March 15, 2025, without any notice, legal process, or hearing, ICE forcibly transported Abrego Garcia to the Terrorism Confinement Center ("CECOT") in El Salvador, a notorious supermax prison known for widespread human rights violations. ECF No. 1 ¶ 59; ECF No. 11-3 at 2; ECF No. 10-2. On that day, two planes carried over 100 aliens to CECOT purportedly pursuant to the Alien Enemies Act, ECF No. 11-3 at 2, the legality of which is the subject of separate litigation. *See J.G.G. v. Trump,* No. 1:25-cv-766 (JEB), 2025 WL 890401 (D.D.C. Mar. 24, 2025). A third plane included "aliens with Title 8 removal orders;" many of them were in ICE custody awaiting asylum and other protective hearings in the United States. ECF No. 11-3 at 2; *see J.G.G. v. Trump,* No. 1:25-cv-766 (JEB), ECF Nos. 67-5–67-20.

Once the planes arrived in El Salvador, the male detainees[7] were stripped and shackled. Their heads were shaved, and they were marched into CECOT to join nearly 40,000 other prisoners held in some of the most inhumane and squalid conditions known in any carceral system. ECF No. 10-3. Since then, no one has heard from Abrego Garcia. ECF No. 1 ¶ 41.

To effectuate a mass relocation of those detained by the United States, the federal government struck an agreement with El Salvador whereby it would pay the Salvadoran government six-million dollars for placement of the detainees in "very good jails at a fair price that will also save our taxpayer dollars." Marco Rubio (@SecRubio), X (Mar. 16, 2025, 7:59 AM), https://x.com/SecRubio/status/1901241933302825470. El Salvador's President, Nayib Bukele, has publicly touted the agreement terms: "We are willing to take in only convicted criminals (including convicted U.S. citizens) into our mega-prison (CECOT) in exchange for a

[7] Female detainees were returned to the United States because the prison would not accept them. *See, e.g.*, *J.G.G. v. Trump*, No. 1:25-cv-766 (JEB), ECF No. 55-1.

fee."[8] ECF No. 10-5; Nayib Bukele (@nayibbukele), X (Apr. 4, 2025, 10:23 AM), https://x.com/nayibbukele/status/1901245427216978290. According to a memorandum issued by El Salvador's Ministry of Foreign Affairs, the agreement provides that the detainees will be held "for one (1) year, pending the United States' decision on [their] long term disposition." *See* Matthew Lee & Regina Garcia Cano, *Trump Officials Secretly Deported Venezuelans and Salvadorans to a Notorious Prison in El Salvador*, ASSOCIATED PRESS (Mar. 15, 2025), https://apnews.com/article/trump-deportations-salvador-tren-aragua-64e72142a171ea57c869c3b35eeecce7.

After Abrego Garcia was transferred to CECOT, Defendant, DHS Secretary, Kristi Noem, personally toured the facility alongside senior Salvadoran officials. U.S. Dep't of Homeland Sec., *Inside the Action: Secretary Noem's Visit to El Salvador*, DHS, https://www.dhs.gov/medialibrary/assets/video/59108 (last visited Apr. 4, 2025). From inside the prison walls, Secretary Noem declared that transferring individuals previously detained on U.S. soil to CECOT remains "one of the tools in *our* [the United States'] toolkit that we will use if you commit crimes against the American people." U.S. Dep't of Homeland Sec., *How It's Going*, DHS, https://www.dhs.gov/medialibrary/assets/video/59108 (last visited Apr. 4, 2025) (emphasis added).

Although the legal basis for the mass removal of hundreds of individuals to El Salvador remains disturbingly unclear, Abrego Garcia's case is categorically different—there were no legal grounds whatsoever for his arrest, detention, or removal. Nor does any evidence suggest that Abrego Garcia is being held in CECOT at the behest of Salvadoran authorities to answer for crimes in that country. Rather, his detention appears wholly lawless.

[8] It is unclear what qualifies as a "convicted criminal" under the terms of the agreement, but Abrego Garcia has not been convicted of any crime.

Based on these events, Abrego Garcia, through counsel, and along with his wife, Jennifer Stefania Vasquez Sura, and their son, A.A.V., by and through his mother and next friend, [9] filed suit in this Court on March 24, 2025, against DHS Secretary Noem; Acting Director of U.S. Immigration and Customs Enforcement, Todd Lyons; Acting Executive Associate Director of ICE Enforcement and Removal Operations, Kenneth Genalo; ICE Baltimore Field Office Director, Nikita Baker; Attorney General, Pamela Bondi; and Secretary of State, Marco Rubio (collectively "Defendants"). Abrego Garcia specifically alleges that his removal to El Salvador violated the Immigration and Nationality Act, 8 U.S.C. § 1231(b)(3)(A)(Count I); the Due Process Clause of the Fifth Amendment (Count II); and the Administrative Procedure Act, 5 U.S.C. § 706(2) (Count III); and, pleaded in the alternative, qualifies him for habeas relief pursuant to 28 U.S.C. § 2241 (Count V). ECF No. 1. The matter is now before the Court on Plaintiffs' motion for preliminary injunction, ECF No. 6, following full briefing and a hearing held on April 4, 2025. This Memorandum Opinion sets forth the Court's findings in support of the Order entered on April 4, 2025.

II. Jurisdictional Challenges

The Defendants' only meaningful challenge to the motion is that this Court lacks the power to hear this case. They advance three arguments. The Court considers each in turn.

A. The Court lacks Jurisdiction Because the "Core" of the Claims Sound in Habeas

Defendants first argue that because Abrego Garcia challenges his confinement in CECOT, the "core" of his claims sound only in habeas brought pursuant to 28 U.S.C. § 2241 *et seq*. ECF No. 11 at 7, citing *DHS v. Thuraissigiam*, 591 U.S. 103, 117 (2020) ("habeas…is the appropriate

[9] Vasquez Sura and A.A.V's claims are not the subject of this decision, and so for clarity, the Court refers solely to Plaintiff Abrego Garcia.

remedy to ascertain…whether any person is rightfully in confinement or not."). And as such, suit is proper only against the immediate "custodian" (the Warden of CECOT) and in the jurisdiction where Abrego Garcia is confined (El Salvador). *Id.* at 9.

Defendants are wrong on several fronts. Abrego Garcia exclusively challenges his lawless return to El Salvador, not the fact of his confinement. ECF No. 1 at 16-20. This is the core of his claim, as Defendants concede, which is why his suit would remain equally strong had Defendants released Abrego Garcia to the streets of El Salvador instead of CECOT. Hr'g. Tr., Apr. 4, 2025, at 19. As Defendants did in *J.G.G. v. Trump*, Civil Action No. 25-766 (JEB), 2025 WL 890401, at *7–8 (D.D.C. Mar. 24, 2025), they fundamentally ignore the difference between challenging legality of *removal* as opposed to confinement. *Id.*[10] For purposes of this decision, however, Abrego Garcia simply does not challenge his confinement. The removal itself lies at the heart of the wrongs. Thus, the Court need not wade into the murky jurisdictional implications that flow from such a challenge.

But even if the Court considers the thorny question of "custody" as it pertains to Abrego Garcia's habeas claim (Count V), the Defendants are not out of the woods. They do indeed cling to the stunning proposition that they can forcibly remove any person—migrant and U.S. citizen alike —to prisons outside the United States, and then baldly assert they have no way to effectuate return because they are no longer the "custodian," and the Court thus lacks jurisdiction. As a practical matter, the facts say otherwise.

The facts are that the United States exerts control over each of the nearly 200 migrants sent to CECOT. The Defendants detained them, transported them by plane, and paid for their

[10] In this context, habeas claims need not be brought to the exclusion of all other claims. *See R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 185–186 (D.D.C. 2015) (noting that "APA and habeas claims may coexist" where aliens challenge their detention in violation of removal procedures).

placement in the mega-jail until "the United States" decides "their long-term disposition."[11] Against this backdrop, Defendants have produced *no evidence* to suggest they cannot secure one such detainee, Abrego Garcia, for return to the United States. Equally important, to credit Defendants' argument would permit the unfettered relinquishment of any person regardless of immigration status or citizenship to foreign prisons "for pennies on the dollar."[12]

Nor do the Defendants cite any authority to support this eye-popping proposition. Sure, they point the Court to *Munaf v. Green*, 553 U.S. 674 (2008), but that decision has little bearing here. In *Munaf*, the Court reviewed whether plaintiffs, American citizens who voluntarily traveled to Iraq and were subsequently detained for violations of Iraqi law, could challenge their detention. The Court concluded that while the district court retained jurisdiction in the first instance, *id.* 686, the merits of the habeas challenge failed because "Iraq has the sovereign right to prosecute Omar and Munaf for *crimes committed on its soil*." *Id.* at 695 (emphasis added).

Here, by contrast, Abrego Garcia is *not* being held for crimes committed in or against El Salvador, the United States, or anywhere else for that matter. His claims do not implicate any question of competing sovereign interests, and so, *Munaf* offers little guidance.[13] Thus, while the

[11] *See* Matthew Lee & Regina Garcia Cano, *Trump Officials Secretly Deported Venezuelans and Salvadorans to a Notorious Prison in El Salvador*, ASSOCIATED PRESS (Mar. 15, 2025), https://apnews.com/article/trump-deportations-salvador-tren-aragua-64e72142a171ea57c869c3b35eeecce7.

[12] *Louis Casiano, U.S. Paid El Salvador to Take Venezuelan Tren de Aragua Members for 'Pennies on the Dollar,' White House Says*, FOX NEWS (Mar. 26, 2025), https://www.foxnews.com/politics/us-paid-el-salvador-take-venezuelan-tren-de-aragua-members-pennies-dollar-white-house-says.

[13] Defendants also urged this Court to follow *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), wherein the United States Court of Appeals for the District of Columbia held that a claim could not sound in habeas where the plaintiff sought relief to avoid "torture" in the receiving country. The *Kiyemba* Court held that because a "district court may not question the Government's determination that that a potential recipient country is not likely to torture a detainee," the habeas claims fail on the merits. *Id.,* citing *Munaff*, 553 U.S. at 514. That is not this. Defendants have already determined that Abrego Garcia must not be returned to El Salvador because he had established under the INA that he faces persecution from Barrio18. ECF No. 1-1. Defendants remain bound to that decision just as much today as they were when they decided not to appeal that determination. Defendants' violation of the INA in detaining Abrego Garcia in El Salvador does not implicate United States' policy decisions as to El Salvador's possible propensity to violate the Convention Against Torture writ large. ECF No. 11 at 16 (this Court should defer to the Defendants' determination that Abrego Garcia will not likely be tortured or killed in El Salvador, this implicating Executive policy decisions). Accordingly, *Kiyemba* does not counsel a different outcome.

success of Abrego Garcia's preliminary injunction motion does not depend on the success of his habeas claim, Defendants also fail to convince this Court that the claim will not survive in the end. For purposes of this decision, suffice to say the Court retains jurisdiction because Abrego Garcia challenges his removal to El Salvador, not the fact of confinement.

B. Redressability

Defendants next make a narrow standing argument, contending that because the claims are not redressable, this Court lacks the power to hear the case. ECF No. 11 at 10. Federal courts are ones of limited jurisdiction, hearing only live "Cases" and "Controversies." U.S. Const. art. III, § 2. A party's standing to maintain an action "is an essential and unchanging part of the case-or-controversy requirement of Article III." *Davis v. Fed. Election Comm.*, 554 U.S. 724, 733 (2008) (citations omitted). To satisfy Article III standing, the plaintiff must make plausible that he "(1)[] has suffered an 'injury in fact' that is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical; (2) the injury is fairly traceable to the challenged action of the defendant; and (3) it is likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 180–81 (2000).

The Defendants' redressability argument, simply put, is that their placement of Abrego Garcia in an El Salvadoran prison deprives them of any power to return him. Thus, they say, even if Abrego Garcia succeeds on the merits, Defendants are powerless to get him back. The facts demonstrate otherwise.

First, Defendants can and do return wrongfully removed migrants as a matter of course. This is why in *Lopez-Sorto v. Garland*, 103 F.4th 242, 248–53 (4th Cir. 2024), the Fourth Circuit concluded that the Defendants could redress wrongful removal to El Salvador by facilitating the

plaintiff's return per DHS' own directives. *Id.* at 253*; see also Nken v. Holder*, 556 U.S. 418, 436 (2009) ("Aliens who are removed may continue to pursue their petitions for review, and those that prevail can be afforded effective relief by facilitation of their return, along with restoration of the immigration status they had upon removal.").

Second, Defendants unilaterally placed hundreds of detainees behind the walls of CECOT without ceding control over the detainees' fates, as the detainees are in CECOT "*pending the United States' decision on their long-term disposition.*" *See* Matthew Lee & Regina Garcia Cano, *Trump Officials Secretly Deported Venezuelans and Salvadorans to a Notorious Prison in El Salvador*, ASSOCIATED PRESS (Mar. 15, 2025), https://apnews.com/article/trump-deportations-salvador-tren-aragua-64e72142a171ea57c869c3b35eeecce7. Unlike Abrego Garcia, for whom *no* reason exists to detain him, Defendants transported many individuals who had been detained in the United States while awaiting immigration proceedings.[14] Yet, despite Defendants' power to transfer those awaiting hearings to CECOT for a "good price," Defendants disclaim any ability to secure their return, including Abrego Garcia. ECF No. 11 at 11. Surely, Defendants do not mean to suggest that they have wholesale erased the substantive and procedural protections of the INA in one fell swoop by dropping those individuals in CECOT without recourse. Instead, the

[14] *See, e.g.,* 25-cv-766-JEB, ECF No. 55-1 (Declaration of S.Z.F.R., a female detainee formerly held at Webb County Detention Center in Laredo, Texas awaiting a merits hearing on her asylum claims was part of the mass transport to CECOT but ultimately returned to the United States because CECOT would not accept females); ECF 67-10 (Declaration of immigration attorney for Jose Hernandez Romero, who had been detained at Otay Mesa Detention Center pending his asylum hearing at time was transported to CECOT); ECF No. 67-11 (Declaration of immigration attorney for detainee, G.T.B., a native of Venezuela who had been detained at Aurora Contract Detention Facility awaiting deportation proceedings when transported to CECOT without warning. ICE ultimately returned her to the United States); ECF No. 67-11 (Declaration of immigration attorney for detainee, Jerce Reyes Barrios, who had been housed at Otay Mesa Detention Center awaiting hearing on protected status, prior to transport to CECOT); ECF No. 67-14 (Declaration of immigration attorney for detainee, E.V., who had been housed at Moshannon Valley Processing Center in Philipsburg, Pennsylvania awaiting hearing on final order of removal when transported to CECOT); ECF No. 67-16 (Declaration of immigration attorney for detainee J.A.B.V, who had been detained domestically prior to his removal hearing scheduled for April 7, 2025 was transported to CECOT); ECF No. 67-17 (Declaration of immigration attorney for detainee, L.G., who had been detained at Moshannon Valley Processing Center in Philipsburg, Pennsylvania, awaiting removal proceedings prior to transfer to CECOT).

record reflects that Defendants have "outsource[d] part of the [United States'] prison system."[15] *See also* U.S. Dep't of Homeland Sec., *How It's Going*, DHS, https://www.dhs.gov/medialibrary/assets/video/59108 (last visited Apr. 4, 2025) (quoting Defendant Noem: "This facility is one of the tools in our toolkit that we will use")."[16] Thus, just as in any other contract facility, Defendants can and do maintain the power to secure and transport their detainees, Abrego Garcia included.

In the end, Defendants' redressability argument rings hollow. As their counsel suggested at the hearing, this is not about Defendants' *inability* to return Abrego Garcia, but their lack of desire.

> THE COURT: Can we talk about, then, just very practically, why can't the United States get Mr. Abrego Garcia back?
>
> MR. REUVENI: Your Honor, I will say, for the Court's awareness, that when this case landed on my desk, the first thing I did was ask my clients that very question. I've not received, to date, an answer that I find satisfactory.

Hr'g Tr., Apr. 4, 2025, at 35–36. *See also id.* at 50 (counsel seeking 24 hours to persuade Defendants to secure Abrego Garcia's return). Flat refusal, however, does not negate redressability. The record reflects that the remedy is available. Abrego Garcia maintains standing to sue.

C. Section 1252(g) of the INA Does Not Strip the Court's Jurisdiction in this Case

Lastly, Defendants argue that 8 U.S.C. § 1252(g) ("Section 1252(g)") deprives the Court of jurisdiction to review this matter. The statute reads:

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[15] Nayib Bukele (@nayibbukele), X (Mar. 19, 2025, 8:12 PM), https://x.com/nayibbukele/status/1886606794614587573

[16] U.S. Dep't of Homeland Sec., *How It's Going*, DHS, https://www.dhs.gov/medialibrary/assets/video/59108 (last visited Apr. 4, 2025) (quoting Defendant Noem: "This facility is one of the tools in our toolkit that we will use").

> Except as provided in this section and notwithstanding any other provision of law (statutory or non-statutory), 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 General to commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g).

Defendants concede that *Reno v. American-Arab Anti-Discrimination Committee*, 525 U.S. 471, 482 (1999), commands a narrow construction of Section 1252(g), limiting application solely to the Attorney General's exercise of lawful discretion to (1) commence proceedings; (2) adjudicate cases; or (3) execute removal orders. *Id.* ("It is implausible that the mention of three discrete events along the road to deportation was a shorthand way of referring to all claims arising from deportation proceedings."). *See also Bowrin v. U.S. I.N.S.*, 194 F.3d 483, 488 (4th Cir. 1999) (noting that Section 1252(g) only stripped federal courts of jurisdiction to review the "Attorney General's decision to exercise her *discretion* to initiate or prosecute the specific stages in the deportation process."). As the *Reno* Court explained, "there was good reason for Congress to focus special attention upon, and make special provision for, judicial review of the Attorney General's *discrete acts* . . . which represent the initiation or prosecution of various stages in the deportation process." *Id.* (emphasis added). Thus, this Court is deprived of jurisdiction only for the discretionary decisions made concerning the three stages of the deportation process. *See Bowrin*, *v. U.S. INS,* 194 F.3d 483, 488 (4th Cir. 1999); *U.S. v. Hovsepian,* 359 F.3d 1144, 1155 (9th Cir. 2004); *Coyotl v. Kelly*, 261 F. Supp. 3d 1328, 1339–1341 (N.D. Ga. 2017); *Gondal v. U.S. Dep't of Homeland Sec.*, 343 F. Supp. 3d 83, 92 (E.D.N.Y. 2018). *But see Silva v. United* States, 866 F.3d 938 (8th Cir. 2017).

Defendants press that Section 1252(g) precludes jurisdiction here because the claims concern Defendants' "execution of his removal order." ECF No. 11 at 13. The argument fails in both fact and law.

First, the Court cannot credit that Defendants removed Abrego Garcia pursuant to an "executed removal order" under the INA. Defendants have not produced *any* order of removal as to Abrego Garcia, executed or otherwise, or submitted any proof that they had removed him pursuant to one. Hr'g Tr. Apr. 4, 2025, at 20 (counsel admitting no order of removal is part of the record); *see also id*. at 22 (counsel confirming that "the removal order" from 2019 "cannot be executed" and is not part of the record). Nor have any other corollary documents surfaced, such as a "warrant for removal/deportation" customarily served on an alien as part of a lawful deportation or removal. *Id.*[17] From this, the Court cannot conclude that Abrego Garcia was spirited to CECOT on an "executed removal order" such that Section 1252(g) is implicated.

Second, even if there were an executed order of removal for Abrego Garcia, his claims do not seek review of any discretionary decisions. He is not asking this Court to review the wisdom of the Attorney General's lawful exercise of authority. Rather, he asks that the Court determine whether his return to El Salvador violated the INA. In this circumstance, the Fourth Circuit has spoken.

Bowrin v. U.S. INS, 194 F.3d 483 (4th Cir. 1999) made plain that review of agency decisions involving pure questions of law "do not fall into any of the three categories enumerated in § 1252(g)." *Bowrin*, 194 F.3d at 488. Section 1252(g), the *Bowrin* Court emphasized, "does not apply to all claims arising from deportation proceedings, because §

[17] *See* sample warrant for removal at https://www.ice.gov/sites/default/files/documents/Document/2017/I-205_SAMPLE.PDF

1252(g) stripped the federal courts of jurisdiction only to review challenges to the Attorney General's decision to *exercise her discretion* to initiate or prosecute these specific stages in the deportation process." *Id.* (citing *American-Arab Anti-Discrimination Committee*, 525 U.S. at 482) (emphasis added). *See also Hovsepian*, 359 F.3d at 1155 ("The district court may consider a purely legal question that does not challenge the Attorney General's discretionary authority, even if the answer to that legal question . . . forms the backdrop against which the Attorney General later will exercise discretionary authority."); *Siahaan v. Madrigal*, Civil No. PWG-20-02618, 2020 WL 5893638, at *5 (D. Md. Oct. 5, 2020) ("To insist, as the Respondents do, that this Court lacks jurisdiction because of § 1252(g) to determine the purely legal questions of whether his removal under these circumstances violates the statutory and constitutional provisions that his habeas petition has raised runs contrary to the consistent rulings of the Supreme Court for at least twenty years."); *Coyotl*, 261 F. Supp. 3d at 1339–41. Accordingly, and after exhaustive analysis, *Bowrin* concluded that "absent express congressional intent . . . to eliminate the general federal habeas corpus review pursuant to 28 U.S.C.A. § 2241, the remedy remains available to Bowrin and other aliens similarly situated." *Bowrin*, 194 F.3d at 489 (collecting cases).

Like *Bowrin*, Abrego Garcia presents to this Court a pure question of law: whether Defendants exceeded their authority in returning him to El Salvador, in violation of the 8 U.S.C. § 1231(b)(3)(A). Hr'g Tr., Apr. 4, 2025, at 24. In this Court's view, no plainer question of statutory interpretation could be presented. Thus, Section 1252(g) does not deprive the Court of jurisdiction over the claims.

In sum, the Court retains jurisdiction over this case. And even though Defendants concede that if this Court retains jurisdiction, Abrego Garcia prevails on the merits of his preliminary injunction,[18] for the benefit of all, the Court briefly addresses why this concession makes sense.

III. Merits of Preliminary Injunctive Relief

A preliminary injunction is an extraordinary remedy that should be granted only upon "a clear showing that the plaintiff is entitled to relief." *Dewhurst v. Century Aluminum Co.*, 649 F.3d 287, 290 (4th Cir. 2011) (internal quotation marks omitted) (quoting *Winter v. Natural Res. Def. Council*, 555 U.S. 7, 22 (2008)). Generally, injunctions are sought to "preserve the status quo so that a court can render a meaningful decision after a trial on the merits." *Hazardous Waste Treatment Council v. State of S.C.*, 945 F.2d 781, 788 (4th Cir. 1991) (quotation omitted); *see also United States ex rel. Rahman v. Oncology Assocs., P.C.*, 198 F.3d 489, 498 (4th Cir. 1999). By contrast, injunctions which alter the status quo, known as "mandatory injunctions," are highly disfavored, *Wetzel v. Edwards*, 635 F.2d 283, 286 (4th Cir. 1980), and should be granted only when "necessary both to protect against irreparable harm in a deteriorating circumstance created by the defendant and to preserve the court's ability to enter ultimate relief on the merits of the same kind," *In re Microsoft Corp. Antitrust Litig.*, 333 F.3d 517, 526 (4th Cir. 2003), *abrogation on other grounds recognized in Bethesda Softworks, LLC v. Interplay Entm't Corp.*, 452 F. App'x 351, 353–54 (4th Cir. 2011); *see also Pierce v. N. Carolina State Bd. of Elections*, 97 F.4th 194, 209 (4th Cir. 2024). Abrego Garcia requests relief designed to retore the status quo ante, or the "last uncontested status between the parties which preceded the controversy." *League of Women Voters of N. Carolina v. North Carolina*, 769 F.3d 224, 236 (4th Cir. 2014). That is, to return him to where he was on March 12, 2025, before he was apprehended by ICE and spirited away to

[18] *See* Hr'g Tr., Apr. 4., 2025, at 25:10–14 (Mr. Reuveni: "if you're not buying our jurisdictional arguments, like, we're done here . . . . We have nothing to say on the merits.").

CECOT.

To receive the benefit of injunctive relief, Abrego Garcia must demonstrate by preponderant evidence four well-established factors: (1) a likelihood of success on the merits; (2) a likelihood of suffering irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in its favor; and (4) that issuing the injunction is in the public interest. *See Winter*, 555 U.S. at 20. The Court considers each factor separately.

A. Likelihood of Success of the Merits

As to likelihood of success on the merits, Abrego Garcia need only demonstrate a likelihood of success on one cause of action. *See Mayor & City Council of Baltimore v. Azar*, 392 F. Supp. 3d 602, 613 (D. Md. 2019). Defendants concede success as to Count I, their violation of the INA. The Court agrees.

An alien "may seek statutory withholding under [8 U.S.C.] § 1231(b)(3)(A), which provides that 'the Attorney General may not remove an alien to a country if the Attorney General decides that the alien's life or freedom would be threatened in that country because of the alien's race, religion, nationality, membership in a particular social group, or political opinion.'" *Johnson v. Guzman Chavez*, 594 U.S. 523, 530 (2021)). "If an alien is granted withholding-only relief, DHS may not remove the alien to the country designated in the removal order unless the order of withholding is terminated. 8 C.F.R. §§ 208.22, 1208.22. The withholding of removal is country-specific and more stringent than other forms of relief from deportation because once the noncitizen "establishes eligibility for withholding of removal, the grant is mandatory." *Amaya v. Rosen*, 986 F.3d 424, 427 (4th Cir. 2021), *as amended* (Apr. 12, 2021) (quoting *Gandziami-Mickhou v. Gonzales*, 445 F.3d 351, 353–54 (4th Cir. 2006)).

Accordingly, pursuant to Section 1231(b)(3)(A), once an alien is granted withholding of

removal, the Defendants "may not" remove the alien to the identified country. It is undisputed that "Abrego Garcia, was removed to El Salvador despite a grant of withholding of removal to that country." ECF No. 11. Even more disturbing, the Defendants concede that it cannot even produce the documents which reflect *any* authority, lawful or otherwise, to transfer him to El Salvador. Thus, the record plainly reflects that Defendants' forced migration to El Salvador violates Section 1231(b)(3)(A). He is guaranteed success on the merits of Count I.

Next as to Count II, the procedural due process claim, Abrego Garcia alleges that Defendants forced removal to El Salvador without *any process* constitutes a clear constitutional violation. This the Defendants also concede. But for completeness, the Court briefly addresses why the parties are correct. To succeed on a Fifth Amendment due process claim, the plaintiff must show that he possesses "a constitutionally cognizable life, liberty, or property interest"; that he was deprived of that interest because of "some form of state action"; and "that the procedures employed were constitutionally inadequate." *Sansotta v. Town of Nags Head*, 724 F.3d 533, 540 (4th Cir. 2013).

Abrego Garcia has demonstrated that he had a liberty interest by virtue of the INA in avoiding forcible removal to El Salvador. "In order for a statute to create a vested liberty or property interest giving rise to procedural due process protection, it must confer more than a mere expectation (even one supported by consistent government practice) of a benefit." *Mallette v. Arlington County Employees' Supplemental Ret. Sys. II*, 91 F.3d 630, 635 (4th Cir.1996). There must be entitlement to the benefit as directed by statute, and the statute must "'act to limit meaningfully the discretion of the decision-makers.'" *Id.* (quoting *Board of Pardons v. Allen*, 482 U.S. 369, 382 (1987) (O'Connor, J., dissenting))." Here, the statutory scheme which conferred withholding of removal also entitled Abrego Garcia to not be returned to El Salvador absent

process. Further, the statutes at issue eliminated the discretion altogether. Thus, this element is easily met.

As to the third element, Defendants deprived Abrego Garcia of this right without *any procedural protections* due to him. Indeed, nothing in the record suggests that Abrego Garcia received any process at all. Accordingly, he is likely to succeed on the merits of Count II.

Last, and for similar reasons, Abrego Garcia is likely to succeed on the merits of the APA claim, Count III. The APA mandates that "agency action must be set aside if the action was 'arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law' or if the action failed to meet statutory, procedural, or constitutional requirements." *Citizens to Pres. Overton Park, Inc. v. Volpe*, 401 U.S. 402, 414(1971), *abrogated by Califano v. Sanders*, 430 U.S. 99; 5 U.S.C. § 706(2); *W. Virginia v. Thompson*, 475 F.3d 204, 209 (4th Cir. 2007). An agency action is arbitrary and capricious when the agency disregards rules or regulations still in effect or departs from a prior policy without "articulat[ing] a satisfactory explanation for its action including a rational connection between the facts found and the choice made." *See Sierra Club v. Dep't of the Interior*, 899 F.3d 260, 293 (4th Cir. 2018). In short, an agency may not "depart from a prior policy sub silentio or simply disregard rules that are still on the books." *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

The Defendants do not dispute that its expulsion of Abrego Garcia to El Salvador constitutes a final agency action. Nor do they dispute that the decision was without any lawful authority whatsoever. Nor have Defendants articulated any rationale for taking such action. Their action was lawless, and thus in violation of the APA.

Abrego Garcia, as all who have touched this case recognize, is likely to succeed on the merits of these claims. The first *Winter* factor is thus satisfied.

B. Irreparable Harm

Regarding the second *Winter* factor, Abrego Garcia must show that he will be irreparably harmed in the absence of preliminary injunctive relief. *See Winter*, 555 U.S. at 20. This standard requires more than the mere "possibility" of irreparable harm; rather, the plaintiff must "demonstrate that irreparable injury is likely in the absence of an injunction." *Id.* at 21.

Obviously, "the risk of torture, beatings, and even death clearly and unequivocally supports a finding of irreparable harm." *J.G.G.,* 2025 WL 890401, at *16*, citing United States v. Iowa*, 126 F.4th 1334, 1352 (8th Cir. 2025) (torture); *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir. 2011) (physical abuse). Perhaps this is why Defendants anemically suggested that Abrego Garcia failed to show he would be "harmed" in CECOT, but then abandoned that contention at the preliminary injunction hearing. Certainly as to Abrego Garcia, the IJ found that returning him to El Salvador *at all* would likely subject him to persecution at the hands of Barrio 18, to include the risk of death. ECF No. 1-1 at 7.

More fundamentally, Defendants do not dispute that their placement of Abrego Garcia at CECOT invites this very harm. Defendants effectuated his detention in one of the most notoriously inhumane and dangerous prisons in the world. Defendants even embrace that reality as part of its well-orchestrated mission to use CECOT as a form of punishment and deterrence. ECF No. 10-5 at 4 (Defendant Noem announcing while standing in front of caged prisoners at CECOT "if an immigrant commits a crime, this is one of the consequences you could face . . . . You will be removed and you will be prosecuted.").

But particular to Abrego Garcia, the risk of harm shocks the conscience. Defendants have forcibly put him in a facility that intentionally mixes rival gang members without any regard for protecting the detainees from "harm at the hands of the gangs." ECF No. 10-3 at 15. Even worse,

Defendants have claimed—without any evidence—that Abrego Garcia is a member of MS-13 and then housed him among the chief rival gang, Barrio 18. Not to mention that Barrio 18 is the very gang whose years' long persecution of Abrego Garcia resulted in his withholding from removal to El Salvador. To be sure, Abrego Garcia will suffer irreparably were he not accorded his requested relief. He has satisfied the second *Winter* factor.

C. Balance of Equities and Public Interest

The Court considers the last two factors in tandem because "the balance of the equities and the public interest . . . 'merge when the Government is the opposing party.'" *Antietam Battlefield KOA v. Hogan*, 461 F. Supp. 3d 214, 242 (D. Md. 2020) (quoting *Nken v. Holder*, 556 U.S. 418, 435 (2009)). As to the balance of the equities, "courts 'must balance the competing claims of injury and must consider the effect on each party of the granting or withholding of the requested relief.'" *Winter*, 555 U.S., at 24 (quoting *Amoco Prod. Co. v. Gambell, AK*, 480 U.S. 531, 542 (1987)). When considering the public interest, the Court "should pay particular regard for the public consequences in employing the extraordinary remedy of injunction." *Id.* (quoting *Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982)). The Court is mindful that it may not collapse this inquiry with the first *Winter* factor. *See USA Farm Lab., Inc. v. Micone*, No. 23-2108, 2025 WL 586339, at *4 (4th Cir. Feb. 24, 2025) (explaining that it is "circular reasoning" to argue that a government "program is against the public interest because it is unlawful" and that such argument "is nothing more than a restatement of their likelihood of success").

"Of course there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Nken,* 416 U.S. at 436. Equally important, the public remains acutely interested in "seeing its governmental institutions follow the law. . . ." *Roe v. Dep't of Def.*, 947 F.3d at 230–31 (4th Cir. 2020) (internal quotation

marks and citation omitted). The absence of injunctive relief places this interest in greatest jeopardy, as demonstrated by Abrego Garcia's experience over the past three weeks.

Defendants seized Abrego Garcia without any lawful authority; held him in three separate domestic detention centers without legal basis; failed to present him to any immigration judge or officer; and forcibly transported him to El Salvador in direct contravention of the INA. Once there, U.S. officials secured his detention in a facility that, by design, deprives its detainees of adequate food, water, and shelter, fosters routine violence; and places him with his persecutors, Barrio 18. In short, the public interest and companion equities favor the requested injunctive relief.[19]

IV. Conclusion

Based on the foregoing, the Court retains jurisdiction to hear this case. Abrego Garcia has also demonstrated that he is entitled to the injunctive relief sought. The Court's April 4, 2025 Order thus remains in full force and effect.[20]

Date: April 6, 2025

/S/
Paula Xinis
United States District Judge

[19] Defendants suggested in their response that the public retains an interest in not returning Abrego Garcia to the United States because "he is a danger to the community," ECF No. 11, only to abandon this position at the hearing. Again, with good reason. No evidence before the Court connects Abrego Garcia to MS-13 or any other criminal organization.

[20] For these same reasons, the Court denies Defendants' Motion to Stay the Court's April 4, 2025 Order. ECF No. 29.

No. 24A

In the Supreme Court of the United States

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL., APPLICANTS

v.

KILMAR ARMANDO ABREGO GARCIA, ET AL.

APPLICATION TO VACATE THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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PARTIES TO THE PROCEEDING

Applicants (defendants-appellants below) are Kristi Noem, Secretary of Homeland Security, in her official capacity; Todd Lyons, Acting Director, U.S. Immigration and Customs Enforcement (ICE), in his official capacity; Kenneth Genalo, Acting Executive Associate Director, ICE Enforcement and Removal Operations, in his official capacity; Nikita Baker, ICE Baltimore Field Office Director, in her official capacity; Pamela Bondi, Attorney General of the United States, in her official capacity; and Marco Rubio, Secretary of State, in his official capacity.

Respondents (plaintiffs-appellees below) are Kilmar Armando Abrego Garcia; Jennifer Stefania Vasquez Sura; and A.A.V., a minor, by and through his next friend and mother, Jennifer Vasquez Sura.

RELATED PROCEEDINGS

United States District Court (D. Md.):

Abrego Garcia v. *Noem*, No. 25-cv-951 (Apr. 4, 2025)

United States Court of Appeals (4th Cir.):

Abrego Garcia v. *Noem*, No. 25-1345

In the Supreme Court of the United States

No. 24A

KRISTI NOEM, SECRETARY OF HOMELAND SECURITY, ET AL., APPLICANTS

v.

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APPLICATION TO VACATE THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Solicitor General—on behalf of applicants Kristi Noem, Secretary of Homeland Security, et al.—respectfully files this application to vacate the injunction issued by the U.S. District Court for the District of Maryland (App., *infra*, 78a-80a). In addition, the Solicitor General respectfully requests an immediate administrative stay of the district court's order, which requires the government's immediate action by 11:59 p.m. tonight, pending this Court's consideration of this application.

On Friday afternoon, a federal district judge in Maryland ordered unprecedented relief: dictating to the United States that it must not only negotiate with a foreign country to return an enemy alien on foreign soil, but also succeed by 11:59 p.m. tonight. Complicating the negotiations further, the alien is no ordinary individual, but rather a member of a designated foreign terrorist organization, MS-13, that the government has determined engages in "terrorist activity" or "terrorism"—or "retains the capability and intent to engage in terrorist activity or terrorism"—that

"threatens the security of United States nationals or the national security of the United States." 8 U.S.C. 1189(a)(1)(B) and (C); see *Specially Designated Global Terrorist Designations* (Feb. 6, 2025), 90 Fed. Reg. 10,030 (Feb. 20, 2025). The order compels the government to allow Kilmar Armando Abrego Garcia to enter the United States on demand, or suffer the judicial consequences.

Even amidst a deluge of unlawful injunctions, this order is remarkable. Even respondents did not ask the district court to force the United States to persuade El Salvador to release Abrego Garcia—a native of El Salvador detained in El Salvador—on a judicially mandated clock. For good reason: the Constitution charges the President, not federal district courts, with the conduct of foreign diplomacy and protecting the Nation against foreign terrorists, including by effectuating their removal. And this order sets the United States up for failure. The United States cannot guarantee success in sensitive international negotiations in advance, least of all when a court imposes an absurdly compressed, mandatory deadline that vastly complicates the give-and-take of foreign-relations negotiations. The United States does not control the sovereign nation of El Salvador, nor can it compel El Salvador to follow a federal judge's bidding. The Constitution vests the President with control over foreign negotiations so that the United States speaks with one voice, not so that the President's central Article II prerogatives can give way to district-court diplomacy. If this precedent stands, other district courts could order the United States to successfully negotiate the return of other removed aliens anywhere in the world by close of business. Under that logic, district courts would effectively have extraterritorial jurisdiction over the United States' diplomatic relations with the whole world.

Compounding these errors, Congress has already made clear that the district court here lacked authority to grant any relief at all—let alone the arbitrary, infeasi-

ble relief it ordered. District courts lack jurisdiction under 8 U.S.C. 1252(g) to "hear any cause or claim by or on behalf of any alien arising from the decision or action by the Attorney General to * * * execute removal orders against any alien under" the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, except as otherwise provided. Yet the district court here allowed a collateral challenge to Abrego Garcia's removal that Congress foreclosed.

Respondents emphasize that Abrego Garcia was improperly removed to El Salvador because, although he could be removed anywhere else in the world under a 2019 order of removal, that order granted statutory withholding of removal to El Salvador alone. But, while the United States concedes that removal to El Salvador was an administrative error, see App., *infra*, 60a, that does not license district courts to seize control over foreign relations, treat the Executive Branch as a subordinate diplomat, and demand that the United States let a member of a foreign terrorist organization into America tonight. For starters, because MS-13 members such as Abrego Garcia have since been designated members of a foreign terrorist organization, they are no longer eligible for withholding of removal under 8 U.S.C. 1231(b)(3)(B). Further, the United States has ensured that aliens removed to CECOT in El Salvador will not be tortured, and it would not have removed any alien to El Salvador for such detention if doing so would violate its obligations under the Convention Against Torture. Moreover, respondents treat the relief here as "routine," Resp. C.A. Stay Opp. 1, but that relief goes far beyond merely facilitating an alien's return, which is what courts have ordered in other cases. This order—and its demand to accomplish sensitive foreign negotiations post-haste, and effectuate Abrego Garcia's return tonight—is unprecedented and indefensible.

In one respect, at least, this order is nothing new. It is the latest in a litany of injunctions or temporary restraining orders from the same handful of district courts that demand immediate or near-immediate compliance, on absurdly short deadlines. These orders virtually guarantee that decisions on sensitive, weighty, and vigorously disputed issues will be made after "barebones briefing, no argument, and scarce time for reflection." *Department of Educ.* v. *California*, No. 24A910, 2025 WL 1008354, at *2 (U.S. Apr. 4, 2025) (Kagan, J, dissenting).[1] Such orders unduly burden the parties and appellate courts, and they obstruct meaningful and orderly appellate review.

The Fourth Circuit has not yet ruled on the government's request for that court to issue an administrative stay or a stay pending appeal by 5:00 p.m. yesterday. In light of that extraordinary circumstance, and to allow this Court time to consider the issues this application raises before the district court's deadline of 11:59 p.m. tonight, the government is filing this application now and respectfully requests, at a minimum, an immediate administrative stay. See Sup. Ct. R. 23.3.

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[1] See, *e.g.*, *D.V.D.* v. *DHS*, No. 25-cv-10676 (D. Mass. Mar. 28, 2025) (temporary restraining order enjoining removal of all aliens to third countries unless court-imposed conditions were satisfied); *Widakuswara* v. *Lake*, No. 25-cv-2390 (S.D.N.Y. Mar. 28, 2025) (temporary restraining order enjoining further actions to implement an Executive Order on reduction of the federal bureaucracy); *NTEU* v. *Vought*, No. 25-cv-381 (D.D.C. Mar. 28, 2025) (preliminary injunction enjoining certain actions with respect to the CFPB); *Washington* v. *Trump*, No. 25-cv-244 (W.D. Wash. Feb. 28, 2025) (temporary restraining order and preliminary injunction enjoining implementation of Executive Order on federal funding for "gender-affirming" care); *National Ass'n of Diversity Officers in Higher Educ.* v. *Trump*, No. 25-cv-333 (D. Md. Feb. 21, 2025) (preliminary injunction on implementation of Executive Orders on diversity, equity, and inclusion initiatives); *New York* v. *Trump*, No. 25-cv-1144 (S.D.N.Y. Feb. 21, 2025) (preliminary injunction enjoining the Treasury Department from granting access to DOGE-affiliated individuals to certain payment records); *American Foreign Serv. Ass'n* v. *Trump*, No. 25-cv-352 (D.D.C. Feb. 7, 2025) (temporary restraining order requiring reinstatement of USAID employees); *New York* v. *Trump*, No. 25-cv-39 (D.R.I. Jan. 31, 2025) (temporary restraining order on providing federal financial assistance to the States).

STATEMENT

A. Background

1. Kilmar Armando Abrego Garcia is a native and citizen of El Salvador. App., *infra*, 6a. Sometime around 2011, he entered the United States without inspection. *Id.* at 25a. In March 2019, officers from the Prince George's County Police Department arrested Abrego Garcia and three other men in Maryland. *Ibid.* The officers transferred him to the custody of the Department of Homeland Security (DHS). *Id.* at 26a. DHS served him with a notice to appear for removal proceedings and detained him under 8 U.S.C. 1226(a). App., *infra*, 26a. The notice charged that Abrego Garcia was subject to removal under Title 8 because he was an alien present in the United States without being admitted or paroled—and thus was here unlawfully. *Ibid.*; see 8 U.S.C. 1182(a)(6)(A)(i).

Ensuing proceedings established that Abrego Garcia was a ranking member of the deadly MS-13 gang and thus presented a danger to the community. Soon after he was detained, Abrego Garcia requested a bond hearing before an immigration judge (IJ). App., *infra*, 1a. At the hearing, DHS presented evidence that Abrego Garcia had been "arrested in the company of other ranking gang members" and had been "confirmed to be a ranking member of the MS-13 gang by a proven and reliable source." *Id.* at 2a. The IJ agreed that the "evidence show[ed] that [Abrego Garcia] is a verified member of MS-13." *Ibid.* The IJ specifically cited "the fact that a 'past, proven, and reliable source of information' [had] verified [Abrego Garcia's] gang membership, rank, and gang name." *Id.* at 3a. And the IJ noted that Abrego Garcia had "failed to present evidence to rebut th[e] assertion" that he "is a gang member." *Ibid.* Given Abrego Garcia's MS-13 membership, the IJ determined that Abrego Garcia had "failed to meet his burden of demonstrating that his release from custody would not

pose a danger to others." *Id.* at 2a. The IJ thus denied his request for release on bond. *Id.* at 3a. The Board of Immigration Appeals (Board) affirmed, explaining that the IJ had "appropriately considered allegations of gang affiliation against [Abrego Garcia] in determining that he has not demonstrated that he is not a danger to property or persons." *Id.* at 5a.

In October 2019, after Abrego Garcia had "conceded his removability as charged," an IJ ordered Abrego Garcia's removal from the United States under Title 8. App., *infra*, 7a; see *id.* at 60a. The IJ determined, however, that it was more likely than not that, if Abrego Garcia returned to El Salvador, he would be subject to persecution on account of his affiliation with his mother, whose "earnings from the pupusa business" had been allegedly targeted by "the Barrio 18 gang." *Id.* at 15a.[2] The IJ therefore granted Abrego Garcia withholding of removal to El Salvador under 8 U.S.C. 1231(b)(3). App., *infra*, 11a-15a. Withholding of removal "only bars deporting an alien to a particular country or countries," *INS* v. *Aguirre-Aguirre*, 526 U.S. 415, 419 (1999)—in Abrego Garcia's case, to El Salvador. Because "withholding of removal is a form of '"country specific"' relief" but does not confer any lawful status within the United States, DHS remains free to "remov[e] the alien to a third country other than the country to which removal has been withheld." *Johnson* v. *Guzman Chavez*, 594 U.S. 523, 531-532 (2021) (brackets and citations omitted).

2. Thereafter, Abrego Garcia was released from DHS custody under an order of supervision. App., *infra*, 60a; D. Ct. Doc. 1-3, at 1 (Mar. 24, 2025). In February 2025, however, the Secretary of State designated MS-13 as a foreign terrorist organization under 8 U.S.C. 1189. *Specially Designated Global Terrorist Designations*

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[2] The pupusa is a thick, handmade corn tortilla filled with savory ingredients that is a staple food of El Salvador.

(Feb. 6, 2025), 90 Fed. Reg. 10,030 (Feb. 20, 2025). The Secretary of State found that MS-13 engages in "terrorist activity" or "terrorism"—or "retains the capability and intent to engage in terrorist activity or terrorism"—that "threatens the security of United States nationals or the national security of the United States." 8 U.S.C. 1189(a)(1)(B) and (C); see 90 Fed. Reg. at 10,030. The government then sought to remove identified MS-13 members as expeditiously as possible, given those determinations regarding the national-security threat.

Thus, on March 12, 2025, DHS officers "arrested Abrego Garcia due to his prominent role in MS-13" and questioned him about his affiliation with that foreign terrorist organization. App., *infra*, 60a; see *id.* at 29a-31a. According to Abrego Garcia, he was then transferred to a detention center in Texas and told that he was being removed to El Salvador, where he would be detained at the Terrorist Confinement Center known as CECOT. *Id.* at 31a & n.1.

On March 15, DHS executed Abrego Garcia's removal order by placing him on a flight to El Salvador. App., *infra*, 59a. That flight carried only aliens being removed under the INA, not the Alien Enemies Act. *Ibid.* Although DHS was "aware of th[e] grant of withholding of removal at the time [of] Abrego Garcia's removal from the United States," Abrego Garcia was removed to El Salvador "[t]hrough administrative error," *id.* at 60a—in other words, while removing him from the United States was not error, the administrative error was in removing him to El Salvador, given the withholding component of the 2019 order.

B. Proceedings Below

1. On March 24, 2025, respondents—Abrego Garcia, his wife, and their child—brought suit against various federal officials (collectively, the United States) in the U.S. District Court for the District of Maryland, alleging that the government

had "removed Plaintiff Abrego Garcia to El Salvador" in violation of the withholding-of-removal statute, the Due Process Clause, and the Administrative Procedure Act (APA). App., *infra*, 35a, 36a; see *id.* at 35a-39a.

Significantly, respondents did not seek the relief the district court granted here. Respondents' complaint instead sought an injunction "ordering Defendants to immediately cease compensating the Government of El Salvador for its detention of Plaintiff Abrego Garcia" and "ordering Defendants to immediately *request* that the Government of El Salvador release Plaintiff Abrego Garcia from CECOT and deliver him to the U.S. Embassy in El Salvador." App., *infra*, 40a (emphasis added). If "the Government of El Salvador decline[d] such request," the complaint sought a further injunction "ordering Defendants to take all steps reasonably available to them, proportionate to the gravity of the ongoing harm, to return Plaintiff Abrego Garcia to the United States." *Ibid.*

Along with their complaint, respondents filed an ex parte emergency motion for a temporary restraining order. App., *infra*, 41a-42a. In that motion, respondents "admitted[]" that the district court "has no jurisdiction over the Government of El Salvador and cannot force that sovereign nation to release Plaintiff Abrego Garcia from its prison." *Id.* at 42a. "But," respondents asserted, "because that government is detaining Plaintiff at the direct request and pursuant to financial compensation from defendants," the district court could "order Defendants to immediately stop paying such compensation, and to *request* that the Government of El Salvador return Plaintiff Abrego Garcia to their custody." *Ibid.* Respondents disclaimed asking for any other "emergency relief." *Ibid.* The district court denied respondents' ex parte motion because respondents had failed to explain why the court should dispense with

notice to the United States and "take the unusual step" of deciding the motion ex parte. D. Ct. Doc. 5, at 1 (Mar. 25, 2025).

On March 25, respondents filed a renewed motion for a temporary restraining order. App., *infra*, 43a-45a. In that motion, respondents reiterated that the district court "admittedly has no jurisdiction over the Government of El Salvador and cannot force that sovereign nation to release Plaintiff Abrego Garcia from its prison." *Id.* at 44a. Respondents then requested the same "emergency relief" as in their ex parte motion. *Ibid.*

The district court set a briefing schedule on respondents' renewed motion. D. Ct. Doc. 8, at 1 (Mar. 25, 2025). In a supplemental memorandum in support of their motion, respondents acknowledged that "[t]his case may end up raising difficult questions of redressability in a subsequent phase." App., *infra*, 47a. Respondents nevertheless argued that a "preliminary injunction should issue promptly," ordering the United States to "request that the government of El Salvador return [Abrego Garcia] to Defendants' custody" and to "cease paying the government of El Salvador to continue to detain [him]." *Ibid.*

On the afternoon of Friday, April 4, the district court construed respondents' renewed motion as a motion for a preliminary injunction and granted it, directing the United States "to return Abrego Garcia to the United States no later than 11:59 PM on [Monday,] April 7th, 2025." App., *infra*, 79a; see *ibid.* (directing the United States "to facilitate and effectuate the return of Plaintiff Kilmar Armando Abrego Garcia to the United States by no later than 11:59 PM on Monday, April 7, 2025"). The court said that it would, "in due course," issue "[a] memorandum opinion further setting forth the basis" for its ruling, but summarily stated its conclusions that (1) respondents "are likely to succeed on the merits because Abrego Garcia was removed to El

Salvador in violation of the [withholding-of-removal statute], and without any process"; (2) Abrego Garcia's "continued presence" in El Salvador "constitutes irreparable harm"; (3) "the balance of equities and the public interest weigh in favor of returning him to the United States"; and (4) preliminary relief "is necessary to restore him to the status quo and to avoid ongoing irreparable harm resulting from Abrego Garcia's unlawful removal." *Ibid.*

2. The United States immediately filed a notice of appeal. D. Ct. Doc. 22 (Apr. 4, 2025). The United States also filed, in the district court and the Fourth Circuit, an emergency motion for an immediate administrative stay and a stay pending appeal. C.A. Doc. 3 (Apr. 5, 2025); D. Ct. Doc. 29 (Apr. 5, 2025).

3. On the morning of Sunday, April 6, the district court issued a memorandum opinion in support of its April 4 injunction. App., *infra*, 81a-102a. The court held that it had jurisdiction to hear respondents' claims, rejecting the United States' contention that 8 U.S.C. 1252(g) deprived the court of jurisdiction because those claims challenge the execution of a removal order. App., *infra*, 92a-96a. The court also held that respondents had satisfied each of the requirements for preliminary injunctive relief. *Id.* at 96a-102a. In particular, the court concluded that respondents would prevail on their statutory withholding, due process, and APA claims in light of the IJ's grant of withholding of removal to El Salvador. *Id.* at 97a-99a. The court also concluded that Abrego Garcia's placement at CECOT would cause him irreparable harm, *id.* at 100a-101a, and that the balance of equities and public interest favored injunctive relief, *id.* at 101a-102a. The court stated that it had granted what it regarded as the "narrowest" relief warranted: an "order that Defendants return Abrego Garcia to the United States." *Id.* at 82a. The court declined to issue an immediate administrative stay or a stay pending appeal. *Id.* at 102a & n.20.

4. The United States asked the Fourth Circuit to rule on its stay motion by 5 p.m. yesterday. On Saturday morning, the Fourth Circuit requested that respondents file a response by 2 p.m. on Sunday. But as of the time of this filing, the Fourth Circuit has not acted on either the government's request for a stay pending appeal or its request for an administrative stay.

ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay or vacate a district order's interlocutory order granting emergency relief. See, *e.g.*, *Trump* v. *International Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam); *Brewer* v. *Landrigan*, 562 U.S. 996 (2010); *Brunner* v. *Ohio Republican Party*, 555 U.S. 5, 6 (2008). An applicant must show (1) a likelihood of success on the merits, (2) a reasonable probability of obtaining certiorari, and (3) a likelihood of irreparable harm. See *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010) (per curiam). In "close cases," "the Court will balance the equities and weigh the relative harms." *Ibid.* Those factors strongly support relief here.[3]

A. The United States Is Likely To Succeed On The Merits

The district court's injunction—which requires Abrego Garcia's release from the custody of a foreign sovereign and return to the United States by midnight on Monday—is patently unlawful. As respondents acknowledged below, the district court has no jurisdiction over the Government of El Salvador and thus no authority to order Abrego Garcia's return to the United States. App., *infra*, 42a, 44a. The court nevertheless ordered his return into the United States on an arbitrary and impossible

[3] The United States has applied to "vacate" rather than "stay" the district court's injunction, though the practical effect of the relief is the same; the traditional stay standard should govern. See Appl. to Vacate Order at 11 n.4, *Bessent* v. *Dellinger*, 144 S. Ct. 338 (No. 24A790).

timeline for sensitive foreign negotiations—arrogating core Article II prerogatives to Article III, in contravention of bedrock constitutional responsibilities. On top of all that, Congress already deprived the district court of jurisdiction to enter any relief, because 8 U.S.C. 1252(g) provides that no court shall have jurisdiction to address collateral attacks on the execution of a removal order outside the statutorily prescribed process. The injunction therefore cannot stand. Moreover, at a minimum, it should be vacated insofar as it requires the government to bring Abrego Garcia back to the United States, where he has no lawful status.

1. An injunction demanding the release of a member of a foreign terrorist organization from the custody of a foreign sovereign and his return to the United States is an abuse of judicial power

a. Tellingly, the district court's injunction is so unprecedented that not even respondents requested the district court to enter it. Before the district court, respondents never asked for an injunction ordering Abrego Garcia's return to the United States—not in their complaint, or their ex parte motion for a temporary restraining order, or their renewed motion for a temporary restraining order, or their supplemental memorandum in support of injunctive relief, or any other filing. See App., *infra*, 40a, 42a, 44a, 47a. Instead, respondents asked for only two forms of immediate relief: (1) an order directing federal officials "to immediately stop paying" the Government of El Salvador "compensation" for detaining Abrego Garcia; and (2) an order directing federal officials "to *request* that the Government of El Salvador return Plaintiff Abrego Garcia to their custody." *Id.* at 42a; see *id.* at 40a, 44a, 47a. Respondents disclaimed asking for any other emergency relief. See *id.* at 42a, 44a ("That is all Plaintiff asks for this Court [to] order as emergency relief.").

That is for good reason. Abrego Garcia is a native and citizen of El Salvador being detained in El Salvador by the Government of El Salvador. As respondents have "admitted[]," the district court "has no jurisdiction over the Government of El Salvador," which is not a party. App., *infra*, 42a, 44a. And because the court lacks jurisdiction over the Government of El Salvador, it "cannot force that sovereign nation to release Plaintiff Abrego Garcia from its prison." *Ibid.*

The district court's injunction, however, demands that the United States accomplish just that, no matter the foreign-relations consequences. The court's injunction, entered last Friday afternoon, requires Abrego Garcia's "return" to "the United States no later than 11:59 PM on April 7th." App., *infra*, 79a; see *id.* at 82a (characterizing the court's injunction as an order for Abrego Garcia's "return"). But neither a federal district court nor the United States has authority to tell the Government of El Salvador what to do. The Government of El Salvador has custody of Abrego Garcia, so he cannot be returned to the United States unless the Government of El Salvador releases him. Compliance with the district court's order thus requires the Government of El Salvador to "release Plaintiff Abrego Garcia from its prison." *Id.* at 42a, 44a.

The district court's injunction thus does not just offend the sovereignty of the Government of El Salvador—though it surely does that. The negotiate-by-midnight order gravely offends the separation of powers, under which the Executive, not the Judiciary, conducts relations with foreign sovereigns and protects the Nation against foreign terrorists, including by effectuating their removal. As this Court has repeatedly recognized, "any policy toward aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations [and] the war power." *Harisiades* v. *Shaughnessy*, 342 U.S. 580, 588-589 (1952); see *Trump* v. *Ha-*

waii, 585 U.S. 667, 702 (2018). Under the Constitution, "[s]uch matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades,* 342 U.S. at 589; see *Trump* v. *United States*, 603 U.S. 593, 607 (2024) (recognizing that Article II entrusts the Executive with "important foreign relations responsibilities," including "managing matters related to terrorism, trade, and immigration"); *Hawaii*, 585 U.S. at 702 ("For more than a century, this Court has recognized that the admission and exclusion of foreign nationals is a 'fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.'") (citation omitted).

The district court's injunction, however, subjects the Executive's conduct of foreign relations to precisely such interference. This case does not involve just "[*a*]*ny* policy toward aliens," *Harisades*, 342 U.S. at 588 (emphasis added); it involves policy toward an alien *who is in the custody of a foreign sovereign* (and who is part of a designated foreign terrorist organization). And because the United States cannot comply with the district court's injunction unless the Government of El Salvador releases Abrego Garcia from custody, the injunction makes the district court the arbiter of "relations with [a] foreign power[]" itself. *Hawaii*, 585 U.S. at 702 (citation omitted). Such relations go to the core of the Executive's responsibilities under Article II, which "authorizes the Executive to engag[e] in direct diplomacy with foreign heads of state and their ministers." *Zivotofsky* v. *Kerry*, 576 U.S. 1, 14 (2015); see *id.* at 13-15 (recognizing that "the President himself has the power to open diplomatic channels simply by engaging in direct diplomacy with foreign heads of state and their ministers" and that the President is positioned to engage in "delicate and often secret diplomatic contacts"). "Accordingly, the Court has taken care to avoid 'the danger of unwarranted judicial interference in the conduct of foreign policy,' and declined to

'run interference in [the] delicate field of international relations.'" *Biden* v. *Texas*, 597 U.S. 785, 805 (2022) (quoting *Kiobel* v. *Royal Dutch Petroleum Co.*, 569 U.S. 108, 115-116 (2013)). By subjecting such relations to judicial control, the court's injunction impermissibly intrudes on those Article II prerogatives.

Compounding that error, the district court's injunction, which was entered on Friday afternoon, sets an arbitrary—and impossible—deadline of 11:59 p.m. on Monday, April 7, for Abrego Garcia's return. App., *infra*, 79a. The United States' negotiations with a foreign sovereign should not be put on a judicially mandated clock, least of all when matters of foreign terrorism and national security are at stake. See *Biden* v. *Texas*, 597 U.S. at 806 (reversing court of appeals' decision requiring resumption of program to return arriving aliens to contiguous territory pending their removal proceedings in part because that order "imposed a significant burden upon the Executive's ability to conduct diplomatic relations with Mexico"). The idea that district judges are best positioned to decide how long delicate foreign negotiations should take—and can grossly interfere with those negotiations by signaling to foreign partners that they can leverage the United States' obligation to comply with court orders into concessions to beat the district judge's clock—is antithetical to the constitutional order.

b. The district court's and respondents' attempts to justify the court's injunction are meritless. In its Sunday morning memorandum opinion, the court characterized its injunction as the "narrowest" relief that it could issue. App., *infra*, 82a. That characterization is indefensible, especially because the injunction went far beyond what respondents themselves had requested. An injunction that demands that the United States persuade El Salvador to release a member of a foreign terrorist

organization from El Salvador's custody and return him to the United States on an arbitrary, impossible timeline is hardly "narrow[]." *Ibid.*

In opposing a stay of the injunction in the court of appeals, respondents insisted that they did "request[]" the injunction that the district court entered. Resp. C.A. Stay Opp. 9. But contrary to respondents' characterization, the court did not merely order the United States to "facilitate" Abrego's return, *ibid.*; it ordered the United States actually to "effectuate" it, App., *infra*, 79a. If there were any doubt on that score, the court's memorandum opinion eliminated it, by reiterating that its injunction "order[s]" that "Defendants *return* Abrego Garcia to the United States." *Id.* at 82a (emphasis added). Again, respondents clearly disclaimed such a request in repeatedly telling the court that it "has no jurisdiction over the Government of El Salvador and cannot force that sovereign nation to release Plaintiff Abrego Garcia from its prison." *Id.* at 42a, 44a.

The district court's and respondents' efforts to analogize the court's injunction to relief in other immigration cases also fail. See App., *infra*, 90a-91a; Resp. C.A. Stay Opp. 10. Each of those other cases involved a U.S. Immigration and Customs Enforcement (ICE) directive that describes a policy for "facilitating" the return of certain lawfully removed aliens whose petitions for review are granted after their removal. *E.g.*, *Ramirez* v. *Sessions*, 887 F.3d 693, 706 n.11 (4th Cir. 2018) (citation omitted); see also *Nken* v. *Holder*, 556 U.S. 418, 435 (2009) (noting that aliens "who prevail" on petitions for review of removal orders "can be afforded effective relief by facilitation of their return"). The ICE directive defines "facilitating an alien's return" to mean "engag[ing] in activities which allow a lawfully removed alien to travel to the United States (such as by issuing a Boarding Letter to permit commercial air travel) and, if warranted, parol[ing] the alien into the United States upon his or her arrival

at a U.S. port of entry." *Ramirez*, 887 F.3d at 706 n.11 (citation omitted). The directive further specifies that facilitating an alien's return "does not necessarily include funding the alien's travel via commercial carrier to the United States or making flight arrangements for the alien." *Ibid.* (citation omitted).

Yet what the district court's injunction requires the United States to do in this case goes far beyond "facilitating" an alien's return as defined by the ICE directive. Whereas the ICE directive contemplates actions entirely within the United States' control—like issuing a travel document or paroling an alien into the United States—the court's injunction in this case requires the United States to secure an alien's release from the custody of a foreign sovereign. Accordingly, respondents and the district fail to identify another case that involved an order that bears any resemblance to this one. Far from being "routine," Resp. C.A. Stay Opp. 1, the injunction in this case is an unprecedented attempt to tell a foreign sovereign what to do and to usurp the Executive's conduct of foreign relations in the process.

2. Section 1252(g) of Title 8 deprives the district court of jurisdiction over respondents' claims

a. The district court's injunction should be vacated for an independent reason: Section 1252(g) of Title 8 deprives the district court of jurisdiction over respondents' claims. By its terms, Section 1252(g) strips district courts of "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 * * * execute removal orders against any alien under" the INA, except as provided in Section 1252. 8 U.S.C. 1252(g); see *Reno* v. *American-Arab Anti-Discrimination Comm.*, 525 U.S. 471, 482 (1999).

Respondents' claims in this case are claims by or on behalf of Abrego Garcia "arising from the decision or action" by the federal government to "execute [a] removal

order[] against" Abrego Garcia under the INA. 8 U.S.C. 1252(g). That much is clear from respondents' complaint, which alleges that the government violated the withholding-of-removal statute and the Due Process Clause by "*remov*[*ing*] Plaintiff Abrego Garcia to El Salvador." App., *infra*, 35a, 36a (emphasis added); see *id.* at 33a (alleging that federal officials "decided to deport Plaintiff Abrego Garcia without following the law"). Indeed, respondents acknowledge that their "core contention in this case is that Defendants *removed* [*Abrego Garcia*] *from the United States* without legal justification." *Id.* at 67a. And, tellingly, the injunction that the district court granted purports to undo that removal, by directing Abrego Garcia's "return" to the United States. *Id.* at 79a. There can thus be no question that respondents' claims arise from the government's decision or action to "execute [a] removal order[] against" Abrego Garcia under the INA. 8 U.S.C. 1252(g).

To be sure, what respondents challenge is not the validity of the removal order itself; they acknowledge that there is a valid removal order against Abrego Garcia. See App., *infra*, 46a. Rather, what respondents challenge is Abrego Garcia's "removal to El Salvador," after he was granted withholding of removal to that country. *Ibid.* But Section 1252(g) does not refer to claims challenging the validity of a removal order; it refers to claims arising from a decision or action to "*execute* [a] removal order[]." 8 U.S.C. 1252(g) (emphasis added). And the *execution* of a removal order necessarily involves deciding *where* the alien will go. See *Johnson* v. *Guzman Chavez*, 594 U.S. 523, 536 (2021) (explaining that withholding of removal "relates to *where* an alien may be removed"). The facts of this case illustrate the point: DHS "executed" Abrego Garcia's Title 8 removal order by placing him on a flight to a particular country (here, El Salvador). App., *infra*, 59a; see *ibid.* ("Abrego-Garcia * * * was on the third flight and thus had his removal order to El Salvador executed."). By challenging

Abrego Garcia's "removal to El Salvador," *id.* at 46a, respondents' claims arise from the execution of a removal order against him.

Section 1252(g) therefore deprives district courts of jurisdiction over respondents' claims, "[e]xcept as provided in [Section 1252]." 8 U.S.C. 1252(g). That exception does not apply in this case; indeed, respondents never invoked Section 1252 as a basis for jurisdiction. See App., *infra*, 21a. Section 1252(g) deprives the district court of jurisdiction to hear respondents' claims—and to enter the injunction at issue here.

b. The district court's and respondents' attempts to evade Section 1252(g)'s jurisdictional bar lack merit. In its Sunday morning memorandum opinion, the district court stated that there is no removal order in the record. App., *infra*, 94a. But the record shows that Abrego Garcia was charged with removability under Title 8, see *id.* at 6a; that the IJ found Abrego Garcia removable as charged, see *id.* at 7a; and that Abrego Garcia had "his removal order * * * executed" when he was put on a plane to El Salvador with other "aliens with Title 8 removal orders," *id.* at 59a. Not only have respondents never disputed that there is a valid removal order against Abrego Garcia, they have conceded that the "government could have chosen to remove Mr. Abrego Garcia to any *other* country on earth." *Id.* at 46a. They are plainly challenging his removal to El Salvador versus somewhere else—and Section 1252(g) bars that claim.

For similar reasons, respondents' contention (C.A. Stay Opp. 13-14) that the execution of Abrego Garcia's removal order was not the execution of a removal order "under this chapter"—*i.e.*, Chapter 12 of Title 8—fails. Abrego was charged with removability under that Chapter and placed in removal proceedings governed by that Chapter. See App., *infra*, 6a. The removal order that was executed was thus a removal order under that Chapter.

Citing various lower-court decisions, the district court also expressed the view that Section 1252(g) does not deprive courts of jurisdiction to review non-"discretionary" decisions or "pure question[s] of law." App., *infra*, 94a-95a (citing, *e.g.*, *Borwin* v. *United States INS*, 194 F.3d 483 (4th Cir. 1999)). But those purported exceptions to Section 1252(g)'s jurisdictional bar appear nowhere in the text of Section 1252(g). See, *e.g.*, *Silva* v. *United States*, 866 F.3d 938, 940 (8th Cir. 2017) ("The statute * * * makes no distinction between discretionary and nondiscretionary decisions."); *Foster* v. *Townsley*, 243 F.3d 210, 214 (5th Cir. 2001) ("[A] plain reading of the statute demonstrates that Congress did not exclude non-discretionary decisions from this provision limiting judicial review."). And even if they did, the exceptions would not cover this case. The decision to execute Abrego Garcia's removal order was a discretionary one—made several years after that order but soon after the designation of MS-13 as a foreign terrorist organization. See pp. 6-7, *supra*. And contrary to the district court's suggestion, respondents' claims arising from that discretionary decision do not present a "pure question of law," App., *infra*, 95a; the challenged error here was an "administrative error," not a purely legal one, *id.* at 60a; see *Silva*, 866 F.3d at 941 (holding that an error in executing a removal order did not present a "pure question of law"). Indeed, the administrative error here involved removal to El Salvador—not removal anywhere—and the 2019 order granting withholding did not, of course, account for MS-13's ensuing designation as a foreign terrorist organization whose members cannot invoke withholding of removal, or the United States' ensuing work with El Salvador to ensure that removed aliens are treated consistently with the Convention Against Torture. Section 1252(g) therefore deprived the district court of jurisdiction to enter any relief on respondents' claims, including this injunction.

3. At a minimum, the district court erred in ordering Abrego Garcia's return to the United States

The district court did not simply order Abrego Garcia's release from the custody of the Government of El Salvador; it ordered that he be brought back "to the United States." App., *infra*, 79a. But a plaintiff's remedy must be "limited to the inadequacy that produced his injury in fact." *Gill* v. *Whitford*, 585 U.S. 48, 66 (2018) (brackets and citation omitted). Here, the only injury that the court identified was Abrego Garcia's "continued presence in El Salvador." App., *infra*, 79a. Abrego Garcia has never claimed any entitlement to be in the United States. Nor could he. He does not dispute that there is a removal order against him. See *id.* at 46a. Although Abrego Garcia was granted withholding of removal to El Salvador, that only "prohibits DHS from removing [him] *to* that particular country, not *from* the United States." *Guzman Chavez*, 594 U.S. at 536. The removal order "remains in full force, and DHS retains the authority to remove [him] to any other country authorized by the statute." *Ibid.*; see App., *infra*, 46a (acknowledging that the "government could have chosen to remove Mr. Abrego Garcia to any *other* country on earth"). On top of that, Abrego Garcia is certainly removable now—without any entitlement to withholding—based on his membership in a designated foreign terrorist organization. See 8 U.S.C. 1231(b)(3)(B). Congress sensibly determined that when individuals associate with terrorist organizations, the government has the strongest of interests in removing them elsewhere, and thus Congress gave the Executive Branch greater flexibility to prevent the serious national-security harms from having foreign terrorists remain on U.S. soil. The district court's order directing that Abrego Garcia be brought back to *the United States* heightens the unlawfulness of the order.

B. The Other Factors Support Vacating The District Court's Injunction

The remaining factors—*i.e.*, whether the underlying issues warrant review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities, see *Hollingsworth*, 558 U.S. at 190—likewise support relief here.

1. The questions raised by this case plainly warrant this Court's review. See *Does 1-3* v. *Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring) (identifying certworthiness as a stay factor). As explained, the district court's injunction vastly exceeds the court's authority, grossly interferes with the President's core foreign-relations powers, and exercises jurisdiction in the very type of case where Congress barred it. See pp. 11-20, *supra*. If allowed to stand, the injunction would allow district courts to function as *de facto* Secretaries of State, empowered to dictate the conduct of relations with a foreign sovereign over which the district court has "no jurisdiction," as respondents acknowledge. App., *infra*, 42a, 44a. The case presents questions of important questions of federal law that warrant this Court's review. Sup. Ct. R. 10(c). In addition, the questions of the proper interpretation of 8 U.S.C. 1252(g) are independently certworthy for the reasons discussed above.

2. For similar reasons, the district court's injunction irreparably harms the government by placing the conduct of foreign relations under judicial superintendence. See pp. 11-17, *supra*. The injunction also threatens irreparable harm to the public by directing the return of "a verified member of MS-13" to the United States. App., *infra*, 2a. At a bond hearing in 2019, "a 'past, proven, and reliable source of information' verified [Abrego Garcia's] gang membership," and Abrego Garcia "failed to present evidence to rebut th[e] assertion" that he "is a gang member" of MS-13. *Id.* at 3a. An IJ therefore determined that Abrego Garcia had "failed to meet his burden of demonstrating that his release from custody would not pose a danger to others,"

id. at 2a, and the Board affirmed the IJ's denial of release on bond, finding that the IJ had "appropriately considered allegations of gang affiliation against [Abrego Garcia]," *id.* at 5a. Since then, the Secretary of State has designated MS-13 as a foreign terrorist organization. 90 Fed. Reg. at 10,030; see pp. 6-7, *supra*. Self-evidently, the public interest supports vacating the order directing Abrego Garcia's return to the United States. See *Nken*, 556 U.S. at 435 (noting that the "public interest in prompt execution of removal orders" may "be heightened" if an "alien is particularly dangerous").

The district court's assertion that there is "no evidence linking Abrego Garcia to MS-13" ignores the evidence that was before the IJ and the Board. App., *infra*, 82a n.2. Further, any suggestion that DHS could eliminate the public safety concern by detaining Abrego Garcia upon his return is profoundly misguided. The United States has a compelling interest in ensuring that members of foreign terrorist organizations do not interact with anyone else in the United States, because MS-13 members present heightened risks of violence against government officials and fellow detainees and attempt to recruit others to their ranks. See Gov't C.A. Stay Mot. 16-17. Moreover, the Executive's assessment of the danger that Abrego Garcia poses to this country is entitled to substantial deference. See *Hawaii*, 585 U.S. at 704 ("'[J]udicial inquiry into the national-security realm raises concerns for the separation of powers' by intruding on the President's constitutional responsibilities in the area of foreign affairs.").

3. On the other side of the balance, vacating the district court's injunction would not cause respondents irreparable harm. Respondents assert that Abrego Garcia is "suffering irreparable harm in the form of separation from" his family. App., *infra*, 36a. But the district court declined to rely on that assertion in entering its

injunction, see *id.* at 100a-101a—for good reason. While respondents challenge Abrego Garcia's "removal to El Salvador," they acknowledge that the "government could have chosen to remove [him] to any *other* country on earth," thereby separating him from his family. *Id.* at 46a. Because respondents take issue only with *where,* not *whether* Abrego Garcia was removed, the harm that they claim from family separation is not implicated or properly redressable here.

Respondents also allege that Abrego Garcia is at imminent risk of irreparable harm, including torture or death, "with every additional day he spends detained in CECOT." App., *infra*, 35a. But both the United States and El Salvador are parties to the Convention Against Torture, and the United States is obligated not to return a person to a country where that person is likely to be tortured. See 8 C.F.R. 1208.18. The United States has accordingly ensured that removed aliens will not be tortured, and it would not have removed any alien to El Salvador for detention in CECOT if doing so would violate its obligations under the Convention. "The Judiciary is not suited to second-guess such determinations" about "whether there is a serious prospect of torture at the hands of" a foreign sovereign. *Munaf* v. *Geren*, 553 U.S. 674, 702 (2008); see *Kiyemba* v. *Obama*, 561 F.3d 509, 514 (D.C. Cir. 2009) ("Under *Munaf*, * * * the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee."), cert. denied, 559 U.S. 1005 (2010).

It is true that an IJ concluded six years ago that Abrego Garcia should not be removed to El Salvador, due to his claims about threats from a different gang. App., *infra*, 11a-15a. But given the Secretary of State's designation of MS-13 as a foreign terrorist organization in February 2025, see 90 Fed. Reg. at 10,030, the IJ's finding that Abrego Garcia is "a verified member of MS-13" would render him ineligible for

statutory withholding of removal if the issue arose today, App., *infra*, 3a; see 8 U.S.C. 1231(b)(3)(B)(iv). So while "there is a public interest in preventing aliens from being wrongfully removed," *Nken*, 556 U.S. at 436, that interest is substantially diminished in this case and outweighed by the harm that the district court's injunction threatens to cause the government and the public.

C. This Court Should Grant An Immediate Administrative Stay

At the very least, this Court should grant an administrative stay while it considers this application. An administrative stay is particularly warranted in this case because of the exceedingly short period that the district court gave the government to comply with its injunction. As explained above, the court entered its injunction on a Friday afternoon and directed Abrego Garcia's return by midnight tonight—giving the government little more than one business day to secure Abrego Garcia's release from a foreign sovereign. See p. 15, *supra*. In light of that impending deadline, an administrative stay is necessary to ensure an opportunity for meaningful appellate review of the court's injunction. Heightening the concern, the district court did not even issue its memorandum opinion explaining the basis for its injunction until the morning of Sunday, April 6—the calendar day before the compliance deadline. App., *infra*, 81a-102a. In these circumstances, an administrative stay is warranted while this Court assesses the government's entitlement to vacatur.

CONCLUSION

This Court should vacate the district court's injunction. In addition, the Solicitor General respectfully requests an immediate administrative stay of the district court's injunction pending this Court's consideration of this application.

Respectfully submitted.

D. JOHN SAUER
Solicitor General

APRIL 2025

APPENDIX