No. 24A1153

In the Supreme Court of the United States

U.S. DEPARTMENT OF HOMELAND SECURITY ET AL.,

Applicants,

v.

D.V.D. ET AL.,

Respondents.

ON APPLICATION FOR A STAY OF THE INJUNCTION ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

SUPPLEMENTAL APPENDIX

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SUPPLEMENTAL APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D.V.D, et al.,	)	
	)	
Plaintiffs,	)	
	)	**Civil Action No.**
v.	)	**25-10676-BEM**
	)	
U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER ON
DEFENDANTS' MOTIONS FOR RECONSIDERATION AND STAY

MURPHY, J.

Defendants have mischaracterized this Court's order, while at the same time manufacturing the very chaos they decry. By racing to get six class members onto a plane to unstable South Sudan, clearly in breach of the law and this Court's order, Defendants gave this Court no choice but to find that they were in violation of the Preliminary Injunction.

Even after finding that violation, however, the Court stayed its hand and did not require Defendants to bring the individuals back to the United States, as requested by Plaintiffs. Instead, the Court accepted *Defendants' own suggestion* that they be allowed to keep the individuals out of the country and finish their process abroad. In the interest of full transparency, the Court quotes at length from the hearing transcript:

> **THE COURT**: [Plaintiffs' counsel] is suggesting that the only remedy is for the plane to return here so that these individuals be given an opportunity to raise any objections they have to being sent to South Sudan. Do you have another suggestion as to what a remedy that would allow these people to have the process that they are due might be?
>
> **MR. ENSIGN**: If I may, we think any remedy should be narrowly tailored to the violation. And so, you know, if Your Honor believes they weren't given a meaningful opportunity to express a fear under CAT [Convention Against Torture], that **the remedy should first be limited to giving them such a meaningful opportunity. If they were to do so, then they would be given that reasonable fear interview.** But bringing them back would be a much broader remedy than necessary because this Court only requires compliance with procedures and, to the extent that Your Honor believes those procedures were not followed, the Government should be allowed to provide those procedures, and that should satisfy the due process as interpreted by this Court.
>
> **THE COURT**: Thank you, Mr. Ensign. So let's say that -- I agree with you that I want to make the most narrowly tailored order to address the violation of my preliminary injunction that is possible. **What you're suggesting is that they can have a reasonable fear interview where they are now.** Is that a practical possibility?
>
> **MR. ENSIGN**: Your Honor, I don't know. I'd have to speak to my client, but **I think that would need to be at least one of the compliance options that's presented, because that would be a much more narrowly tailored remedy that is actually tailored to the violation that Your Honor has found.**[1]

After this exchange, Defendants spent several hours conferring internally as to the feasibility of this option, ultimately deciding that it was doable:[2]

> **THE COURT**: I'm very much considering this, but, if this is the route we go, **my inclination would be to say, if you want to do all of these [interviews] where they are, you have to do them appropriately; if you don't want to, you can always bring them home of your own volition and do it there. And so I'm not going to mandate that the Department do anything overseas, but in an effort to craft as circumscribed a remedy as possible, I'm inclined to say if the Department wants to figure that out, I'm inclined to let them.**

[1] Tr. of May 21, 2025 H'rg at 44:8–45:14 (emphases added).

[2] Tr. of May 21, 2025 H'rg at 119:10–21. ("[I.C.E. Assistant Director Charles]: I know it's possible and the Department can work it out. We've been working on it for the last couple of hours to make sure that we can do it, and it is possible to do it.").

> **MR. ENSIGN**: **And we appreciate that, Your Honor.** And, you know, to the extent that it poses challenges that are not -- that would be insurmountable, we would quickly inform the Court and figure out -- use one of the options to comply with the Court's orders.[3]

Since that hearing, merely five days ago, Defendants have changed their tune. It turns out that having immigration proceedings on another continent is harder and more logistically cumbersome than Defendants anticipated. However, the Court never said that Defendants *had* to convert their foreign military base into an immigration facility; it only left that as an option, again, *at Defendants' request*. The other option, of course, has always been to simply return to the status quo of roughly one week ago, or else choose any other location to complete the required process.

To be clear, the Court recognizes that the class members at issue here have criminal histories. But that does not change due process. "The history of American freedom is, in no small measure, the history of procedure." *Malinski v. New York*, 324 U.S. 401, 414 (1945) (Frankfurter, J., concurring). "It is procedure that spells much of the difference between rule by law and rule by whim or caprice. Steadfast adherence to strict procedural safeguards is our main assurance that there will be equal justice under law." *Joint Anti-Fascist Refugee Comm. v. McGrath*, 341 U.S. 123, 179 (1951) (Douglas, J., concurring). The Court treats its obligation to these principles with the seriousness that anyone committed to the rule of law should understand.

It continues to be this Court's sincere hope that reason can get the better of rhetoric. The orders put in place here are sensible and conservative. Accordingly, and for the reasons stated herein, Defendants' motions for reconsideration and for stay pending appeal are DENIED.

[3] Tr. of May 21, 2025 H'rg at 112:1–25 (emphases added).

I. Background

A. General Background

This action concerns the procedures that the Government must take before removing non-citizens to "third" countries. The Immigration and Nationality Act, 8 U.S.C. § 1101 *et seq.*, determines the country or countries to which an individual can be removed. *Id.* § 1231(b). In the first instance, the Government generally must remove a non-citizen to their country of origin or to the country designated on their Order of Removal. *See id.* § 1231(b)(2)(A)–(D). If those options prove "impracticable, inadvisable, or impossible," the Government may remove the non-citizen to any other country whose government will accept them, *i.e.*, to a "third" country. *Id.* § 1231(b)(2)(E)(vii). The Government's power to designate third countries for removal is subject to certain limitations set by Congress. *Id.* § 1231(b)(2). In particular, the Government may not remove a non-citizen to a country where they are likely to be tortured. *See* note to 8 U.S.C. § 1231 (codifying the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA")). A non-citizen's claim that he or she qualifies for this type of protection is called a "CAT" claim, referring to the Convention Against Torture, an international agreement implemented by Congress through FARRA. *See id.*

B. Case Background

On March 23, 2025, Plaintiffs filed this action, claiming that Defendants were removing people to third countries without giving any opportunity to show that they were at risk of persecution or torture. *See generally* Dkts. 1, 6–8. On April 18, 2025, the Court issued a Preliminary Injunction, which required Defendants to tell class members about their third-country removals in advance and to give them a "meaningful opportunity" to show or explain why they qualify for CAT protection. *See* Dkt. 64 at 46–47.

Twice, well-founded allegations of non-compliance or imminent non-compliance led this Court to amend or clarify the Preliminary Injunction. *See* Dkts. 86, 91. Neither of those changed the substance of the Preliminary Injunction, which continued to require Defendants to give written notice of the third-country removal and a meaningful opportunity to make a CAT claim. *See id.*

C. Present Issues

On May 21, 2025, Plaintiffs again moved for a temporary restraining order and preliminary injunction, alleging that Defendants were violating or had already violated the Preliminary Injunction by removing an unknown number of individuals to South Sudan without advanced notice and without an opportunity to demonstrate CAT eligibility. *See generally* Dkts. 111–12. Shortly thereafter, the Court called a hearing by remote videoconference. Dkt. 115. Defendants' attorneys had very little information, and the Court ordered Defendants to maintain custody of the individuals while everybody figured out what was happening. Dkt. 116.

The Court held an in-person hearing the next day, May 21, 2025. Dkts. 114, 117. An hour prior, Defendants held a press conference where they revealed the names and criminal histories of the individuals on the plane, at least six of whom turned out to be class member Plaintiffs in this case.[4] At the hearing, the Court learned that these individuals were being held at a foreign military base in Djibouti.[5] The Court heard sworn testimony from the I.C.E. Acting Assistant Director for

[4] *See Immigration and Customs Enforcement Officials Hold News Conference*, CSPAN (May 21, 2025), https://www.c-span.org/program/news-conference/immigration-and-customs-enforcement-officials-hold-news-conference/660241; *see also* Press Release, Department of Homeland Security, DHS Reacts to Activist Judge Ruling to Halt the Deportation of Barbaric Criminal Illegal Aliens Including Murderers, Rapists, and Pedophiles, (May 21, 2025), https://perma.cc/ZAR7-8KWE.

[5] Defendants requested that the country location of the individuals be kept under seal but have since made that information public. *See* Dkt 131-1; *see also* Haley Britzky, et al., *Deported migrant detainees are holding at a US Naval base in Djibouti amid court fight, officials say*, CNN (May 22, 2025 2:12 PM), https://perma.cc/W2FN-C6X8.

Field Operations at Enforcement and Removal Operations, Marcos Charles, and acting General Counsel of Department of Homeland Security, Joseph Mazzara. Dkt. 117.

Based on that testimony, Plaintiffs' submissions, and Defendants' submissions in connection with the instant motion, the Court has made factual findings, substantially reflecting its understanding of the events immediately following the May 21, 2025, hearing:

Sometime on May 19, 2025, Defendants informed eight individuals in I.C.E. detention that they were being removed to South Africa. *See* Dkt. 112-1 at 4–5; Dkt. 112-3 at 4. Later that day, no earlier than 5:46 p.m., Defendants told them instead that they were being removed to South Sudan. *Id.*; Dkt. 130-2 ¶ 10.[6]

The U.S. Government has issued stark warnings regarding South Sudan, advising its citizens not to travel to there because of "**crime**, **kidnapping**, and **armed conflict**." *South Sudan Travel Advisory*, U.S. DEPARTMENT OF STATE, Mar. 8, 2025, https://perma.cc/XQN7-VXHV (emphases in original). The U.S. Department of State further warns that "[v]iolent crime, such as carjackings, shootings, ambushes, assaults, robberies, and kidnappings are common throughout South Sudan, including [its capital,] Juba. Foreign nationals have been the victims of rape, sexual assault, armed robberies, and other violent crimes." *Id.*

The following day, no later than 9:35 a.m., the class members left detention and were brought to a nearby airport.[7] Tr. of May 21, 2025 Hr'g at 39:17. After leaving the detention center, class members definitively had no communication access. *Id.* at 19:10–18. Thus, these individuals received fewer than 16 hours' notice before being removed, most of which were non-waking hours, none within the business day. During the interim, they had limited, if any, ability to communicate

[6] All refused to sign their notices of removal. Dkt. 130-2 ¶ 10.

[7] One attorney was told by I.C.E. at 8:27 a.m. that her client had already been removed. Dkt. 112-1 ¶¶ 8–10.

with family or legal representatives and little, if any, opportunity to access information that would have allowed them to determine for themselves the repercussions of being removed to South Sudan.[8] The plane was in the air by noon. *Id.* at 17:2–3.

Based on this information, the Court found that Defendants had violated the Preliminary Injunction and crafted a remedy based on Defendants' requests made during the hearing. *See* Dkt. 119.[9] The Court further issued a clarification as to the Preliminary Injunction, Dkt. 118, based on Defendants' representations that the initial iteration of the Preliminary Injunction "wasn't specific enough." *See, e.g.*, Tr. of May 21, 2025 Hr'g at 37:23–38:3 ("I just wanted to highlight, Your Honor, that I think that part of any misunderstanding on the -- from the Department of Homeland Security may have had to do with the fact that the Court's preliminary injunction motion wasn't specific enough, and so we ask that the Court please take that into consideration when issuing its order.").

D. Procedural Posture

On May 23, 2025, at 9:03 p.m., Defendants moved the Court to reconsider its finding that Defendants violated the Preliminary Injunction and to vacate its orders accordingly.[10] Dkt. 130 at 2. In the alternative, Defendants seek a stay of those orders pending appeal. *Id.*

The removals at issue were brought to this Court's attention originally via Plaintiffs' May 20, 2025, motion for temporary restraining order and preliminary injunction. Dkt. 111. Had

[8] Acting Director Charles testified that detainees generally have access to a telephone or tablet for communication purposes while in custody. Tr. of May 21, 2025 Hr'g at 20:4–17. However, he could not confirm whether these specific individuals did or at what time their access was cut off. *Id.* As stated, at least one attorney attempted but was unable to meet with her client during the short window. *See generally* Dkt. 112-1.

[9] The Court reserved ruling on whether such a violation warranted a finding of contempt. *See* Tr. of May 21, 2025 Hr'g at 35:12–17.

[10] Defendants characterize Dkt. 118 as an order. The Court believes it is more properly a clarification but need not muddy the waters.

the Court not found that Defendants' actions were already covered by the Preliminary Injunction, *see* Dkt. 64, it would have issued the same remedy in the form of a new temporary restraining order or preliminary injunction. In other words, the Court believes that it already ruled prospectively that Defendants' May 20, 2025, actions were unlawful, but even if not, the Court would find them unlawful now, to the same effect. Accordingly, the Court will supplement its analysis to address those factors as necessary below.

II. Legal Standard

A. Motion for Reconsideration

A district court "has the inherent power to reconsider its interlocutory orders." *Fernández–Vargas v. Pfizer*, 522 F.3d 55, 61 n.2 (1st Cir. 2008). A motion for reconsideration is allowed where "the original decision was based on a manifest error of law or was clearly unjust." *United States v. Allen*, 573 F.3d 42, 53 (1st Cir. 2009). However, "[u]nless the court has misapprehended some material fact or point of law," a motion for reconsideration "is normally not a promising vehicle for revisiting a party's case and rearguing theories previously advanced and rejected." *Palmer v. Champion Mortg.*, 465 F.3d 24, 30 (1st Cir. 2006).

B. Motion for Stay Pending Appeal

"Deciding a motion for a stay pending appeal requires an exercise of the court's equitable discretion." *Arkansas Tchr. Ret. Sys. v. State St. Bank & Tr. Co.*, 527 F. Supp. 3d 40, 58 (D. Mass. 2021) (citing *Common Cause Rhode Island v. Gorbea*, 970 F.3d 11, 15–16 (1st Cir. 2020)). The Court considers the following factors, substantially like those considered on a motion for preliminary injunction: "(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." *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987).

Likelihood of success is the essential element. *Acevedo-Garcia v. Vera-Monroig*, 296 F.3d 13, 16 (1st Cir. 2002) (calling it the "sine qua non" for a stay pending appeal).

C. Motion for Temporary Restraining Order or Preliminary Injunction

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Together Emps. v. Mass Gen. Brigham Inc.*, 32 F.4th 82, 85 (1st Cir. 2022) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The last two factors "merge in a case like this one, where the Government is the party opposing the preliminary injunction." *Devitri v. Cronen*, 289 F. Supp. 3d 287, 297 (D. Mass. 2018) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Likelihood of success "weighs most heavily" in the preliminary injunction analysis. *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020). "The standard for issuing a TRO is 'the same as for a preliminary injunction.'" *Orkin v. Albert*, 557 F. Supp. 3d 252, 256 (D. Mass. 2021) (quoting *Bourgoin v. Sebelius*, 928 F. Supp. 2d 258, 267 (D. Me. 2013)).

III. Discussion

A. Motion for Reconsideration

1. Defendants Violated the Preliminary Injunction

Defendants characterize this last week's events as a big misunderstanding, brought on by the Court's failure to specify what constitutes a "meaningful opportunity" to present fear-based claims. Dkt. 130 at 3–4. Indeed, at the March 28, 2025, hearing, Defendants' counsel did raise the issue and, by way of example, pointed out that Defendants would likely consider the opportunity Plaintiff O.C.G. received to have been "meaningful." *See id.* Defendants now argue that the parties and the Court were essentially on notice that Defendants might apply that same standard prospectively, as a way of complying with the Preliminary Injunction. *Id.* at 4. The fatal

flaw with this argument is that, prior to May 20, 2025, the Court had already twice found that O.C.G.'s process was likely insufficient.[11] Dkt. 40 at 6; Dkt. 64 at 42 n.43. Moreover, as of March 28, 2025, Defendants were claiming that O.C.G. was notified of his removal in *January*, roughly *three weeks prior* to his actual removal in February. Dkt. 31 at 4.[12] It is therefore impossible to justify Defendants' position that O.C.G.'s case reasonably stood as a benchmark of compliance with the due process protections this Court has determined to be required.

Defendants effectively tell this Court that it should have at least tried to micromanage the Department of Homeland Security as it fulfills its required obligations, but that is not the role of the courts. *See Martinez v. Bondi*, 132 F.4th 74, 84 (1st Cir. 2025) (explaining that the appropriate remedy for improper agency action, "except in rare circumstances, is to remand to the agency for additional investigation or explanation"). Rather, this Court has strived to give Defendants as much flexibility as possible within legal bounds. At the end of the March 28, 2025, hearing, the Court presented Defendants with a good-faith opportunity to define the process provided under the Preliminary Injunction:

> **THE COURT**: . . . In the meantime, I take your point about the Court ordering what "meaningful" means to heart. And so I would consider a motion to reconsider, if you wanted to narrow what that procedure looked like, or you wanted [to] come to an agreement about what it looked like, or you wanted to tell me, [t]his is what we're defining as meaningful, and I would like you to reconsider and adopt this. I'm open to all of those things because you raise a very good point. And so, to the extent that the guidance that the Court is giving you is nothing more than a meaningful opportunity and you want some more direction or you want to narrow that with some more specificity, I would welcome a motion to consider.

[11] At those times, the Court declined to order O.C.G.'s return based on Defendants' then-assertion that O.C.G. disavowed any fear of his removal. Dkt. 40 at 6 & n.11; Dkt. 64 at 47–48. That factual dispute has since been resolved in O.C.G.'s favor, and the Court has accordingly ordered Defendants to facilitate his return. Dkt. 132.

[12] Defendants' brief states that O.C.G. was asked whether he had a fear of being sent to Mexico in January. Dkt. 31 at 4. The declaration cited states that O.C.G.'s removal was scheduled on or about January 31, 2025, and that O.C.G. was asked whether he had a fear of being sent to Mexico on or around February 21, 2025, the day of his removal. Dkt. 31-1 ¶¶ 12–13. While inconsistent either way, a natural reading is that O.C.G. was at least notified of his removal at time of scheduling.

> If you file a motion to consider, I can hear you. I think you're in D.C.; so I can hear you, even by Zoom, within 24 hours.

Tr. of Mar. 28, 2025 H'rg at 68:13–69:3. Defendants' counsel thanked the Court for that opportunity, *id.* at 69:4–5, but then declined to take it.[13]

Consistent with this approach, the Court has repeatedly asked Defendants to weigh in on the particulars of its remedies, and Defendants have consistently refused. *See* Dkt. 64 at 47 n.49 ("The Court has been forced to decide on an appropriate time limit because Defendants were unable, unwilling, or incapable of meaningfully engaging in a discussion about what process was required to provide aliens with a meaningful opportunity to contest a finding that their fear was reasonable."). Even in this latest round of back-and-forth, nearly two months later, the Court again asked Defendants for input on the appropriate length of time to raise a fear-based claim—Defendants again refused to engage.[14] Tr. of May 21, 2025 Hr'g at 48:14–49:10 ("[Mr. Ensign]: Certainly, our position is that 24 hours is sufficient. We recognize you disagree, but we don't have a specific proposal in light of this Court's disagreement with that position.").[15] The Court then suggested that Defendants could provide additional authority after the hearing, *id.* at 50:21–51:10—Defendants did not. From this course of conduct, it is hard to come to any conclusion other than that Defendants invite lack of clarity as a means of evasion.

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[13] Defendants moved for an indicative ruling as to whether the Court would find that subsequent guidance issued by the Department of Homeland Security mooted Plaintiffs' claims. Dkt. 43. That guidance did not address or attempt to clarify the substance of what constitutes a meaningful opportunity—indeed, its thrust was that, in certain circumstances where the United States has received diplomatic assurances, no opportunity would be had at all. *Id.* at 2–3; *see also* Dkt. 64 at 42–43 (finding that the procedures outlined in the guidance were insufficient). For the remainder, Defendants offered no clarity as to what "opportunity" they would propose as acceptable.

[14] Tellingly, Defendants still do not propose any suggestion for how to define what constitutes a meaningful opportunity. *See* Dkt. 130 at 4–5. Defendants say that the Court "did not heed the Government's warning" that it should be allowed to draft a proposal for the Court's review. *Id.* at 5. That is incorrect; the Court expressly welcomed such a proposal. *See* Tr. of Mar. 28, 2025 H'rg at 68:13–69:3. The Government did not submit any proposal.

[15] Of course, the individuals here had fewer than 24 hours; they had, at most, sixteen. *See* Tr. of May 21, 2025 Hr'g at 12:20–22.

Defendants' argument might be stronger if this were at all close, but the Court breaks no new ground in finding that the events of May 20, 2025, did not include a meaningful opportunity for the class members to present fear-based claims. Defendants' own submission shows that it is I.C.E.'s general practice to provide 24 hours' notice prior to removal.[16] Dkt. 130-2 ¶ 7. Here, the class members "had fewer than 24 hours' notice, and zero business hours' notice, before being put on a plane" to South Sudan. Dkt. 118 at 1. Class members appear not to have had any access to counsel—indeed, a declaration submitted by Plaintiffs alleges that I.C.E. *canceled* at least one attorney's pre-scheduled meeting with her client.[17] Dkt. 112-1 ¶¶ 8–10. Class members likewise had no opportunity to learn anything about South Sudan, a nascent, unstable country to which the United States has recently told its citizens not to travel because of "**crime**, **kidnapping**, and **armed conflict**."[18] The Court notes that class members were flown out on chartered flights, which Defendants state can take "30 days or more to coordinate." Dkt. 130-2 ¶ 24. Then the Court is left to consider, why were these individuals told less than sixteen hours in advance? *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950) ("An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections."); *see also A.A.R.P. v. Trump*, 605 U.S. —, 2025 WL 1417281, at *2 (May 16, 2025) ("Under these circumstances, notice roughly 24

[16] Indeed Mr. Ensign, Deputy Assistant Attorney General for the Office of Immigration Litigation of the Department of Justice's Civil Division, suggested 24 hours was sufficient, apparently before realizing the notice here was significantly short of even this proffered minimum. Tr. of May 21, 2025 Hr'g at 49:8 ("Certainly, our position is that 24 hours is sufficient.").

[17] One attorney states that, at 8:27 a.m., she was informed that her client had already been removed to South Sudan. Dkt. 112-1 ¶ 8–10. But Defendants claim that the class members did not leave detention until 9:35 a.m. Tr. of May 21, 2025 Hr'g at 39:17.

[18] *South Sudan Travel Advisory*, U.S. DEPARTMENT OF STATE, Mar. 8, 2025, https://perma.cc/XQN7-VXHV (emphases in original).

hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster."). Given the totality of the circumstances, it is hard to take seriously the idea that Defendants intended these individuals to have any real opportunity to make a valid claim.

Defendants' comparison to expedited removal is a red herring.[19] Plaintiffs' class excludes non-citizens removed pursuant to expedited removal. *See* Dkt. 64 at 23 (defining the class to include "individuals who have a final removal order issued in proceedings under Section 240, 241(a)(5), or 238(b) of the INA"). Expedited removal usually involves individuals "apprehended at or near the border" or who are denied admission at ports of entry, before due-process rights attach. *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 106–08 (2020). By contrast, CAT claims emerging from standard removal proceedings, reinstatements of prior removal orders, and administrative removals, *see* Dkt. 64 at 23, have greater protections, including judicial review. *See* 8 U.S.C. §§ 1229a, 1231, 1228, 1252; 8 CFR §§ 208.31, 1208.31, 1208.16.[20] The comparison is thus inapposite.[21]

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[19] It also goes more toward the merits of the case than the question of whether Defendants violated the Preliminary Injunction. Nevertheless, the Court addresses the argument insofar as it informs what a reasonable person could understand a meaningful opportunity to be and insofar as it bears on the Court's findings in the alternative regarding Plaintiffs' motion for preliminary relief.

[20] The Court notes, as have scholars in this area of the law, that it is somewhat of an anomaly that reinstated removal orders are subject to judicial review, while expedited removal orders—which may form the basis for reinstatement—are not. *See* Jennifer Lee Koh, *When Shadow Removals Collide: Searching for Solutions to the Legal Black Holes Created by Expedited Removal and Reinstatement*, 96 WASH. U.L. REV. 337, 368–72 (2018). Nevertheless, that is how it works.

[21] Even applying the law of expedited removals, however, the events of May 20, 2025, would have been unlawful. On May 9, 2025, the District Court for the District of Columbia struck down the final agency rule that required non-citizens to affirmatively manifest fear of return or removal in order to be given a fear-screening interview, as opposed to the previous rule which "required officials to provide individual advisals to each noncitizen [and] affirmatively ask questions designed to determine if the noncitizen qualifies for a credible fear interview." *Las Americas Immigrant Advoc. Ctr. v. U.S. Dep't of Homeland Sec.*, — F.Supp.3d —, 2025 WL 1403811, at *16–17 (D.D.C. May 9, 2025). By Defendants' own admission, these class members were not affirmatively asked any questions regarding their fear of removal. Tr of May 21, 2025 Hr'g at 21:5–9. Accordingly, insofar as Defendants contend that the law of expedited removals informed their understanding of what constitutes a meaningful opportunity, that analogy fails them on its face.

2. The Court's Remedy Was Flexible and Narrow

Despite Defendants contention to the contrary, this Court has never "direct[ed] the Executive Branch to conduct foreign relations in a particular way, or engage with a foreign sovereign in a given manner." Dkt. 130 at 6. Rather, this Court's order, remedying Defendants' flagrant violation of the Preliminary Injunction, merely outlines the procedural rights owed to class members, Dkt. 119 at 1, and grants Defendants full flexibility about how and where it can accomplish that:

> DHS, in its discretion, may elect to provide this process to the six individuals either within the United States—should it choose to return them to the United States—or abroad, if at all relevant times DHS retains custody and control over the individuals in conditions commensurate to those the individuals would be housed in were they still in DHS's custody within the United States.

Id. at 2.

It cannot be said enough that this is the result Defendants asked for. *See, e.g.*, Tr. of May 21, 2025 H'rg at 103:18–21 ("I think we certainly agree that any remedy should be narrowly tailored. I don't know that return to the United States would be required to carry those [interviews] out. You know, I think that those could potentially be conducted abroad."). This Court sought to fashion a remedy to address the constitutionally inadequate nature of the class members' removals, while not limiting Defendants' ability to effectuate those removals in the most expeditious manner possible—subject, of course, to constitutional requirements. In doing so, the Court offered Defendants a method of compliance that both guaranteed the procedural rights due to the class members but was less exacting than having to turn around a chartered plane. The Court considered Defendants' prerogative in the sensitive and political areas of immigration and foreign policy and offered Defendants complete discretion to provide these interviews in the time and manner they deemed best.

Defendants describe the hardship of having to carry out impromptu immigration proceedings on foreign soil. Dkt. 130 at 7–9. But that was—and continues to be—Defendants' daily choice. "To say more would be to paint the lily." *Rodríguez v. Encompass Health Rehab. Hosp. of San Juan, Inc.*, 126 F.4th 773, 783 (1st Cir. 2025) (Selya, J.).

B. Motion for Stay Pending Appeal

As a threshold matter, the Court finds this request for a stay perplexing. The order remedying Defendants' violation of the Preliminary Injunction is as flexible as possible, leaving the details of when, where, and how entirely in Defendants' hands. *See* Dkt. 119 at 1–2 ("Each of the six individuals must be given a reasonable fear interview . . . DHS, in its discretion, may elect to provide this process to the six individuals either within the United States—should it choose to return them to the United States—or abroad."). It is the narrow remedy Defendants requested.[22] In short, there is very little to stay, absent completely blessing Defendants' violation.

As to the clarification to the Preliminary Injunction, Dkt. 118, that addresses a problem *raised by Defendants*. *See* Dkt. 130 at 4–5; Tr. of May 21, 2025 Hr'g at 37:23–38:3 ("[T]he Court's preliminary injunction [] wasn't specific enough."). Defendants ask this Court to reverse its clarification but offer nothing to put in its place. That would do little more than return us to the same spot as before.

As to the request itself, for the reasons stated on the record and further outlined in Dkt. 118 and in Section A, *supra*, Defendants have not "made a strong showing that [they] [are] likely to succeed" in demonstrating that there was no violation of the Preliminary Injunction or in

[22] See *supra* at 2.

challenging the appropriateness of the Court's relief. *See Hilton*, 481 U.S. at 776. Accordingly, Defendants' motion for stay pending appeal is DENIED. *See Acevedo-Garcia*, 296 F.3d at 16.[23]

C. Motion for Temporary Restraining Order or Preliminary Injunction

In the alternative, the Court finds that it would grant Plaintiffs' motion for temporary restraining order or preliminary injunction. Likelihood of success and irreparable harm clearly weigh in Plaintiffs' favor, although Defendants raise serious concerns regarding the public interest, which justify the Court's limited remedy.

1. Likelihood of Success

For the reasons stated on the record and further outlined in Dkt. 118 and in Section A, *supra*, the Court finds that Plaintiffs are likely to succeed in showing that the May 20, 2025, attempted removals were unlawful.

2. Irreparable Harm

The Court further finds that the class members at issue were, and continue to be, at risk of irreparable harm in the absence of injunctive relief. The Court has already outlined the risks faced by class members generally. *See* Dkt. 64 at 44–45. Here, that risk becomes tangible as class members were nearly dropped off in a war-torn country where the Government states that "[f]oreign nationals have been the victims of rape, sexual assault, armed robberies, and other violent crimes."[24]

[23] The Court notes an additional reason to deny this motion. Stays are tools of equity, *Common Cause*, 970 F.3d at 15–16, and are thus subject to equitable doctrines. Here, the unclean hands doctrine bars equitable relief. *See Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 241, 245 (1933) ("He who comes into equity must come with clean hands."). Discretion cautions against granting preliminary, extraordinary relief where a party has, at best, sought to get around an injunction through clever compliance.

[24] *South Sudan Travel Advisory*, U.S. DEPARTMENT OF STATE, Mar. 8, 2025, https://perma.cc/XQN7-VXHV.

3. Balance of Equities and Public Interest

Defendants' last set of arguments, Dkt. 130 at 6–9, when stripped of rhetoric, sound primarily in the public interest and in the hardship that the government faces in complying with Congress's immigration laws. This Court shares Defendants' concerns about the limited role courts should play in directing the Executive Branch and continues to be open to solutions for how to craft narrow and effective relief. This Court has also taken into consideration Defendants' determination that the class members at issue pose a security threat and has withheld action accordingly. For example, against Plaintiffs' requests, the Court did not dictate the terms of the class members' detention, respecting safety concerns raised by Defendants. *See* Dkt. 116; Tr. of May 20, 2025 Hr'g at 43:23–44:8. Likewise, the Court did not order the class members' return to the United States and otherwise gave Defendants remarkable flexibility with minimal oversight. Dkt. 119 (ordering weekly status reports). All of this is to say that the Court has reviewed the totality of the situation, including the criminal histories of the individuals and the undoubted operational costs, and has weighed those factors in ordering as narrow relief as the Constitution will tolerate.

IV. Conclusion

For the foregoing reasons, Defendants' motions for reconsideration and for stay pending appeal are DENIED.

So Ordered.

/s/ Brian E. Murphy
Brian E. Murphy
Judge, United States District Court

Dated: May 26, 2025

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D.V.D, et al.,	)	
	)	
Plaintiffs,	)	
	)	**Civil Action No.**
v.	)	**25-10676-BEM**
	)	
U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER
ON PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

MURPHY, J.

Plaintiff O.C.G. has no known criminal history. After suffering multiple violent attacks, O.C.G. sought protection in the United States, where an immigration judge granted him withholding of removal from his native country, Guatemala. This means that the immigration judge found it more likely than not that O.C.G. would suffer serious harm if sent back to Guatemala. Two days later, and without any notice, O.C.G. was placed on a bus and sent to *Mexico*, a country where he was previously held for ransom and raped. O.C.G. had said during his immigration proceedings that he was afraid of being sent to Mexico, and even presented evidence of the violence he had experienced there. But the immigration judge told O.C.G.—consistent with this Court's understanding of the law—that he could not be removed to a country other than his native Guatemala, at least not without some additional steps in the process. Those necessary steps, and O.C.G.'s pleas for help, were ignored. As a result, O.C.G. was given up to Mexico, which then sent him back to Guatemala, where he remains in hiding today.

This is the second time Plaintiffs have asked this Court to order the return of O.C.G. The first time, the Court declined to do so because the facts were in dispute—Defendants had submitted a declaration, made under oath, that O.C.G., prior to removal, affirmatively stated that he had no fear of being sent to Mexico. Dkt. 31-1 ¶ 3. O.C.G. adamantly contested this fact, submitting his own declaration stating that he was only told about Mexico essentially as it was happening and that he begged to speak to his attorney but was denied. Dkt. 8-4 ¶ 9. Because of this factual disagreement, the Court declined to conclusively credit O.C.G.'s account and instead ordered discovery of additional evidence. Dkt. 64 at 47–48; Dkt. 80.

Last week, on May 16, 2025, Defendants acknowledged an "error" in their previous filings and statements to the Court. Dkt. 103 at 2. Defendants admitted, hours before the scheduled deposition of the witness who could allegedly verify the facts included in the prior declaration made under oath, that, in fact, there was no such witness and therefore no reliable basis for the statements put forward by Defendants. Defendants apparently cannot find a witness to support their claim that O.C.G. ever said that he was unafraid of being sent to Mexico. The only evidence before the Court therefore is O.C.G.'s uncontroverted assertion that he was given no notice of his transfer to Mexico and no opportunity to explain why it would be dangerous to send him there. Defendants' retraction of their prior sworn statement makes inexorable the already-strong conclusion that O.C.G. is likely to succeed in showing that his removal lacked any semblance of due process, *see* Dkt. 40 at 6; Dkt. 64 at 42 n.43, and it otherwise alleviates concern about the appropriateness of relief. Accordingly, Plaintiffs' motion for a preliminary injunction is GRANTED.

Although a preliminary injunction is always an exceptional remedy, never awarded as of right, *Peoples Federal Sav. Bank v. People's United Bank*, 672 F.3d 1, 8–9 (1st Cir. 2012), the

Court notes that this result is not otherwise so extraordinary. Courts, including district courts, regularly find that return is the appropriate remedy when a removal is found to be unlawful. *See, e.g.*, *Grace v. Whitaker*, 344 F. Supp. 3d 96, 144–45 (D.D.C. 2018) (ordering return of non-citizen plaintiffs entitled to further process prior to removal), *aff'd in relevant part, rev'd in part and remanded sub nom. Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020); *L. v. U.S. Immigr. & Customs Enf't*, 403 F. Supp. 3d 853, 860–61, 863–68 (S.D. Cal. 2019) (ordering government to allow return of parents wrongfully prevented from petitioning for asylum); *see also Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025) (denying stay of district court order to facilitate return of non-citizen wrongfully removed); *J.O.P. v. United States Dep't of Homeland Sec.*, 2025 WL 1431263, at *1 (4th Cir. May 19, 2025) (denying stay of district court order to facilitate return of non-citizens removed in violation of a settlement agreement). Defendants acknowledge that there are procedures in place for facilitating return upon a court's order. *See* Dkt. 64 at 30 n.34. No one has ever suggested that O.C.G. poses any sort of security threat. In general, this case presents no special facts or legal circumstances, only the banal horror of a man being wrongfully loaded onto a bus and sent back to a country where he was allegedly just raped and kidnapped.

Finally, it must be said that, while mistakes obviously happen, the events leading up to this decision are troubling. The Court was given false information, upon which it relied, twice, to the detriment of a party at risk of serious and irreparable harm. Defendants then exacerbated that risk by placing O.C.G.'s full name on the public docket, in violation of this Court's Order, Dkt. 13.[1] *See* Dkt. 105 at 8. The Court has ordered discovery, including depositions of the individuals involved in the false declaration and underlying data entries, to better understand how this happened.

[1] The Court accepts Defendants' apology, Dkt. 113 at 1 n.1, and finds no further action necessary.

I. Factual Background

O.C.G. is a native and citizen of Guatemala.[2] Dkt. 31-1 ¶ 4. In March 2024, O.C.G. entered the United States without prior authorization. *Id.* ¶ 5. O.C.G. alleges that he presented himself for asylum at the border and was denied an interview. Dkt. 8-4 ¶ 2. In any event, he was deported shortly thereafter to Guatemala. *Id.*

In April 2024, O.C.G. decided to try again and crossed Mexico on his way to the United States. *Id.* ¶ 3. There, he was raped and held hostage until a family member paid ransom. *Id.* In May 2024, O.C.G. again arrived at the United States and was arrested by Border Patrol. Dkt. 31-1 ¶ 5. This time, however, he was referred to an asylum officer after expressing fear of return to Guatemala. *Id.* ¶¶ 8–9. That officer determined that O.C.G. had a credible fear of persecution or torture and initiated withholding-only proceedings, *id.* ¶ 10, where an immigration judge agreed and determined that it was more likely than not that O.C.G. would be persecuted or tortured if sent back to Guatemala, *see id.* ¶ 11.[3] Accordingly, O.C.G. was granted withholding of removal from Guatemala. *Id.*

During the withholding-only proceedings, O.C.G. asked if he might be sent to Mexico—because he was afraid of being sent to Mexico—and the immigration judge told him, "we cannot send you back to Mexico, sir, because you're a native of Guatemala." Tr. of June 17, 2024 H'rg at 10:37–13:12.[4] During another hearing before the immigration court, O.C.G. described in detail the violence he experienced while in Mexico. Tr. of Feb. 19, 2025 H'rg at

[2] The Court has "broad discretion in deciding what evidence to consider in connection with a motion for preliminary injunction." *Rice v. Wells Fargo Bank, N.A.*, 2 F. Supp. 3d 25, 31 (D. Mass. 2014). Generally speaking, the relevant facts here do not appear to substantially be in dispute.

[3] *See* 8 U.S.C. § 1231(b)(3); 8 C.F.R. § 208.16.

[4] The Court has been provided with audio and partial transcripts of O.C.G.'s hearings in immigration court.

28:48–33:40. At the close of that hearing, the government's attorney clarified with the immigration judge that, because Guatemala was the country of removal designated on O.C.G.'s order of removal, that was the only relevant country for purposes of the withholding-only proceedings, and the immigration judge agreed. *Id.* at 1:23:37–1:25:07.

Two days after being granted withholding of removal, and with no advanced warning, O.C.G. was put on a bus and sent to Mexico. Dkt. 8-1 ¶¶ 8–9. According to O.C.G., he begged the officers to let him call his attorney but was refused. *Id.* ¶ 9. Until one week ago, Defendants maintained that O.C.G. verbally stated that he was not afraid of being sent to Mexico, based on data entries made by immigration officers. *See* Dkt. 31 at 4. However, after speaking with those officers, Defendants no longer make that claim. Dkt. 103 at 2.

In Mexico, O.C.G. was given the option of being detained indefinitely while trying to obtain asylum there—a country where he has consistently maintained that he faces a significant risk of violence—or of being sent back to Guatemala—the very country from which an immigration judge awarded him withholding from removal due to the risk of persecution that he faced. Dkt. 8-1 ¶ 10. O.C.G. chose Guatemala. *Id.* He remains there today. *Id.* ¶ 1.

Just yesterday, O.C.G. submitted a declaration informing the Court of his current status. Dkt. 123. He reports living in constant fear of his attackers, *id.* ¶ 4, being unable to leave the place where he is staying, *id.* ¶ 6, not being able to rely on the police to protect him, *id.* ¶ 7, and not being able to see his mother for fear of exposing her to violence, *id.* ¶ 8, among other hardships.

II. Legal Background

On March 23, 2025, Plaintiffs filed this action and sought a temporary restraining order and preliminary injunction, in part, for the return of Plaintiff O.C.G. Dkts. 1, 6–8. The Court

denied this part of Plaintiffs' request, recognizing that there was a factual dispute as to the circumstances surrounding O.C.G.'s removal, Dkt. 64 at 47–48, and ordering discovery, Dkt. 80.

On May 18, 2025, in the course of that discovery, Defendants filed their "Notice of Errata," "correcting" their previous declaration, Dkt. 31-1, regarding the removal of O.C.G. Dkt. 103 at 2. The original version of the Errata filing included an exhibit that publicly revealed O.C.G.'s full name and other identifying information, *see* Dkt. 105 at 8, contrary to this Court's prior order concerning the use of pseudonyms, Dkt. 13.

Shortly thereafter, Plaintiffs moved again for a temporary restraining order and preliminary injunction. Dkt. 104. Following briefing by both parties, Dkts. 105, 113, the Court heard oral argument, Dkt. 117, and took the motion under advisement.

III. Legal Standard

"[A] preliminary injunction preserve[s] the status quo during the pendency of trial-court proceedings." *Berge v. Sch. Comm. of Gloucester*, 107 F.4th 33, 37 (1st Cir. 2024). The "status quo" refers to "the last uncontested status which preceded the pending controversy." *Baillargeon v. CSX Transportation Corp.*, 463 F. Supp. 3d 76, 82–83 (D. Mass. 2020) (quoting *United Steelworkers of Am., ALF-CIO v. Textron, Inc.*, 836 F.2d 6, 10 (1st Cir. 1987)). Here, the "status quo" is properly viewed as the pre-February 21, 2025 status, before O.C.G.'s removal, *i.e.*, "the last uncontested status . . . preced[ing] the pending controversy." *Id.*[5]

"A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Together*

[5] Accordingly, as a purely academic matter, the Court corrects itself and agrees with Plaintiffs that this is not technically a "mandatory" injunction. *See Braintree Lab'ys, Inc. v. Citigroup Glob. Markets Inc.*, 622 F.3d 36, 41 n.5 (1st Cir. 2010). Nevertheless, for the reasons stated below, the Court has applied heightened scrutiny.

Emps. v. Mass Gen. Brigham Inc., 32 F.4th 82, 85 (1st Cir. 2022) (quoting *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The last two factors "merge in a case like this one, where the Government is the party opposing the preliminary injunction." *Devitri v. Cronen*, 289 F. Supp. 3d 287, 297 (D. Mass. 2018) (citing *Nken v. Holder*, 556 U.S. 418, 435 (2009)). Likelihood of success "weighs most heavily" in the preliminary injunction analysis. *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020).

"[T]he more drastic the effect of the injunction, the more carefully the district court should consider staying its hand." *A-Copy, Inc. v. Michaelson*, 599 F.2d 450, 451 (1st Cir. 1978); *see also Tom Doherty Assocs., Inc. v. Saban Ent., Inc.*, 60 F.3d 27, 33–34 (2d Cir. 1995) (requiring the movant to meet a higher standard where "an injunction will provide the movant with substantially all the relief sought and that relief cannot be undone even if the defendant prevails at a trial on the merits"). "But the denial of preliminary relief may in some situations be as fraught with adverse consequences to plaintiff as the granting of relief is fraught with consequences to defendant. In such cases, a court may have no choice but to act even though its decision has the effect of providing most or even all of the ultimate relief in dispute." *A-Copy*, 599 F.2d at 451. Here, the preliminary injunction grants "most or even all," *id.*, of the ultimate relief sought by O.C.G. individually. It is not obvious that this relief could be undone. *See Tom Doherty*, 60 F.3d at 33–34. Accordingly, the Court has exercised caution and held Plaintiffs to a stringent standard, as appropriate under the circumstances. *See* Dkt. 40 at 6, 8; Dkt. 64 at 9, 47–48.

IV. Discussion

A. Likelihood of Success

O.C.G. is likely to succeed in showing that his due-process rights were violated. This Court has jurisdiction to hear those claims, and the appropriate remedy is return.

1. Jurisdiction

The Court has already addressed most of Defendants' jurisdictional arguments in the context of Plaintiffs' first motion for a preliminary injunction. *See* Dkt. 64 at 10–27. The Court finds the remainder unpersuasive.

Defendants argue that O.C.G.'s case defies the underlying motivation behind 8 U.S.C. § 1252(g), apparently more so than the class claims. Dkt. 113 at 2 (quoting *Reno v. American-Arab Anti-Discrimination*, 525 U.S. 471, 482 (1999) [hereinafter, "*AADC*"]). The Court reads *AADC* differently, *see* Dkt. 64 at 20 (quoting *AADC* at 485 & n.9), but in any event, Defendants' gestalt argument cannot supersede the plain text of the statute as interpreted by authority binding on this Court. *See id.* at 20–21 (citing *Kong v. United States*, 62 F.4th 608 (1st Cir. 2023)).

Next, Defendants claim that O.C.G. received "specific warning[s]" of the possibility of third-country removal during his withholding-only proceedings. Dkt. 113 at 3–4. According to Defendants, these warnings were sufficient to effectively push any claims O.C.G. might have regarding third-country removal into the claim-channeling function of 8 U.S.C. §§ 1252(a)(5) and (b)(9). But the Court has already found that such general warnings are meaningless when the non-citizen has not received notice of removal as to any particular third country. Dkt. 64 at 17 & n.24. O.C.G. is, in fact, the perfect example of why this is correct—he *did* present evidence of his fear of return to Mexico during his withholding-only proceedings, Tr. of Feb. 19, 2025 H'rg at 28:48–33:40, and even asked the immigration court whether he needed to seek protection from Mexico as well, Tr. of June 17, 2024 H'rg at 10:37–13:12. To that, the immigration judge told him—correctly in this Court's estimation—that he only needed to worry about the country of removal already identified on his removal order. *Id.*

Still looking toward sections 1252(a)(5) and (b)(9), Defendants' next argument does highlight one difference between O.C.G.'s circumstances and those of class members not yet

removed—once O.C.G. was removed, he obviously had notice of his third-country removal. Dkt. 113 at 4–5. With that notice, Defendants argue, O.C.G. could have moved to reopen his administrative case. *Id.*; *see also* Dkt. 64 at 14–17 (explaining motions to reopen).[6] This would, according to Defendants, make O.C.G.'s claim subject to the channeling provisions.

In reality, O.C.G.'s post factum notice is a distinction without a difference. As an initial matter, O.C.G. could not have moved to reopen his immigration case, as he was subject to a reinstated order of removal. *See Garcia Sarmiento v. Garland*, 45 F.4th 560, 564 (1st Cir. 2022) ("[P]ersons subject to reinstated removal orders following unlawful reentry are barred from reopening their orders of removal." (citing *Cuenca v. Barr*, 956 F.3d 1079, 1088 (9th Cir. 2020))). Even if O.C.G. could have moved to reopen, it is unclear what precisely that motion would have said—motions to reopen must be based on evidence that was "not available and could not have been discovered or presented at the former hearing," *Escobar v. Garland*, 122 F.4th 465, 472 (1st Cir. 2024) (quoting *Rivera-Medrano v. Garland*, 47 F.4th 29, 35 (1st Cir. 2022)). Here, there was no new evidence to discover or present; O.C.G. had already testified about the violence he experienced in Mexico. The awkwardness of trying to imagine how this issue might theoretically be shoehorned into a motion to reopen only confirms that this is not the type of claim one is expected to "cram[]" into judicial review of a final order of removal. *See Jennings v. Rodriguez*, 583 U.S. 281, 293 (2018).

More fundamentally, Defendants confuse O.C.G.'s claim for the remedy he seeks. As with every other Plaintiff in this case, O.C.G.'s claim arose the moment he was denied notice and a meaningful opportunity to present his fear-based claim. For the same reasons as every other

[6] Defendants also point out that O.C.G. could still ask the immigration court to reopen sua sponte. Dkt. 113 at 4–5. However, the Court has explained how the theoretical possibility of sua sponte reopening provides no meaningful relief. Dkt. 64 at 14–16.

plaintiff, that claim could not have been raised in the immigration proceedings, substantially because it occurred outside of, and following the conclusion of, those proceedings. Defendants seem to say that O.C.G. might be able to get his fear-based claims adjudicated some other way. The Court thinks that is dead wrong, but, *even if he could*, that would not alter the fact that his rights were violated in the first place. That wrong calls for a remedy, and the most obvious remedy is to go back and do it over, with proper notice and an opportunity to be heard.

Finally, Defendants argue that the Court implicitly "review[s]" the regulations implementing the Convention Against Torture through its due-process finding. Dkt. 113 at 5 (quoting FARRA § 2242(d)). Defendants point to no regulation that they contend this Court contradicts, nor do they cite any authority for their expansive understanding of what it means to "review" regulations. *Cf. Khouzam v. Att'y Gen. of U.S.*, 549 F.3d 235, 258–59 & n.14 (3d Cir. 2008) (finding FARRA § 2242(d) inapplicable where the regulation itself is non-problematic); *Harrington v. Chao*, 372 F.3d 52, 59 (1st Cir. 2004) (in agency context, holding that inconsistency does not arise where a regulation is silent as to a particular issue).

2. Merits

The Court has already found it likely that O.C.G.'s removal lacked due process. *See* Dkt. 40 at 6; Dkt. 64 at 42 n.43. Indeed, at no point in this litigation have Defendants put forth an account of O.C.G.'s removal that would comport with what this Court has found due process requires. *Compare* Dkt. 31-1 (March 25, 2025 Declaration of Brian Ortega) ¶ 13 (indicating that O.C.G. was verbally notified on the day of his removal), *with* Dkt. 64 (requiring written notice to both non-citizen and counsel); *see also A. A. R. P. v. Trump*, 605 U.S. —, 2025 WL 1417281, at *2 (May 16, 2025) ("Under these circumstances, notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not

pass muster."). Accordingly, the likelihood that O.C.G. is correct in asserting that his due-process rights were violated, in this Court's view, has long hovered near certainty.

It is therefore somewhat of a misnomer to say that O.C.G.'s likelihood of success has "increased" on account of Defendants' new admission of "error" in its Notice of Errata, Dkt. 103 at 2. Due process is, in some sense, a binary—one either receives what the Constitution requires, or one does not. It has been clear that O.C.G. did not receive what the Constitution requires.

Nevertheless, O.C.G. seeks injunctive relief, and injunctions require consideration of equity and prudence. *Charlesbank Equity Fund II v. Blinds To Go, Inc.*, 370 F.3d 151, 162 (1st Cir. 2004). Until recently, Defendants have maintained that O.C.G. verbally "stated he was not afraid of returning to Mexico" on the day of his removal. *See* Dkt. 31-1 ¶ 13. Of course, Plaintiffs have always disputed this fact.[7] Nevertheless, the Court felt that the possibility that O.C.G. acquiesced in his own third-country removal warranted further factfinding before the Court engaged its equitable powers. Dkt. 64 at 47–48.

Now, Defendants admit that they "cannot identify any officer who asked O.C.G. whether he had a fear of return to Mexico." Dkt. 103 at 2 ("advis[ing] the Court of an error in the March 25, 2025, declaration of Brian Ortega" and submitting a "correct[ed]" declaration). Setting aside concerns about how this "error," *id.*, came to be a central tenet of Defendants' case, its renunciation relieves the Court of fear that it might be overextending itself in granting this remedy.

[7] Dkt. 8-4 ¶ 9 (Declaration of O.C.G.):

> After I was taken out of the prison the immigration officer told me that I was being deported to Mexico. I was so scared and surprised. I told him that I had won my case and showed him the order the judge gave me. But the immigration officer said the order had expired. I begged him to let me call my attorney but he said it was too late to call anyone now.

See also Grace, 344 F. Supp. 3d at 144–45; *L. v. U.S. Immigr. & Customs Enf't*, 403 F. Supp. 3d at 860–61, 863–68; *Abrego Garcia*, 145 S. Ct. at 1018; *J.O.P.*, 2025 WL 1431263, at *1.

B. Irreparable Harm

The Court has no reason to doubt the immigration judge's finding that O.C.G. is more likely than not to be persecuted if he stays in Guatemala.[8] Nor does the Court question the sincerity of O.C.G.'s sworn declarations, endorsed by counsel. *See* Dkts. 8-4, 123.

Defendants make no specific argument regarding irreparable harm in their brief. Dkt. 113 at 6–7. At oral argument, in response to inquiry from the Court, Defendants stated only that this case calls for heightened scrutiny and that the Court should consider O.C.G.'s "choice" to go back to Guatemala over indefinite detention in Mexico, a country where he has consistently maintained that he faces a significant risk of violence, *see* Dkt. 8-4 ¶¶ 3, 9–10. The Court does take this fact into account but finds that it likely says more about O.C.G.'s options than his preferences.

O.C.G. daily risks not only loss of life but "of all that makes life worth living." *Ng Fung Ho v. White*, 259 U.S. 276, 284 (1922) (J., Brandeis). This factor militates strongly in favor of granting the injunction.

C. Balance of Equities and Public Interest

The Court recognizes that the public has an interest both in preventing wrongful removals, *Nken v. Holder*, 556 U.S. 418, 436 (2009), and in the prompt execution of removal orders, *id.* "There is, of course, a strong public interest in the protection of constitutional rights." *Harris v. Adams*, 757 F. Supp. 3d 111, 144 (D. Mass. 2024).

[8] Defendants' inadvertent exposure of O.C.G.'s identity, while now remedied on the docket, only heightens concern as a bell that perhaps cannot be un-rung given the permanent nature of the internet. It is of little comfort that Plaintiffs appear to have done a thorough and diligent job of getting the information removed as fast as possible from major sources. *See* Dkt. 105 at 3, 8, 17–18 & n.8.

As with irreparable harm, Defendants make no argument that an injunction would go against the public interest or otherwise be unduly burdensome. Dkt. 113 at 6–7. On balance, the Court finds that the public benefits from living in a country where rules are followed and where promises are kept. Rules are tedious and frustrating, but they also keep us fair and honest. At oral argument, Defendants' counsel confirmed that it is "the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture." FARRA § 2242(a). The return of O.C.G. poses a vanishingly small cost to make sure we can still claim to live up to that ideal.

V. Conclusion

The Court finds that all four preliminary injunction factors weigh in favor of granting the injunction. Accordingly, Plaintiffs' motion for preliminary injunction is GRANTED.[9]

Defendants are hereby ORDERED to take all immediate steps, including coordinating with Plaintiffs' counsel, to facilitate[10] the return of O.C.G. to the United States. Defendants shall file a status report within five days of this Order updating the Court as to the status of O.C.G.'s return.

The Court exercises its discretion to waive the requirement to post a bond under Rule 65(c). *See, e.g., Int'l Assoc. of Machinists and Aerospace Workers v. Eastern Airlines*, 925 F.2d 6, 9 (1st Cir. 1991) (finding "ample authority for the proposition that the provisions of Rule 65(c) are not

[9] Plaintiffs' motion for a temporary restraining order is therefore denied as moot.

[10] The Court notes that "facilitate" in this context should carry less baggage than in several other notable cases. O.C.G. is not held by any foreign government. Defendants have declined to make any argument that facilitating his return would be costly, burdensome, or otherwise impede the government's objectives. The Court anticipates that Defendants will take at least the same level of action as is routine to return *lawfully* removed aliens. *See* ICE Policy Directive No. 11061.1, § 3.1, Facilitating the Return to the United States of Certain Lawfully Removed Aliens (Feb. 24, 2012). Given that this Court has found that Plaintiffs are likely to succeed in showing that O.C.G.'s removal was *not* lawful, there is no reason for Defendants to take *less* action than they would when returning a lawfully removed alien.

mandatory and that a district court retains substantial discretion to dictate the terms of an injunction bond").

So Ordered.

/s/ Brian E. Murphy
Brian E. Murphy
Judge, United States District Court

Dated: May 23, 2025

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D.V.D., et al.,	)	
	)	
Plaintiffs,	)	
	)	**Civil Action No.**
v.	)	**25-10676-BEM**
	)	
U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,	)	
	)	
Defendants.	)	

ORDER ON REMEDY FOR VIOLATION OF PRELIMINARY INJUNCTION

MURPHY, J.

As set forth in today's hearing and at Dkt. 118, the Court found that Defendants violated the Court's Preliminary Injunction. Having considered the arguments of counsel, the Court ORDERS the following remedy for Defendants' violations of the Preliminary Injunction:

Each of the six individuals must be given a reasonable fear interview in private, with the opportunity for the individual to have counsel of their choosing present during the interview, either in-person or remotely, at the individual's choosing. Each individual must be afforded access to counsel that is commensurate with the access that they would have received had these procedures occurred within the United States prior to their deportation, including remote access where in-person access would otherwise be available. Each individual must also be afforded the name and telephone number of class counsel, as well as access to a phone, interpreter, and technology for the confidential transfer of documents that is commensurate with the access they would receive were they in DHS custody within United States borders.

Each individual, along with class counsel, must be given no fewer than 72-hours' notice of the scheduled time for each reasonable fear interview. Should any individual raise a fear with

respect to deportation to the third country that DHS determines falls short of "reasonable fear," the individual must be provided meaningful opportunity, and a minimum of 15 days, to seek to move to reopen immigration proceedings to challenge the potential third-country removal. During that 15-day period, the individual must remain within the custody or control of DHS, and must be afforded access to counsel that is commensurate with the access they would be afforded if they were seeking to move to reopen from within the United States' borders. Defendants must provide status reports every seven days as to all six individuals. Should any individual move to reopen, the parties must also immediately provide a status report, and continue providing status reports every seven days thereafter, on the status of the motion to reopen.

DHS, in its discretion, may elect to provide this process to the six individuals either within the United States—should it choose to return them to the United States—or abroad, if at all relevant times DHS retains custody and control over the individuals in conditions commensurate to those the individuals would be housed in were they still in DHS's custody within the United States.

This Order reflects a remedy, in light of the Court's finding of a violation of its Preliminary Injunction, that has been narrowly tailored in accordance with principles of equity. The Court cautions Defendants that this remedy should not be construed as setting forth a course of conduct that would constitute compliance with the Preliminary Injunction, and the Court is not—in ordering this remedy—making any findings or conclusions that compliance with these processes before deportation would have satisfied the requirements of its Preliminary Injunction in the first instance.

So Ordered.

/s/ Brian E. Murphy
Brian E. Murphy
Judge, United States District Court

Dated: May 21, 2025

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D.V.D., et al., **Plaintiffs,** **v.** **U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,** **Defendants.**	**Civil Action No. 25-10676-BEM**

ORDER

MURPHY, J.

At today's emergency hearing, the Court ordered Defendants to maintain custody and control of class members currently being removed to South Sudan or to any other third country, to ensure the practical feasibility of return if the Court finds that such removals were unlawful. While the Court leaves the practicalities of compliance to Defendants' discretion, Defendants have ensured, and the Court expects, that class members will be treated humanely.

The Court has further ordered that Defendants be prepared at tomorrow's prescheduled hearing to identify by name the affected class members and to address: (1) the time and manner of notice each individual received as to their third-country removal; and (2) what opportunity each individual had to raise a fear-based claim. In the event that Defendants determine that N.M. is not a class member, or was otherwise removed to any country other than South Sudan, Defendants must nonetheless be prepared to address the details of his removal, including when and to where he was removed, the names of individuals personally involved in executing his removal, and any information currently in Defendants' possession regarding his current whereabouts.

So Ordered.

/s/ Brian E. Murphy
Brian E. Murphy
Judge, United States District Court

Dated: May 20, 2025

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D.V.D., et al.,	)	
	)	
Plaintiffs,	)	
	)	**Civil Action No.**
v.	)	**25-10676-BEM**
	)	
U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM AND ORDER ON
PLAINTIFFS' MOTION FOR EMERGENCY RELIEF

MURPHY, J.

Plaintiffs have moved for a temporary restraining order to prevent non-citizen removals to third countries, including but not limited to Libya and Saudia Arabia, without prior written notice and a meaningful opportunity to raise fear-based claims. Dkt. 89. The Court agrees with Plaintiffs that this motion should not be required, *see id.* at 2, as the relief sought is already provided by the Preliminary Injunction entered in this case, Dkts. 64, 86. Accordingly, the Court construes Plaintiffs' motion as one for clarification.

The April 18, 2025 Preliminary Injunction requires all third-country removals to be preceded, *inter alia*, by written notice to both the non-citizen and the non-citizen's counsel in a language the non-citizen can understand as well as a meaningful opportunity for the non-citizen to raise a fear-based claim for CAT protection. Dkt. 64 at 46–47. The April 30, 2025 Amendment to the Preliminary Injunction further clarifies that the Department of Homeland Security may not evade this injunction by ceding control over non-citizens or the enforcement of its immigration responsibilities to any other agency, including but not limited to the Department of Defense.

Dkt. 86. If there is any doubt—the Court sees none—the allegedly imminent removals, as reported by news agencies and as Plaintiffs seek to corroborate with class-member accounts and public information, would clearly violate this Court's Order.

So Ordered.

/s/ Brian E. Murphy
Brian E. Murphy
Judge, United States District Court

Dated: May 7, 2025

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Subject: Activity in Case 1:25-cv-10676-BEM D.V.D. et al v. U.S. Department of Homeland Security et al Order
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United States District Court

District of Massachusetts

Notice of Electronic Filing

The following transaction was entered on 4/30/2025 at 12:51 PM EDT and filed on 4/30/2025
Case Name: D.V.D. et al v. U.S. Department of Homeland Security et al
Case Number: 1:25-cv-10676-BEM
Filer:
Document Number: 86(No document attached)

Docket Text:
Judge Brian E. Murphy: ELECTRONIC ORDER - AMENDED PRELIMINARY INJUNCTION: In light of the issues raised during the April 28, 2025 hearing, this Court modifies a portion of its April 18, 2025 preliminary injunction [64]. This modification preserves the status quo as outlined in this Court's preliminary injunction. *See Sec. & Exch. Comm'n v. Xia,* 2024 WL 3447849, at *6-7 (E.D.N.Y. July 9, 2024) (collecting cases modifying preliminary injunctions pending appeal in order to preserve the status quo). Defendants have represented to this court that that removals from Guantanamo Bay to third countries have been executed by the Department of Defense without the Department of Homeland Security's direction or knowledge, *see* Dkt 72, and the Court makes no finding on the accuracy of this assignment of responsibility but, in an abundance of caution, ORDERS that, prior to removing, or allowing or permitting another agency to remove, an alien from Guantanamo Bay to a third country, Defendants must comport with the terms of the April 18, 2025 preliminary injunction by providing the due-process guarantees set forth in Dkt. 64 at 46-47. At the April 28, 2025 hearing, the status of the Guantanamo Bay Detention Center was debated. The Court declines to resolve if transportation to this base is a deportation to a third country despite the United States' exercise of jurisdiction and control over the base. Given the position taken by the Government that the deportation from Guantanamo to third countries was not at the direction, behest or control of the Department of Homeland Security,

a debated issue to be resolved once preliminary discovery has been conducted, this Court ORDERS that, after taking custody of an alien, Defendants may not cede custody or control in any manner that prevents an alien from receiving the due-process guarantees outlined in the April 18, 2025 preliminary injunction.
(BIB)

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1:25-cv-10676-BEM Notice will not be electronically mailed to:

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D.V.D., *et al.*, Individually and on behalf of all others similarly situated, Plaintiffs, v. U.S. Department of Homeland Security, *et al.*, Defendants.	)	No. 1:25-cv-10676-BEM

DEFENDANTS' RESPONSE TO THE COURT'S APRIL 10, 2025 ORDER

On April 10, 2025, this Court ordered "Plaintiffs to provide names and alien numbers to the Defendants" and for Defendants to respond to Plaintiffs' allegations regarding compliance with the Temporary Restraining Order. ECF No. 62. Plaintiffs have provided Defendants with the names and alien numbers of six aliens. On April 11, 2025, Plaintiffs notified Defendants of four aliens. On April 16, 2025, and again on April 21, 2025, Plaintiffs gave notice of an additional alien. Pursuant to this Court's order Defendants report as follows:

1. [redacted], a convicted domestic abuser, was removed to Mexico on March 28, 2025 at 8:10 AM before this Court issued its Temporary Restraining Order (ECF No. 34) in the afternoon of March 28, 2025. Declaration of Tracy J. Huettl, Exhibit A, at ¶¶ 34, 35. Prior to his removal, Immigration and Customs Enforcement, Enforcement and Removal Operations (ICE ERO) "asked him if he was afraid of being returned to Mexico. At this time, he stated he was not afraid of returning to Mexico." *Id.* at ¶ 33.

2. [redacted], an admitted human smuggler, was removed to Mexico on March 25, 2025, before this Court issued its Temporary Restraining Order (ECF No. 34), on March 28, 2025. *Id.* at ¶¶ 38, 41.

3. [redacted], a registered sex offender, was removed to El Salvador on March 31, 2025 "by the Department of Defense on a flight with no DHS personnel onboard." *Id.* at ¶¶ 47, 51. DHS did not direct the Department of Defense to remove [redacted]. *Id.* at ¶ 51. The Department of Defense is not a defendant in this action.

4. [redacted], an identified Tren de Aragua (TdA) gang member, was removed to El Salvador on March 31, 2025, "by the Department of Defense on a flight with no DHS personnel onboard." *Id.* at ¶¶ 22, 27. DHS did not direct the Department of Defense to remove [redacted]. *Id.* at ¶ 27. The Department of Defense is not a defendant in this action.

5. [redacted], an identified TdA chief, was removed to El Salvador on March 31, 2025, "by the Department of Defense on a flight where no DHS personnel onboard." *Id.* at ¶¶ 16, 18. DHS did not direct the Department of Defense to remove [redacted]. *Id.* at ¶ 18. The Department of Defense is not a defendant in this action.

6. [redacted], an admitted TdA gang member, was removed to El Salvador on March 31, 2025, "by the Department of Defense on a flight where no DHS personnel onboard." *Id.* at ¶¶ 10, 12. DHS did not direct the Department of Defense to remove [redacted]. *Id.* at ¶ 12. The Department of Defense is not a defendant in this action.

Accordingly, based on the attached declaration, DHS did not violate the Court's Temporary Restraining Order (ECF No. 34).

Respectfully submitted,

YAAKOV M. ROTH
Acting Assistant Attorney General

DREW C. ENSIGN
Deputy Assistant Attorney General

ELIANIS N. PEREZ
Assistant Director

MATTHEW P. SEAMON
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/s/*Mary L. Larakers*
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CERTIFICATE OF SERVICE

I, Mary Larakers, Senior Litigation Counsel, hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants.

/s/ *Mary L. Larakers*
Mary L. Larakers
Senior Litigation Counsel

Dated: April 23, 2025

United States Court of Appeals
For the First Circuit

No. 25-1311

D.V.D.; M.M.; E.F.D.; O.C.G.,

Plaintiffs - Appellees,

v.

U.S. DEPARTMENT OF HOMELAND SECURITY; KRISTI NOEM, Secretary of Department of Homeland Security (DHS); PAMELA BONDI, United States Attorney General; ANTONE MONIZ, Superintendent of the Plymouth County Correctional Facility,

Defendants - Appellants.

Before

Montecalvo, Howard, and Aframe,
Circuit Judges.

ORDER OF COURT

Entered: April 7, 2025

The emergency motion for stay pending appeal and immediate administrative stay is denied based on our concerns about whether the underlying temporary restraining order of the district court is appealable as a preliminary injunction. While Courts of Appeals generally have jurisdiction to hear appeals regarding orders granting preliminary injunctions, we generally lack jurisdiction over appeals challenging temporary restraining orders. See 28 U.S.C. § 1292(a)(1); 16 Charles Alan Wright, Arthur R. Miller & Edward H. Cooper, Federal Practice and Procedure § 3922.1 (3d ed. 2012) ("[O]rders granting . . . temporary restraining orders are not appealable . . . ."); see also Dep't of Educ. v. California, 604 U.S. ___, No. 24A910, 2025 WL 1008354, at *1 (Apr. 4, 2025) (per curiam) ("[T]he Courts of Appeals generally lack appellate jurisdiction over appeals from [temporary restraining orders] . . . ."). This principle can be overcome in some situations where the temporary restraining order effectively functions as an appealable preliminary injunction, see Sampson v. Murray, 415 U.S. 61, 86-88 (1974), but that does not appear to be the situation before us. Significantly, appellants have issued intervening "Guidance Regarding Third Country Removals" and moved under Federal Rule of Civil Procedure 62.1 for an indicative ruling that the district court would dissolve the order in light of the Guidance if jurisdiction were returned to it. Appellants have made a moving target of their removal policy (and potentially the underlying order) just days before the district court hearing on the motion for

a preliminary injunction, which has been scheduled within the 14-day period specified in Federal Rule of Civil Procedure 65(b)(2). That only reinforces the temporary nature of the relief at issue.

The stay is denied.

By the Court:

Anastasia Dubrovsky, Clerk

cc:
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Abraham R George
Elianis N. Perez
Matthew Patrick Seamon
Mary Larakers
Mark Sauter
Yaakov Roth
Aysha Iqbal
Daniel Cappelletti
Trina A. Realmuto
Mary A. Kenney
Kristin Macleod-Ball
Tomas Arango
Aaron Korthuis
Anwen Hughes
Glenda M. Aldana Madrid
Leila Kang
Matthew H. Adams

Subject: Activity in Case 1:25-cv-10676-BEM D.V.D. et al v. U.S. Department of Homeland Security et al Order on Motion to Stay
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United States District Court

District of Massachusetts

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Case Name: D.V.D. et al v. U.S. Department of Homeland Security et al
Case Number: 1:25-cv-10676-BEM
Filer:
Document Number: 41(No document attached)

Docket Text:
Judge Brian E. Murphy: ELECTRONIC ORDER entered denying [38] Defendants' Motion For Partial Stay of the Temporary Restraining Order, for the reasons stated in the [40] Memorandum on Plaintiffs' Motion for Temporary Restraining Order issued this day. (BIB)

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UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D.V.D., et al.,	)	
	)	
Plaintiffs,	)	
	)	**Civil Action No.**
v.	)	**25-10676-BEM**
	)	
U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,	)	
	)	
Defendants.	)	

MEMORANDUM ON PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

MURPHY, J.

In this action, Plaintiffs seek an order guaranteeing them the opportunity to show— before being removed to countries not included on their removal orders—that they will suffer persecution, torture, and/or death in those countries. The Court has GRANTED in part Plaintiffs' motion for a temporary restraining order and has issued narrow relief to ensure no irreparable harm is done while the underlying facts develop.[1] This memorandum explains the Court's reasoning.

I. Background

Plaintiffs are individuals subject to final orders of removal, allegedly at imminent risk of deportation to countries other than those authorized by their respective orders. Dkt. 1 ¶¶ 1, 4. One named plaintiff ("O.C.G.")[2] has already been deported. *Id.* ¶ 13. Another ("E.F.D.") has been

[1] The Court announced the Order on the record in open court and has subsequently entered a written version on the docket. Dkt. 34.

[2] The Court has allowed Plaintiffs to proceed under pseudonyms. Dkt. 13.

detained. *Id.* ¶ 12. The remainder ("D.V.D." and "M.M.") fear imminent detention and deportation. *Id.* ¶¶ 10–11. Plaintiffs seek declaratory and injunctive relief. *Id.* at 36–37.

On March 23, 2025, Plaintiffs moved for a temporary restraining order. Dkt. 6.[3] Plaintiffs' motion asked the Court to enjoin the removal of E.F.D., D.V.D., and M.M., as well as all similarly situated parties, until they, first, receive written notice of the newly designated countries to which they might be removed and, second, be given a meaningful opportunity to object to those designations based on fear of persecution, torture, and/or death. Dkt. 6-1 at 1–2. Plaintiffs further asked that, in the interim, D.V.D. and M.M. not be detained. *Id.* at 2. Finally, Plaintiffs asked that O.C.G. be allowed to return to the United States. *Id.*[4]

II. Jurisdiction

The Court has jurisdiction to hear this case under 28 U.S.C. § 1331.

The government argues that the Court lacks jurisdiction based on 8 U.S.C. §§ 1252(g) and 1252(a)(5), (b)(9). Dkt. 31 at 10–14. However, those provisions do not apply. 8 U.S.C. § 1252(g) displaces courts' power to hear cases "arising from the decision or action . . . to . . . execute removal orders." 8 U.S.C. §§ 1252(a)(5) and (b)(9) collectively vest courts of appeal with exclusive jurisdiction to hear petitions requesting "judicial review of an order of removal."

This case concerns neither "execut[ion]" nor "judicial review" of an order of removal. Rather, Plaintiffs allege deportations occurring by authority other than, and in the absence of, fully

[3] Plaintiffs also moved for a preliminary injunction. Dkt. 6. At this time, the Court considers only the request for a temporary restraining order.

[4] Plaintiffs also seek provisional class certification and corresponding relief. Dkt. 6-1 at 2–3. The Court will consider class certification in conjunction with the motion for preliminary injunction. As to the instant motion, class certification is not necessary because the "injunctive . . . relief will inure to the benefit of all those similarly situated." *Dionne v. Bouley*, 757 F.2d 1344, 1356 (1st Cir. 1985); *see also Doe v. Gaughan*, 808 F.2d 871, 872 n.1 (1st Cir. 1986). The limitations on relief flowing from impact beyond the named Plaintiffs is addressed in Section V, *infra*.

authorizing orders of removal.[5] Congress has not precluded district courts' review of removals outside of what has previously been ordered by an immigration judge.[6] *Aden v. Nielsen*, 409 F. Supp. 3d 998, 1006 (W.D. Wash. 2019) (concluding that claim concerning designation of removal country outside proceedings did not involve review of removal order); *see also Kong v. United States*, 62 F.4th 608, 618 (1st Cir. 2023) (holding that § 1252(g) insulates only the discretionary decision to commence removal, not related, potentially unlawful acts).

III. Legal Standard

"A temporary restraining order . . . preserve[s] the status quo," preventing irreparable harm before there is a full opportunity to hear the case. *Berge v. Sch. Comm. of Gloucester*, 107 F.4th 33, 37 n.6 (1st Cir. 2024). The Court considers four factors: "(1) the movant's likelihood of success on the merits; (2) the likelihood of the movant suffering irreparable harm; (3) the balance of equities; and (4) whether granting the injunction is in the public interest." *Shurtleff v. City of Bos.*, 337 F. Supp. 3d 66, 70 (D. Mass. 2018) (citing *Corp. Techs., Inc. v. Harnett*, 731 F.3d 6, 9 (1st Cir. 2013)), *aff'd*, 928 F.3d 166 (1st Cir. 2019).[7]

Of the four factors, likelihood of success "weighs most heavily" in the analysis. *Ryan v. U.S. Immigr. & Customs Enf't*, 974 F.3d 9, 18 (1st Cir. 2020). Nevertheless, "a court's conclusions

[5] At oral argument, the government agreed that, in designating additional countries of removal, it drew its authority from statute. Rough Transcript at 2–4. That implies something beyond mere "execut[ion]" of an order. This plain reading of the statute is supported by the relevant regulations, which state that "the order of the immigration judge *does not limit* the authority of the Department of Homeland Security to remove the alien to any other country as permitted by section 241(b) of the Act." 8 C.F.R. § 1240.12(d) (emphasis added). That such authority is not "limit[ed]" by an order does not suggest that the authority is still *pursuant to* that order.

[6] Although this case involves sensitive subject matter and complex statutory schemes, its underlying principles are very familiar. Courts routinely consider whether jurisdiction is barred based on a prior court's order. *See, e.g.*, *Verogna v. Johnstone*, 583 F. Supp. 3d 331, 336–37 (D.N.H. 2022), *aff'd*, No. 22-1364, 2022 WL 19795808 (1st Cir. Nov. 14, 2022). Under §§ 1252(a)(5) and (b)(9), district courts are precluded from revisiting orders made by immigration judges. It would not make sense, however, to offer that same protection for acts which go beyond those orders' preclusive scope.

[7] "The standard for issuing a TRO is 'the same as for a preliminary injunction.'" *Orkin v. Albert*, 557 F. Supp. 3d 252, 256 (D. Mass. 2021) (quoting *Bourgoin v. Sebelius*, 928 F. Supp. 2d 258, 267 (D. Me. 2013)).

as to the merits of the issues presented on [a motion for temporarily relief] are to be understood [simply] as statements of probable outcomes." *Narragansett Indian Tribe v. Guilbert*, 934 F.2d 4, 6 (1st Cir. 1991). The Court prejudges no future motions or findings.

IV. Discussion

A. Likelihood of Success

Plaintiffs have established that they are likely to succeed. The parties agree—and the Court assumes without deciding—that the government may, outside removal proceedings and apart from the specific authorization provided by a removal order, designate additional countries as places of removal. *See* Dkt. 31 at 15–18.

However, even if these removals can follow from authority exercised outside formal proceedings, that exercise must still comport with due process. "It is well established that the Fifth Amendment entitles aliens to due process of law in deportation proceedings." *Demore v. Kim*, 538 U.S. 510, 523 (2003) (quoting *Reno v. Flores*, 507 U.S. 292, 306 (1993)). It would be strange to hold that constitutional requirements can be circumvented simply by informalizing the process.

At oral argument, the government was asked if it took the position that it can "decide right now that someone who is in [] custody is getting deported to a third country, give them no notice and no opportunity to say, 'I will be killed the moment I arrive there,' and, as long as the [government] doesn't already know that there's someone standing there waiting to shoot him, that's [] fine." Rough Transcript at 26:13–21 ("In short, yes."). This Court holds a very different view.[8]

[8] So, too, does the government when appearing before the Supreme Court, including as recently as five days ago. Transcript of Oral Argument at 32–33, *Bondi v. Riley*, No. 23-1270 (S. Ct. Mar. 24, 2025) ("Justice Kagan: . . . [W]hen you have the order of removal but the [Convention Against Torture] proceedings have not yet been concluded, what does the government feel itself free to do with the alien? . . . [Assistant to the Solicitor General]: We do think we have the legal authority to [send the non-citizen to some other country, assuming no pending claim under the Convention Against Torture as to that other country], with the following caveat: We would have to give the person

Due process requires that an individual be given notice of where they are being taken and a meaningful opportunity to show that, if taken there, they will likely be subject to persecution, torture, or death. Such is established in common moral sense, in statute and in treaty,[9] and in the government's own assurances to our Supreme Court.[10]

Assuming these individuals have due-process rights attending the government's discretionary power to designate additional countries of removal outside formal proceedings, the government challenges Plaintiffs' showing that there have been, or are likely to be, any violations of those rights. Dkt. 31 at 18–20.

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notice of the third country and give them the opportunity to raise a reasonable fear of torture or persecution in that third country."). At oral argument on this case's motion, the government attempted to distinguish this very recent statement as not applicable "post-final order." *See* Rough Transcript at 6–7. But that is not reflective of the government's statement, which concerned "when [the government] ha[s] the order of removal." Withholding proceedings, such as those within which one brings a claim under the Convention Against Torture, do not impact the overall removability of an individual, except as to the specific country at issue. *Johnson v. Guzman Chavez*, 594 U.S. 523, 536 (2021) ("If an immigration judge grants an application for withholding of removal, he prohibits DHS from removing the alien *to* that particular country, not *from* the United States." (emphases in original)); *see also id.* at 539 ("[T]he finality of the order of removal does not depend in any way on the outcome of the withholding-only proceedings."). It is therefore not a meaningful distinction that an individual, subject to an order of removal, may have instituted a fear-based claim as to some other country. The introduction of a *new* country of removal is, according to the government in *Bondi v. Riley*, what triggers the right to receive notice and be heard.

[9] *Jama v. Immigr. & Customs Enf't*, 543 U.S. 335, 348 (2005) (explaining that individuals who "face persecution or other mistreatment in the country designated" as their place of removal "have a number of available remedies," by statute, regulation, and under international law, to "ensur[e] their humane treatment"); *see also Andriasian v. I.N.S.*, 180 F.3d 1033, 1041 (9th Cir. 1999) (finding that "last minute designation" of removal country during formal proceedings "violated a basic tenet of constitutional due process: that individuals whose rights are being determined are entitled to notice of the issues to be adjudicated, so that they will have the opportunity to prepare and present relevant arguments and evidence").

[10] *See supra* note 8; *see also* Transcript of Oral Argument at 20–21, *Guzman Chavez*, 594 U.S. 523 (No. 19-897) ("Justice Kagan: So that's what it would depend on, right? That -- that you would have to provide [an individual being removed] notice [of what country he is being sent to], and if he had a fear of persecution or torture in that country, he would be given an opportunity to contest his removal to that country, isn't that right? [Assistant to the Solicitor General]: Yes, that's right."); Brief for the Petitioners at 3–4, *Guzman Chavez*, 594 U.S. 523 (No. 19-897) ("Congress has left open two avenues for an alien to avoid removal to a particular country where he faces persecution or torture. First, the alien may seek statutory withholding of removal under 8 U.S.C. 1231(b)(3), which prohibits the removal of an alien to a country where he would face persecution because of his 'race, religion, nationality, membership in a particular social group, or political opinion.' *Ibid.* Second, the alien may seek withholding or deferral of removal under regulations implementing the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), *adopted* Dec. 10, 1984, S. Treaty Doc. No. 20, 100th Cong., 2d Sess. (1988), 1465 U.N.T.S. 85—a treaty that addresses the removal of aliens to countries where they would face torture. *See* Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat. 2681–822; 8 C.F.R. 208.31, 241.8(e).").

The facts here are both contested and contestable. At this very early stage, the Court finds it probable that O.C.G. was not given a meaningful opportunity to state his fear-based claim.[11] That understanding of events supports the likelihood that the other Plaintiffs are reasonable in their fear that they will be subject to similar, insufficient processes. Oral argument in this matter made clear that the Government believes that such deportations, without notice and without concern for violations of the Convention Against Torture, could be occurring and would not be violative of any policy or practice of the Department of Homeland Security. In short, the Government expressed no concern that deportations in violation of the Convention Against Torture could be occurring immediately and regularly in the days until the preliminary injunction; the Court does not share the same disregard for probable due process violations protected by the Constitution and enumerated in both statute and treaty. Moreover, to the degree that the Government may argue that deportations of people subject to torture or death may *not* be occurring now or in the days before the preliminary injunction hearing, this temporary restraining order will be of no detrimental effect.

B. Irreparable Harm

The irreparable harm factor likewise weighs in Plaintiffs' favor. Here, the threatened harm is clear and simple: persecution, torture, and death. The government argues that Plaintiffs can make no showing of harm because, even without an injunction, they can move to reopen their removal cases and make fear-based claims therein. Dkt. 31 at 21. But until the government gives notice, it is unrealistic to expect Plaintiffs to be able to make the necessary, country-specific

[11] The government provides a declaration stating that O.C.G. was asked if he was afraid of being returned to Mexico and that O.C.G. responded that he was not. Dkt. 31-1 ¶ 13. This declaration, however, does not appear to have been given by anyone directly involved in O.C.G.'s handling. *Id.* ¶¶ 1–3. O.C.G. offers contrary, under-oath assertions that he received no such opportunity. Dkt. 8-4 ¶¶ 9–10.

showings.[12] It may very well be the case that, following notice, the availability of a motion to reopen satisfies due process.[13] However, Plaintiffs have alleged no possible opportunity for such a showing, and therefore that is not the question before this Court.

C. Balance of Equities and Public Interest

Because the interest of the government is the interest of the public, the final two factors merge when the government is the opposing party. *Nken v. Holder*, 556 U.S. 418, 435 (2009). In cases implicating removal, "there is a public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm." *Id.* at 436. However, there is also "a public interest in prompt execution of removal orders." *Id.*

Here, the Court has found it likely that these deportations have or will be wrongfully executed and that there has at least been no opportunity for Plaintiffs to demonstrate the substantial harm they might face. The Court finds that these circumstances countervail the public's normal and meaningful "interest in prompt execution." *Id.* Thus, the final two factors support issuance of relief.

V. Limitations of Relief

A temporary restraining order should issue only insofar as it is "essential in order effectually to protect . . . rights against injuries otherwise irremediable." *See Weinberger v. Romero-Barcelo*, 456 U.S. 305, 312 (1982) (quoting *Cavanaugh v. Looney*, 248 U.S. 453, 456 (1919)). Here, the "irremediable" injury would be deportation without meaningful opportunity to present a claim based on fear of persecution, torture, or death.

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[12] *See Guzman Chavez*, 594 U.S. at 536 ("[W]ithholding-only relief is country-specific."). It is moreover unclear on what basis Plaintiffs would move to reopen, absent a noticed change to their country of removal. *See* 8 C.F.R. § 1003.23.

[13] The Court expresses no opinion.

Accordingly, the Court circumscribes its remedy and declines, at this time, to issue Plaintiffs' proposed order as it pertains to detention. It is not sufficiently before the Court whether any Plaintiff could plausibly be removed in the "reasonably foreseeable future." Dkt. 6-1 at 2. Likewise, the Court will not order the return of O.C.G. A mandatory injunction, as would be required, "alters rather than preserves the status quo," and is thus subject to an even more heightened level of legal and factual scrutiny. *Braintree Lab'ys, Inc. v. Citigroup Glob. Markets Inc.*, 622 F.3d 36, 41 (1st Cir. 2010) (citing *Massachusetts Coal. of Citizens with Disabilities v. Civ. Def. Agency & Off. of Emergency Preparedness of Mass.*, 649 F.2d 71, 76 n.7 (1st Cir. 1981)). The Court finds, at this stage, that Plaintiffs have not yet made that showing.

Finally, although this memorandum has referred to fear-based claims collectively, such claims are divided between statutory claims made under 8 U.S.C. § 1231(b)(3)(A) and claims made under the Convention Against Torture. *Johnson v. Guzman Chavez*, 594 U.S. 523, 530–31 (2021). This Court is precluded, under 8 U.S.C. § 1252(f)(1), from offering relief as to the former beyond the individual Plaintiffs. *See Galvez v. Jaddou*, 52 F.4th 821, 829–30 (9th Cir. 2022) (clarifying the scope of § 1252(f)(1)). The Court thus limits its Order as to statutory claims to only the named Plaintiffs while ensuring Convention Against Torture protection to all similarly situated individuals.

VI. Conclusion

For the foregoing reasons, the Court has GRANTED in part Plaintiffs' motion.

So Ordered.

/s/ Brian E. Murphy
Brian E. Murphy
Judge, United States District Court

Dated: March 29, 2025

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

D.V.D., et al.,	)	
	)	
Plaintiffs,	)	
	)	**Civil Action No.**
v.	)	**25-10676-BEM**
	)	
U.S. DEPARTMENT OF HOMELAND SECURITY, et al.,	)	
	)	
Defendants.	)	

TEMPORARY RESTRAINING ORDER

MURPHY, J.

This matter comes before the Court on Plaintiff D.V.D., M.M., E.F.D., and O.C.G.'s Motion for a Temporary Restraining Order and Preliminary Injunctive Relief. Having considered the motion and related filings, the Court ORDERS as follows:

1) Plaintiffs' Motion for a Temporary Restraining Order is GRANTED in part.

2) Defendants, and all of their officers, agents, servants, employees, attorneys, successors, assigns, and persons acting in concert or participation with them are hereby ENJOINED and RESTRAINED from:

   a) Removing Plaintiffs D.V.D., M.M., and E.F.D. from the United States to a third country, i.e., a country other than the country designated for removal in the prior immigration proceedings, UNLESS and UNTIL Defendants provide Plaintiffs D.V.D., M.M. and E.F.D., and their respective counsel, with written notice of the third country to where they may be removed, and UNTIL Defendants provide a meaningful opportunity for Plaintiffs D.V.D., M.M. and E.F.D. to submit an

application for protection, including withholding of removal under 8 U.S.C. § 1231(b)(3) and protection under the Convention Against Torture (CAT) to the immigration court, and if any such application is filed, UNTIL Plaintiffs D.V.D., M.M., and E.F.D. receive a final agency decision on any such application;

b) Removing any individual subject to a final order of removal from the United States to a third country, i.e., a country other than the country designated for removal in immigration proceedings, UNLESS and UNTIL Defendants provide that individual, and their respective immigration counsel, if any, with written notice of the third country to where they may be removed, and UNTIL Defendants provide a meaningful opportunity for that individual to submit an application for CAT protection to the immigration court, and if any such application is filed, UNTIL that individual receives a final agency decision on any such application.

3) No security bond is required under Federal Rule of Civil Procedure 65(c).

4) This Order shall remain in effect until the Court rules on Plaintiffs' motion for a preliminary injunction.

5) The Court's previous order, Dkt. 12, remains in effect.

So Ordered.

/s/ Brian E. Murphy
Brian E. Murphy
Judge, United States District Court

Dated: March 28, 2025

DECLARATION OF JOHNNY SINODIS

I, Johnny Sinodis, hereby declare as follows:

1. I am a partner at Van Der Hout LLP, which is located at 360 Post Street, Suite 800, San Francisco, CA 94108. I have personal knowledge of the matters stated herein.

2. I represent the person identified in the email correspondence filed on May 7, 2025, with the Court. Dkt. 90-4. I can confirm that my client has a final order of removal to the Philippines, which was issued on March 11, 2025.

3. The information in this declaration is based on (1) notes that I took during two phone calls with my client on May 7, 2025, at approximately 1:00 p.m. Pacific Standard Time (the first call lasted about ten minutes before the call ended due to time limits, and my client called me back a few minutes later) and (2) calls I have had with various U.S. Immigration and Customs Enforcement (ICE) officers.

4. As background, my client is currently detained at the South Texas ICE Processing Center, a facility run by The GEO Group. He was previously detained at the Northwest ICE Processing Center (NWIPC) in Tacoma, Washington. While at NWIPC, he was issued an order of removal on March 11, 2025. He thereafter was told by his deportation officer (DO) that he was scheduled to be on a removal flight to the Philippines on either April 27 or 28, 2025.

5. Approximately two weeks before April 27, my client was transferred to Texas. He was told by an ICE officer in Tacoma that the decision to transfer him came from "headquarters." He has been detained at the South Texas ICE Processing Center for about three weeks, and he spent some amount of time (he is unsure as to the total number of days) in another facility in Texas prior to being transferred to the South Texas ICE Processing Center. Contrary to what he was told by the ICE officer in Tacoma, he was not put on a flight to the Philippines on April 27 or

April 28.

6. On May 5, 2025, my client called me in the middle of the day to say that he was scheduled to be interviewed by ICE. That night, around 7:00 p.m. Pacific Standard Time, my client called me and said that two ICE officers informed him during his interview that he would be removed to Libya. The officers at some point showed him a one-page document saying he would be removed to Libya, which shocked my client. The officers said it would be the quickest way for him to get out of custody. My client asked whether he had a choice, and the officers told him that he did not. The officers then took the one-page document and said it would be in my client's possessions, which would be returned to him once removed from the United States.

7. To date, I have not received any notification from ICE regarding the decision to send my client to Libya.

8. On May 6, 2025, my client called me in the middle of the day to say that the money in his commissary account had been "zeroed out," which usually occurs before someone is transferred from the facility and/or prior to removal from the United States.

9. On the evening of May 6, 2025, at around 6:00 p.m., I, along with another attorney at my office, contacted the South Texas ICE Processing Facility by phone to request a copy of the notice that my client had received informing him he would be removed to Libya and to request that he be provided a reasonable fear interview. We were told by a front-line ICE officer that my client's assigned DO was not present at the facility, and that he was unable to access complete information about him on the computer system. He informed us, however, that there was no notation that my client was scheduled to be removed to Libya. The officer claimed to be surprised to hear that my client had been informed he would be removed to Libya and repeatedly stressed that, because my client is Filipino, he should be removed to the Philippines. The officer

assured me that my client would not be removed to Libya or anywhere else before the following day (May 7), and said he was not scheduled for any "commercial" or "chartered" flight. He used the words "commercial" and "chartered."

10. Before and after this phone call on May 6, 2025, I sent a series of emails to ICE, which were filed with the Court on May 7, 2025.

11. On May 7, 2025, in the morning, I along with my colleague again contacted the South Texas ICE Processing Center. The officer we spoke with said that the South Texas facility had no control over my client's removal, and that those decisions were made by ICE in Tacoma. He stated that we needed to contact ICE in Tacoma to request a reasonable fear interview. He further informed me that my client was not scheduled for removal on May 7, 2025. He stated several times that he had no idea why our client was informed he would be removed to Libya, and that he was Filipino and set to be removed to the Philippines.

12. At this point, I emailed counsel in the instant matter to provide them an update as to my communications with ICE.

13. I, along with my colleague, then contacted the Tacoma ICE Processing Center and requested to speak to the officers assigned to my client's case. The officer we spoke with was not the officer assigned to my client. This officer was also shocked to hear that our client had been informed he would be removed to Libya. When we requested to speak to a supervisor and the officer assigned to my client given the emergency situation, the officer replied "I can assure you this is not an emergency because that emergency does not exist," referring to the potential of a flight to Libya. The officer then transferred the call to the officer assigned to my client, who did not answer the phone. We repeatedly attempted to contact the officer assigned to my client and the supervisor at the facility between 9:00 a.m. and 12:30 p.m. Pacific Standard Time but

received no response.

14. During this period of time, I emailed the Office of the Principal Legal Advisor in Tacoma, Washington, and asked (1) that my client be provided with a reasonable fear interview and (2) that I be provided notice of the decision to remove him to Libya. A true and correct copy of that email is attached hereto.

15. Just before 12:30 p.m. Pacific Standard Time on May 7, 2025, Supervisory Deportation and Detention Officer Garza from San Antonio ICE called me. He told me that he had received my emails and was looking into the situation. He stated that he had "no explanation" for what my client had been told and said something along the lines of "I cannot guarantee that did not happen" but that it "is not right and it makes no sense." Officer Garza then told me that he would give me another call, hopefully by the end of the day. I have not heard from Officer Garza since that time.

16. Several minutes before 1:00 p.m. on May 7, 2025, my client called me from the South Texas ICE Processing Center. He stated that he was woken up by officers at around 2 a.m. on May 7, 2025. Shortly thereafter, GEO Group Correctional Emergency Response Team (CERT) members dressed in full riot gear entered his pod and told him that he would be leaving in five minutes.

17. Between 2:40-2:50 a.m., the CERT Team members returned to transfer him and twelve other individuals out of his pod.

18. At one point, my client heard a GEO employee say, out loud, "Really, CERT?," as if in disbelief of the display of force.

19. The CERT Team took my client to the facility's intake space, where he was held for around thirty minutes to an hour.

20. The facility did not allow him to change into his regular clothes, which they normally would do when removing someone from the facility for any reason, including for a deportation flight. Instead, he and the twelve other individuals were processed out of the facility in jumpsuits.

21. My client states that one other individual is Mexican, and another is Bolivian. My client informed me that both of these individuals have removal orders to their home countries and had been told that their countries will accept them.

22. As to the Mexican national, my client told me that, after he was informed that he would be removed to Libya, he called the Mexican Consulate to explain what was happening. The Mexican consul responded that ICE could not send him to Libya.

23. During the process of being processed out of the facility, my client recognized that the two ICE officers who had interviewed him on Monday were present for his transfer.

24. My client's belongings were packed for him, as if the CERT Team and ICE officers were trying to move him out of the facility quickly.

25. My client asked one of the ICE officers if the group was still going to Libya and the officer said yes.

26. While being processed out of the facility, my client and the rest of the group were placed in shackles. The shackles were fixed around their ankles and waist.

27. My client was then placed on to a bus outside the facility with the twelve other members of the group. The bus resembled a school bus. It was all white and had an image of a bird on it.

28. My client observed that two people on the bus had logos that read "G4S." One of the characters in the logo is red. On information and belief, G4S is a British multinational private security firm.

29. When my client and the other individuals asked these G4S employees for information as to what was happening, the G4S employees said that they did not know and did not have any information.

30. On the bus, my client and the rest of the group remained shackled at the ankles and waist.

31. ICE officers did not board the bus with my client. Instead, ICE vehicles served as an escort for the bus.

32. My client states that the bus was driven to what appeared to be a military airport where a large military plane was waiting.

33. My client and the rest of the group were never taken off the bus. They remained on the bus, sitting next to the large military plane, for approximately three to four hours.

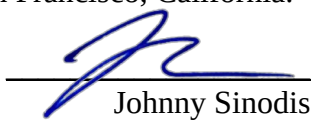
34. At some point in the morning, rather than being shuffled off the bus and onto the large military plane, the bus drove back to the South Texas ICE Processing Facility. My client says that they arrived back at the facility around 11:00 a.m. Central Standard Time on May 7.

35. My client and the rest of the group were taken off the bus and placed into the Special Housing Unit (SHU—also known as solitary confinement). Officers informed the group that they were not in trouble but that they could be held in SHU for twenty-four hours.

36. My client added that, if he had to interpret how the officers were acting once the bus returned to the facility, he would say they looked "peeved," as if they were disappointed by what was occurring.

37. My client has since been returned to the dorm where he was housed prior to being woken up abruptly and transferred out of the facility in the early morning hours of May 7. Nobody at the facility has communicated to my client whether they will attempt to remove him to Libya again or at any point in the future. I also have not received any further correspondence from ICE.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my own personal knowledge. Executed this 12th day of May 2025 at San Francisco, California.



Johnny Sinodis
Declarant

DECLARATION OF TIN THANH NGUYEN

I, Tin Thanh Nguyen, hereby declare as follows:

1. I am an attorney in private practice at the Law Office of Tin Thanh Nguyen, PLLC, which is located at 6769 Albermarle Rd, Suite B, Charlotte, NC 28212. I have personal knowledge of the matters stated herein.

2. I represent a person identified in the email correspondence filed on May 7, 2025, with the Court. Dkt. 90-2. I can confirm that my client has a final order of removal to Vietnam, which was issued by the San Francisco Immigration Court in May 2014. He has been reporting regularly to U.S. Immigration and Customs Enforcement (ICE) on an Order of Supervision since about July 2014.

3. The information in this declaration is based on telephone calls I had with my client on May 8 and May 9, 2025, in which he informed me about what had happened to him earlier in the week and also confirmed information I learned from attorneys and advocates who spoke to my client's partner on or about May 6 and May 7. I also directly spoke to his partner on May 7, 2025.

4. As background, my client is currently detained at the South Texas ICE Processing Center, a facility run by GEO Group. Immigration officers took him into custody when he appeared at a yearly ICE check-in in Los Angeles, California, on March 20, 2025. He spent a night in Los Angeles and then ICE transferred him to Adelanto Detention Center where he was detained for about three weeks. ICE then transferred him to Phoenix, Arizona via a van where he then took a flight to Seattle, WA so that ICE could pick up other detainees. Then ICE flew him to Texas and detained him in a county jail for 3-4 days before transporting him to San Antonio, Texas before finally arriving at the South Texas ICE Processing Center on or about April 18, 2025.

5. On Monday, May 5, 2025, ICE officers brought my client and approximately 22 other men to an office area within the South Texas ICE Processing Center, and then the men were brought into an office one by one to meet with approximately three immigration officers. My client believes he was the first of the men to be brought into the office. My client speaks some

English but does not understand technical and legal jargon and is not comfortable reading or writing in English. He was given a document, written only in English, which the officers told him would allow him to become a free man, but then they told him that he would be free in Libya. My client did not understand the form itself or how he could be free in a country that he knew nothing about and had no permission to reside in. As a result, he refused to sign the document. The ICE officers kept trying to convince him to sign the paper and told him that he would be deported to Libya no matter what he did. However, he never signed the paper. He still has the document. He was forced by ICE officers to sign another paper, which had his photograph and fingerprints on it, while he was handcuffed. They grabbed his hand and moved it with the pen so that he would sign the document. The officers never told him that he could raise a claim that he was afraid to go to Libya because he would be tortured there. He did not have a lawyer at this time.

6. After he continued to refuse to sign the document referencing deportation to Libya, the ICE officers handcuffed him and brought him into a different room, which appeared to be a medical office. He believes that they checked his blood pressure at this point. After all of the men had been interviewed, he was placed in solitary confinement for approximately 24 hours. He believes that some of the other men who did not sign the paperwork were also placed in solitary confinement after their interviews.

7. My client called his partner to inform her what had occurred. I learned about the situation after my client's partner contacted a community organization who contacted attorneys, including me. One of the attorneys attempted to schedule a time to meet with my client on May 7, 2025, at 7 pm CST, but was told by an administrator at 6 am on May 7 that he was no longer at the detention facility.

8. At approximately 2:30 am on May 7, 2025, my client was abruptly woken up by guards in camouflage tactical gear, who told him to put his hands through the food slot in the cell door and handcuffed him. The guards had on their backpacks and client said that they appeared like they were going to war. He, along with 12 other men, were placed in a containment cell together. They all remained in the detention center jumpsuits and their feet were shackled and hands

cuffed. My client believes he saw between 20 to 30 guards in riot gear, and there were about four officers involved with moving each person. He stated that the guards treated him roughly, like he was a military enemy or an animal. If any of the men spoke, the guards yelled aggressively at them to shut up.

9. My client and the other men were moved from the containment cell to a white bus with metal screens on the windows. There was a bus driver and one other individual on the bus with the men, neither of whom appeared to be wearing DHS uniforms.

10. Soon after they boarded the bus, the bus left the detention center and drove for what he believes was more than one hour. They arrived at a military base, which my client believes was Lackland Air Force Base in San Antonio. Throughout the base, there were people in military uniform and military vehicles. My client and the other men on the bus were silent; my client was extremely scared and unsure of what was happening.

11. The bus stopped next to a large airplane, which appeared large enough to transport tanks and military vehicles. The hatch or cargo door of the C-17 airplane was open so he could see military personnel loading the airplane. At some point, the bus moved to a different side of the airplane, and my client saw what appeared to be a military vehicle fueling up the airplane. In addition to the military personnel, my client also saw people, who he thinks were ICE officers, standing outside of the airplane and bus. Additionally, he saw someone setting up to take pictures near the plane.

12. Approximately 3 or 4 hours later, the bus left the military base and returned to the South Texas ICE Processing Center. My client and the other men were released from the bus in the same way that they boarded: with approximately 20 to 30 military soldiers in riot gear removing them from the bus. My client and the other men were brought to segregated cells in the detention center and left there for approximately 24 hours; while in the cells they could not talk to each other, make telephone calls, or shower. Subsequently, all of the men were released into another housing unit at the detention. At this point, they could again make telephone calls, and he contacted his partner to inform her what had happened to him.

13. On May 7, 2025, I submitted a notice of entry of appearance as counsel (Form G-28) electronically on behalf of my client and was able to speak with him about his experiences by telephone both after he returned to the detention facility on May 8 and 9 and via video conference on May 12.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my own personal knowledge. Executed this 13th day of May 2025 at Charlotte, North Carolina.

Tin Thanh Nguyen
Declarant

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

D.V.D.; M.M.; E.F.D.; and O.C.G., Plaintiffs,	)	
v.	)	Civil Action No. 1:25-cv-10676-BEM
U.S. Department of Homeland Security; Kristi Noem, Secretary, U.S. Department of Homeland Security, in her official capacity; Pamela Bondi, U.S. Attorney General, in her official capacity; and Antone Moniz, Superintendent, Plymouth County Correctional Facility, in his official capacity, Defendants.	)	pages 1 to 122

BEFORE THE HONORABLE BRIAN E. MURPHY
UNITED STATES DISTRICT JUDGE

MOTION HEARING
(Sealed Portion Included)

May 21, 2025
11:00 a.m.

John J. Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, Massachusetts 02210

Jessica M. Leonard, CSR, FCRR
Official Court Reporter
John J. Moakley United States Courthouse
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Proceedings reported and produced

to be heard is, has a long history in front of this court, in front of the First Circuit, in front of the Supreme Court, a long history that is familiar to every attorney that has appeared in this court, is aware what an opportunity to be heard is.

I also ordered that the notice that was given be done in writing and in the language -- the primary language of the person who received that notice.

What I have learned is that notice was given some time in the evening of May 19. I am not entirely clear on whether that is 5:45 or a later time that was included in the notation given to at least one of the attorneys, but it was provided to these individuals in the evening of May 19.

The next morning they were taken from that locked facility, for which they, obviously, could not leave and seek advice or counsel, and they were taken and transported to the airport and put onto a plane.

The time that they left that facility is again unclear. We're going to get an exact answer on that shortly, but it was, at the latest, sometime in the 10:00 hour and, at the earliest, sometime before 9:00 a.m.

It is plain to me that an opportunity to be heard -- of several hours that were not during business hours, where you could not consult with your attorney, where you could not consult with your family, or where, in this case, if, for

country, to have a meaningful opportunity to object to it, they must be given some opportunity to see how their life conditions would be dealt with in that country.

I don't know a lot about South Sudan. I have reviewed some of the materials that have been submitted, but I'm not familiar with their policy on all sorts of things. I don't know if there is rampant discrimination based on race or gender, or anything else, or sexual orientation. I'm not saying there is, but I don't know.

And if I was in any of those groups and I was going to be deported to South Sudan, I would need an opportunity to investigate that and to be able to articulate a well-founded fear about why being returned to South Sudan would be -- would result in torture or death.

The Department did not do it in this case. They did not offer any opportunity to object. There are protestations to the contrary, where I have been told -- and I will certainly give them an opportunity to speak again here -- that they believe that they complied with my order because they don't know of any of these people yelling at any of the jailers that they were afraid to go to South Sudan.

That's plainly insufficient. I don't think there's any interpretation of the preliminary injunction that I issued that would comport with the behavior that the Department showed here.

THE COURT: Thank you, Ms. Perez.

I hear your points, I'm familiar with the cases that you've read. I don't agree. I find that my preliminary injunction order has been violated.

I now turn to the next stage of the analysis, which is what the Court can do to remedy that violation.

And I'll let Ms. Realmuto begin as to what an appropriate remedy is that you're seeking here and how we would go about effectuating it.

MS. REALMUTO: Well, Your Honor, I think the remedy that we're seeking is the one that we've continued to seek, which is that we bring these individuals back to the United States and give them the process that's due and that should have been afforded to them in the first instance under the preliminary injunction.

And I would argue that that process can only take place on U.S. soil because it's essential that they have an opportunity to have notice, to investigate the situation in South Sudan, to consult with counsel, and to present their decision about whether or not they're afraid to go to South Sudan -- I think that anyone who investigates the situation in South Sudan would have a fear of being placed in a war-torn country -- and then, for them to have the reasonable fear process that's afforded under this Court's order.

And I think whatever opposing counsel is going to say

finally resolved -- either I get direction from the First Circuit or the Supreme Court or somewhere else -- that for the status quo, to the degree that there is ambiguity about what due process means, I am inclined to delineate it.

I could guess what Ms. Realmuto is going to suggest but -- I'll give her a chance anyway in a moment -- but, Ms. Perez, I'm going to ask you for a suggestion.

So I had -- again, I give great credit to Ms. Larakers for highlighting this point at the very inception of this case: that a meaningful opportunity is subject to different understandings. I didn't think it was subject to understandings as different as they appear to have been today, but, for the sake of clarity, I am going to clarify.

And so what would your suggestion be, Ms. Perez, around -- at a minimum, there will be a period of time between when notice is given and the deportation occurs. What is your suggestion --

Or Mr. Ensign. I'm not sure who's -- either one of you is welcome to speak.

-- what's your suggestion about what comports with due process and is reasonable?

MR. ENSIGN: Your Honor, we don't have a specific suggestion.

I mean, our understanding is from the expedited removal context where we think that would be meaningful

opportunity. We recognize Your Honor disagrees, but that certainly our perspective.

I think the nature of any narrowly tailored remedy would be that, if 24 hours isn't sufficient, that Your Honor would shape it as to whatever your understanding would be that is a minimum to satisfy due process.

I'm not aware of a specific benchmark to propose. Certainly, our position is that 24 hours is sufficient. We recognize you disagree, but we don't have a specific proposal in light of this Court's disagreement with that position.

THE COURT: So I appreciate that, Mr. Ensign, and I know you weren't told to be prepared with this. And so I recognize that I'm asking a lot of you. But let me explain my reasoning.

My reasoning is, generally speaking, Courts analyze whether or not something comports with the constitutional due process on a case-by-case basis, where the Court says, "No, that doesn't comport" and "Yes, that does comport." And you can see this in a variety of contexts.

But that doesn't really work in this scenario and the reason that I had drafted my preliminary injunction in the way that I had is because I had hoped that the Department would exercise its discretion to fashion something that comported with constitutional requirements of due process.

Exactly what that is, though, is very hard to say.

And so I am giving you an opportunity to offer me some advice on that. I suspect that Ms. Realmuto is going to say a month or maybe a month and then a month with an attorney.

There's lots of cases that fall back to 21 days. My order had fallen back to the most conservative limited number of days that I could see any justification for, which was 15 days.

If you could point me to any authority -- and I recognize you're on the spot now, and so -- I'm not resolving this all in the next five minutes; so, if you could point me to any authority or if the Department wants to take a position about what reasonable due process is, I would welcome that input. But, you know, I'd -- I'd welcome that.

So what I intend to do is I will be clarifying my preliminary injunction. I will be --

And don't worry, Ms. Realmuto. I know I haven't given you a chance to speak, but I intend to.

-- I'm going to be clarifying what the minimum amount of time is that the Department has to let go between the time that notice is given and the time that the person is deported.

If the Department wants to take a position on that, I give you until the end of the day today. That -- we will be crafting something. I would give you more time, but I'm in this position where people may currently be getting loaded onto planes with plainly insufficient notice.

So if you want to take me up on that opportunity, you may. If you don't, you don't have to. But I'm going to be fashioning something that clarifies this, because what is absolutely clear to me is that not only is 24 hours plainly insufficient, this was only 17. And this is undeniably insufficient; And to the point where I believe it to be obviously insufficient.

But the exact place where that line should be drawn, I don't know. And so, if the Department wants to take a position and tell me by the end of the day, I'd welcome that input.

MR. ENSIGN: Thank you, Your Honor. We'll certainly run that by our clients and present that option to them and get that back to you if we have a specific proposal.

THE COURT: Thank you.

And, Mr. Ensign, this needn't be a treatise. If you say, "We propose 14 days because of x case," that's really -- that would be valuable input. So feel free to weigh in. I'm not requiring you to, but I would welcome that input.

MR. ENSIGN: Thank you, Your Honor.

THE COURT: Ms. Realmuto, the same question to you is -- we now are forced to modify the order, to specify. What is the specification that you were suggesting to the Court about?

MS. REALMUTO: 30 days, Your Honor. We believe that's reasonable because it gives the individual time to locate or

expeditiously.

That's why, in the expedited removal context, the people are given, you know, much less time, measured in hours or perhaps even minutes, to manifest a fear, which we think is the same sort of screening concept that would apply here.

We'd also note that the statute at issue, 8 U.S.C. 1231, does not limit third-country removals to where it is impossible. I believe the statutory language is that it can be done where it's impossible, impractical, or inadvisable. Any of those are sufficient to permit a third-country removal. Impossibility is not a requirement to carry out a third-country removal, and that's in the statutory language of 1231.

THE COURT: I appreciate that clarification, Mr. Ensign. It raises the question that I've not received a satisfactory answer to, which is around N.M. If N.M. was told he was going to be taken to South Sudan on May 19, presumably, he was only told that because it was either impossible, impractical, or -- I can't remember the third word you just used, but -- inadvisable.

So, presumably, on May 19 it's impossible, impractical or inadvisable to take N.M. back to his country of origin. And what we were told is that the position of the Department changed only because he had a lawyer, and then, instead of deporting him to South Sudan, the Department elected to send him to -- back to his home country.

preliminary relief cannot show likelihood of success on the merits, the other factors fall away. And we believe that's the case here.

We would also point out that, with respect to irreparable harm, Mr. O.C.G. in his declaration concedes that Mexico gave him the choice to seek asylum there or to be returned to Guatemala, and he chose to go to Guatemala. So to the extent that that is a self-inflicted harm, we don't believe that qualifies as irreparable harm for turn purposes of preliminary relief.

THE COURT: Thank you.

MS. REALMUTO: A couple points.

I mean, a self-inflicted harm? He chose not to stay in a country where horrible things happen to him? Where he was going to be detained and he'd have to wait months in detention to apply for asylum, when he was scared of the country he was in?

He specifically asked not to be sent to Mexico at his master calendar hearing. The regulations that the Government is relying on are standard. They're set by the immigration judge.

But I want to put to bed this issue about the application form, the instructions to the I-589 application form. They convey an expectation that the country or countries of proposed removal will be known to the applicant at the time

of the application.

And I would direct the Court's attention to page 3 of those instructions, where it says, to qualify for withholding, you must establish as more likely than not that -- blah-blah-blah -- that your freedom would be threatened on account of race, religion, nationality, membership in a particular social group or political opinion, quote, "in the proposed country of removal." So it's known to the person.

Likewise, the form specifies that the application for asylum is also considered to be an application for withholding under 1231(b)(3) and may also be considered an application for CAT protection or, if the evidence you present indicates that you may be tortured, quote, "in the country of removal."

And so at no point in the history that it's been used has this form to be understood to be an invitation to present protection claims vis-à-vis all the member states in the United Nations and in the world, in the country. So I really want to put that to bed.

With respect to the Government's point about FARRA, O.C.G. is the named plaintiff in this case. He is entitled to withholding, not just CAT protections.

With respect to the Government's argument that this is somehow a challenge to the regulations, it is not. We are seeking the protections for O.C.G. that are due him under withholding statute and the Convention Against Torture.

THE COURT: Okay. Great.

So if you want to weigh in further, my -- well, I can't imagine I will have written this up before 5:00 p.m. So you will certainly have until then --

THE CLERK: Mr. Charles is back.

THE COURT: Well, Mr. Charles is back to tell us whether or not any of this is conceivable.

Mr. Charles, are you there?

MARCOS CHARLES: I am, Your Honor.

THE COURT: Mr. Charles, what can you share with us about the possibility of a reasonable fear interview where they -- the seven people -- are?

MARCOS CHARLES: It is possible, sir.

THE COURT: Okay. Do you have any confounding details or any other details you could share with us about how it would occur? Or you just know it's possible and the Department can work it out.

MARCOS CHARLES: I know it's possible and the Department can work it out. We've been working on it for the last couple of hours to make sure that we can do it, and it is possible to do it.

I think right now -- I just don't know. We're going to have to look at how long it would take us to get it done and keeping people there that long with the -- the cooperation with DOD is going to be key.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

D.V.D.; M.M.; E.F.D.; and O.C.G., Plaintiffs, v. U.S. Department of Homeland Security; Kristi Noem, Secretary, U.S. Department of Homeland Security, in her official capacity; Pamela Bondi, U.S. Attorney General, in her official capacity; and Antone Moniz, Superintendent, Plymouth County Correctional Facility, in his official capacity, Defendants.	Civil Action No. 1:25-cv-10676-BEM pages 1 to 54

BEFORE THE HONORABLE JUDGE MURPHY
UNITED STATES DISTRICT JUDGE

STATUS CONFERENCE

April 28, 2025
11:00 a.m.

John J. Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, Massachusetts 02210

Jessica M. Leonard, CSR, FCRR
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Proceedings reported and produced
by computer-aided stenography.

successors, assigns, and quote, "persons acting in concert or participation with them."

We have provided the names of six men, A-numbers for who we believe had been deported in violation of the Court's order. We also sent Defendants' counsel e-mails on March 31, April 1, April 14, and April 24 asking if any individuals covered by the TRO were deported on two publicly reported flights to El Salvador. We believe one was on March 31 and the other was on April 13.

The defendants have not provided any response to our inquiries about the March and April flights. And, clearly, there's an information imbalance here, because we cannot get the names and A-numbers of individuals on those flights.

The Government has that information, and we've provided the names and A-numbers of the people we were able to ascertain, but we would ask the Court to identify -- to order the defendants to identify the individuals on those flights and any other flights who are covered by the TRO.

Secondly, with respect to the six individuals whose A-numbers we provided, Defendants claim two were removed before the TRO issued and concede that four were deported in violation of the TRO.

With respect to the individuals named in paragraphs 1 and 2 of the Government's response, after additional investigation, we believe it's possible that the men identified

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

D.V.D.; M.M.; E.F.D.; and O.C.G., Plaintiffs,	)	
v.	)	Civil Action No. 1:25-cv-10676-BEM
U.S. Department of Homeland Security; Kristi Noem, Secretary, U.S. Department of Homeland Security, in her official capacity; Pamela Bondi, U.S. Attorney General, in her official capacity; and Antone Moniz, Superintendent, Plymouth County Correctional Facility, in his official capacity, Defendants.	)	Pages 1 to 87

BEFORE THE HONORABLE BRIAN E. MURPHY
UNITED STATES DISTRICT JUDGE

MOTION HEARING

April 10, 2025
11:45 a.m.

John J. Moakley United States Courthouse
Courtroom No. 12
One Courthouse Way
Boston, Massachusetts 02210

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by computer-aided stenography.

THE COURT: Okay. So I understand that. I understand that there's some debate about how available this remedy is and whether or not it should be raised at an earlier stage. And I understand both of those things.

But the -- if there is any availability to try to contest, I mean, it would require notice and at least some period of time. So under this memo are they -- is the Department giving any notice and an opportunity for the individual who's being patriated to a different country an opportunity to raise, through any of the mechanisms you've just discussed, an objection to that third country?

MR. ENSIGN: Your Honor, not under this guidance. I mean, our position is that notice has been provided earlier in the removal proceedings and through other means. But this guidance, itself, would not provide notice.

THE COURT: So this guidance, if someone is from El Salvador and the Department is changing their deportation country to Honduras, right now the Department gives no time. They can be picked up at 6:00 a.m., put on a plane, and flown to Honduras at 6:15?

MR. ENSIGN: Your Honor, the guidance would not prohibit that. In individual circumstances, additional notice might be given. But the guidance would not correct that.

THE COURT: So if someone knows, if they were to go to Honduras for an individualized reason -- they have political

MR. ENSIGN: Your Honor, I mean, the -- assuming you're in the second part of the guidance, then --

THE COURT: No. We're in the first part of the guidance.

MR. ENSIGN: Your Honor, they would have needed to go to the BIA before that. There's nothing under the guidance that would require additional notice or an opportunity to challenge it at that moment.

THE COURT: So it's your position that there is no constitutional or statutory infirmity to send someone to a country where they have an individualized uncontroverted fear of death?

MR. ENSIGN: Your Honor, where they could have raised it previously and did not do so, that the Due Process Clause does not require an additional procedural opportunity to raise in the that context.

THE COURT: Okay.

MR. ENSIGN: But to the extent that Your Honor believes that that would be insufficient under the first step of the guidance, relief should be narrowly tailored to, you know, such that the -- the second part -- and there would be an opportunity to manifest fear would be, you know -- would be a possible remedy if this Court thought there was a constitutional infirmity, which we obviously dispute.

THE COURT: I understand that. And so I want to turn

going to let you continue on jurisdiction because it is a complicated and interesting issue.

But as a practical matter, if the person is told at 6:00 a.m., they have no options. Right?

MR. ENSIGN: Their options have --

THE COURT: Right now -- because historically, the practice of, certainly, the Immigration Board is to not list all 60 countries on the 589 and not to bring that up. And right now if someone is picked up tomorrow morning at 6:00 a.m. and they're taken to a country where they could be killed because of an individualized danger, they have no way to raise them, right?

MR. ENSIGN: Your Honor, it's our position that they could and should have raised that earlier, but to the extent that you think that raises constitutional issues, any relief should be narrowly targeted to that particular concern and not the sort of blanket relief that the plaintiffs are asking for.

THE COURT: How do you make it more narrowly targeted?

MR. ENSIGN: Then, you know --

THE COURT: Because let me -- I'm new to the bench, as I suspect you know, and so I perhaps share my thoughts more than a more experienced jurist might, to make sure I'm giving you a chance to tell me where I've stepped off the line.

The conclusion that if someone is going to be killed if they are brought back to Country B and they're only told

about going to Country B minutes before they get on the plane -- the fact that the U.S. Government is not required to give them any chance to say, "I'm going to be killed when I get off the plane," is -- that seems very troublesome to me.

And I understand what you're saying as a general matter -- that this -- going forward, this should be done differently. And that's the question I had for the plaintiffs. And I understand that, right? The position could well be "Now you know. Raise all the countries that you're worried about at the time that you're going through the immigration proceeding."

But the people who didn't know -- the people who currently have orders of removal didn't know that at the time. There wasn't a practice at the time.

So if there is more tailored relief to address the concern I just articulated -- the person who knows from an individualized basis when they get off the plane in Country B that they're going to be killed -- what is the more individualized relief you're suggesting I could offer?

MR. ENSIGN: Beginning with, of course, we object to the premises. But I think, you know, if you thought, for example, that the procedures under the first step of the guidance were insufficient, you would then need to analyze are the procedures under the second step, if this Court were to require it, you know, sufficient to satisfy due process? Where someone can manifest fear, and, if so, they're given an

opportunity to explain that.

And then there's a screening process, and, if they satisfy that standard, then they have an opportunity to raise that more fulsomely. You know, and then, if you thought there was some deficiency in that, any relief should be tailored to whatever deficiencies you thought in the guidance. But I think --

THE COURT: Let me turn it back to that.

Do you agree? So make the second part of the guidance -- you're familiar with it. The second part applies to everybody who's getting sent to a third country. Does that address all of your concerns?

MS. REALMUTO: Oh, absolutely not. But -- you know, I worried about the people that are covered by the first part of the guidance, for sure. But when we get to the second part of the guidance, that's extremely problematic.

THE COURT: Okay.

MS. REALMUTO: It simply says the person is informed. We don't know where, when, how, to whom they're informed. The burden is on them to manifest the fear, right? That's -- as we've explained, most noncitizens don't know that. They are supposed to be told of their rights. They have a right to express a fear.

THE COURT: But as I understand the guidance -- and correct me if I'm misunderstanding it. But as I understand the

But I want to give you an opportunity to complete it.

But while we're on this issue of what the remedy would look like, Ms. Larakers the last time we were here correctly brought up that if I was to say "a meaningful opportunity to be heard" -- that those things mean different things to different people. And they certainly mean different things to the people who are in front of me here.

And so if I was inclined to be issuing a preliminary injunction -- but I hear your concern about both the scope of what it would be and perhaps the people that it would include. Because I'm now thinking about whether or not respective relief for people who would be on notice -- that they would have to delineate the full panoply of countries to which they had a fear.

What would a more limited -- what would you have -- and I understand you don't want me to issue it at all, but what would the more limited version look like for you?

Because one answer -- and the answer that I thought you just said -- was part b of the memo. I understand that you don't agree that that's a meaningful opportunity, but is that what you would suggest?

MR. ENSIGN: That's certainly something we would suggest. And we think, also, the prospective/retrospective distinction this Court is drawing is something else that could be considered in terms of narrowly tailoring relief.

We think it's also important to keep in mind that essentially what they're proposing is a whole nother round of judicial proceedings. And, you know, the United States has a very strong interest in the execution of final orders of removal. These are people that have received, you know, quite a lot of process through an IJ, through a BIA, through, potentially, a federal court of appeals, even an opportunity to seek certiorari if that's -- and an extraordinary amount of process has already been provided.

And if anyone can trigger, you know, a whole new round of process, which I -- which is what we think Plaintiffs are anticipating, you know, you're talking about potentially years of delay that can be introduced with relative ease.

And that is really concerning. And, certainly, the Due Process Clause, which is flexible and tailored in the circumstances that we're operating under, necessarily should take account of the fact that people have already received quite a lot of process.

THE COURT: So I am -- that's very persuasive for me. And Ms. Larakers had made the point --

Am I pronouncing your name correctly?

MS. LARAKERS: Almost, Your Honor. Larakers.

THE COURT: Ms. Larakers had made the point last time we were here that it's -- I don't think I should be in the position of defining in the first instance what due process is

for the Department. I think that's very correctly in your hands.

And that's why even the temporary restraining order was quite vague in terms of what due process was required. And I was correctly -- it was correctly pointed out to me that vagueness necessarily will engender dispute, which is why I'm --

And I'm not asking you to commit to this, but, if I were to tell you that I'm inclined to issue a preliminary injunction, would your recommendation be to say "issue the preliminary injunction for a subset of people," which is what I'm considering, "and make the process that is due what is delineated in the memo"?

MR. ENSIGN: Yes, Your Honor. I think that would be our first-line position if there were -- if this Court found that there was a violation.

THE COURT: Okay. I'm sorry that I've taken you a bit off of your direction. You were speaking to me about on jurisdiction. If I could redirect you back on that.

MR. ENSIGN: Thank you, Your Honor. You know, I think in particular, turning back to 1252(g), I mean, we are just squarely within the text of it. That provision bars, quote, "any cause or claim...arising from the decision or action by the Attorney General to...execute removal orders."

That is their claim to a T. Their claim arises from

MS. REALMUTO: It's something I usually do; so -- happy to help out.

THE COURT: So here's what I'm left with. That you'd like the most robust process possible. I understand that. The Department would like a more limited amount of due process. I'm reluctant to demand the most amount of due process as a preliminary injunction matter. That seems like that would be an overreach on my part.

Take everything that he just said as true. That you can reopen. You certainly can reopen once you get an adverse determination. For that ability to reopen to be real, what would be required?

MS. REALMUTO: So I assume that we're working on the second part of the memo and that you have disregarded our full-on objections to that.

THE COURT: I understand we're -- no one's happy. We're right there in the middle. Yes.

MS. REALMUTO: In order to answer your question -- caveat that we don't agree, but, answering this question, I think that the notice has to be more tailored, individualized; it has to be written and documented and in a language the person understands. So that's the first way to correct the problem.

THE COURT: Okay.

MS. REALMUTO: It can't just be "inform the person."

Meaningful notice.

Then, if the person has to have -- be asked, "Are you afraid?", if that answer to that question is yes and the Government wants to go through with this screening mechanism, I think we have to have an automatic stay of, I would request, 21 days.

But even if you look at the Government's form that was attached to the complaint as an exhibit, even in that instance, they were saying 14 days, or I believe, perhaps, it was 21. I'd have to look back.

But as the Austin declaration, the Mayer-Salins declaration, and the Morales declaration all cover, filing a motion to reopen is an intense process. Application required. Have to show prima facie eligible. So a person who is detained -- four business days is simply not enough. Because immigration court closes at 4:00 or 5:00 on a Friday and it doesn't reopen until Monday morning.

THE COURT: So I understand. And those declarations were useful in terms of the mechanics of what is required.

MS. REALMUTO: I'm glad.

THE COURT: That was educational for me.

So your position would be 21 days?

MS. REALMUTO: 21 days. And then the person can seek reopening. That's fair. They have an opportunity to do so. And the Government can do the screening thing as well. But

you've got to lower the standard on screening. It cannot be the same standard.

THE COURT: What should the standard be?

MS. REALMUTO: We would propose a well-founded fear or credible fear. We feel like that's reasonable for a --

THE COURT: Credible fear is the lowest, right?

MS. REALMUTO: Right. It is the lowest. But these are detained people who are in a compressed time frame, who don't have access to getting the facts and the corroborating documentation that they need. And many of them may not have counsel.

THE COURT: I understand.

Do you want to respond to the 21 days?

MR. ENSIGN: Certainly, Your Honor.

I mean, 21 days is an awfully long time. This is a situation where Congress has recognized that the United States has a lot of interest in executing final orders of removal, and they've devised a number of jurisdictional provisions to prevent people from gumming up the system in order to prevent removals. And the longer the period is, the more that that's going to be problematic.

We don't -- again, we don't think that there's any deficiency in the memo, but, if there are, 21 days would be far too long.

THE COURT: What's an appropriate number of days?

MR. ENSIGN: Your Honor, our -- we think it should be shorter than that. I'm not prepared to say exactly what that period is. We don't believe there's any deficiencies in the memo, but, you know, 21 days strikes us as quite long.

And, you know, as to the sort of screening point, there's a reason that credible fear is used for asylum. There's at least two different reasons that are fundamentally different here.

One is that the standard for relief under asylum is already lower than both CAT and withholding of removal. And so the fact that it's for a lower standard necessarily means that there's a lower standard that applies.

THE COURT: CAT is the -- I guess it's the highest of the lowest standard that's applied for any type of protection of removal, right?

MR. ENSIGN: It's the most stringent.

THE COURT: You have to show the most.

MR. ENSIGN: Right.

THE COURT: Okay.

MR. ENSIGN: And it's the same for withholding of removal. You have to show more likely than not, whereas asylum is just a well-founded fear. Which I think the Ninth Circuit has said even a 10 percent chance of persecution is enough for a well-founded fear.

And so -- and then, even lower than that would be

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

D.V.D.; M.M.; E.F.D.; and O.C.G., Plaintiffs, v. U.S. Department of Homeland Security; Kristi Noem, Secretary, in her official capacity; Pamela Bondi, U.S. Attorney General, in her official capacity; and Antone Moniz, Superintendent, Plymouth County Correctional Facility, in his official capacity, Defendants.	Civil Action No. 1:25-cv-10676-BEM Pages 1 to 71

BEFORE THE HONORABLE BRIAN E. MURPHY
UNITED STATES DISTRICT JUDGE

MOTION HEARING

March 28, 2025
12:00 p.m.

John J. Moakley United States Courthouse
Courtroom No. 12
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Government that to switch the third-party country designation requires that the deportee who is going to be moved be given an opportunity to be told that that third-party designation is going to be changed and an opportunity to be heard as to the dangerousness of that removal -- do you agree that that's the Government's position?

MS. LARAKERS: I don't agree with their characterization of it. The statement was made with regard to required in removable proceedings; so when that individual is before the immigration court. And we're outside of that context here. We're in post-final order.

THE COURT: Given that we're -- does that apply at all? So I understand that they're not asking to go back to immigration.

I don't think you're going to ask me that.

MS. REALMUTO: We are not.

THE COURT: In this posture, where it is the discretionary decision of the department that's changing the third-party designation, does the person who's going to be deported have a right to be informed and be given an opportunity to be heard as to the dangerousness of that third country designation?

MS. LARAKERS: DHS's position is no.

THE COURT: They don't have to be told anything and given no opportunity to be heard?

MS. LARAKERS: DHS's position is no.

THE COURT: Okay. Thank you.

MS. REALMUTO: Plaintiff's position is yes. A strong yes. Because, in order to afford the protections provided by the statute implied in the Convention Against Torture, a person has to be notified of the country to which they are -- the Government is seeking to deport them.

The State Department recognizes some 197 countries. They cannot be guessing what country the Government is seeking to deport them to. The Government is not providing them with notice, and it is not providing them with an opportunity to make their fear-based claim before the immigration court.

And what happened, we think, to Plaintiff O.C.G. illustrates the urgency of the situation. There an immigration judge granted him protection from removal to Guatemala.

He thought he was being released from detention and, two days later, he was put on a bus and deported to Mexico without the Government notifying him or his counsel and without a chance to make his claim of fear of deportation to Mexico based on the fact that he had been raped and held hostage in that country.

THE COURT: I'm familiar with that. The one thing I was somewhat unclear on is that -- I forget if it was in the declaration from O.C.G. or in the initial briefing, but there was an indication that in the immigration proceeding -- that

surprising thing to hear the Government say.

And so, if that is your -- I want to make sure that I understand your position correctly, that, if the Government is saying, We can deport people to any country that is not prohibited on the notice of removal, and we are not obligated to listen to anything that the deportee has to say about the danger of torture or death that they may face there -- if that's your position, okay. Great. I understand your position.

But I don't want to mischaracterize your position; so that's why I'm saying it back to you, to make sure.

Is your position that the Government can decide right now that someone who is in their custody is getting deported to a third country, give them no notice and no opportunity to say, I will be killed the moment I arrive there, and, as long as the Department doesn't already know that there's someone standing there waiting to shoot him, that that's fine?

MS. LARAKERS: In short, yes.

THE COURT: Okay.

MS. LARAKERS: And that merits argument about O.C.G. That's alternative arguments down the road.

THE COURT: I didn't want to get too far into that because, obviously, I can't resolve it.

MS. LARAKERS: Right. But I will say -- shortly -- that just because that's, like, the legal position doesn't mean

that's not very long at all. How about to the 4th? Would that be enough time for you to file an opposition to the class certification and any additional briefing you'd like on the opposition to the preliminary injunction.

MS. LARAKERS: I obviously would love more time, Your Honor, but it sounds like it's going to have to be the 4th.

THE COURT: The 4th, I'm sorry, is only a week. But that kicks it back to them; they have only a couple of days.

And a reply brief by the 8th? I recognize that gives you only two work days, but the deadlines are short.

MS. REALMUTO: We'll make it work.

THE COURT: In the meantime, I take your point about the Court ordering what "meaningful" means to heart. And so I would consider a motion to reconsider, if you wanted to narrow what that procedure looked like, or you wanted come to an agreement about what it looked like, or you wanted to tell me, This is what we're defining as meaningful, and I would like you to reconsider and adopt this.

I'm open to all of those things because you raise a very good point. And so, to the extent that the guidance that the Court is giving you is nothing more than a meaningful opportunity and you want some more direction or you want to narrow that with some more specificity, I would welcome a motion to consider.

If you file a motion to consider, I can hear you. I think you're in D.C.; so I can hear you, even by Zoom, within 24 hours.

MS. LARAKERS: Thank you, Your Honor, for that opportunity.

I do want to highlight that, in that motion to reconsider that we may file, we may raise objections to the issuing of a TRO in a nationwide context without a provisional -- without even any certification of a class.

I just had to make sure I made that point.

THE COURT: That's completely understood and I'm happy to deal with that. This is only for ten days; so if you want me to deal with that in between, I'm happy to.

But if this prevents procedural challenges that I've not anticipated, explain them to me, and I'm happy to try to ameliorate that, to the degree that I can.

MS. LARAKERS: No, thank you, Your Honor.

THE COURT: With that is there anything else I can do for you today?

MS. REALMUTO: No, thank you, Your Honor.

THE COURT: Is there anything else I can do for the Government today?

MS. LARAKERS: No, Your Honor. Thank you.

THE COURT: Thank you both. I appreciated the argument.