

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

KILMAR ARMANDO ABREGO GARCIA,
et al.,

Plaintiffs,

vs.

KRISTI NOEM, et al.,

Defendants.

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) Docket Number
) 8:25-cv-00951-PX
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TRANSCRIPT OF MOTIONS HEARING
BEFORE THE HONORABLE PAULA XINIS
UNITED STATES DISTRICT COURT JUDGE
MONDAY, JULY 7, 2025, AT 11:17 A.M.

APPEARANCES:

On Behalf of the Plaintiffs:

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COMPUTER-AIDED TRANSCRIPTION OF STENOTYPED NOTES

1 APPEARANCES CONTINUED:

2 On Behalf of the Defendants:

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9 ALSO PRESENT: Jennifer Stefania Vasquez Sura, Plaintiff
10 Ernesto Molina, Esquire, DOJ
11 Bridget O'Hickey, Esquire, DOJ
12 Natasha Patel, Paralegal
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P R O C E E D I N G S

(Court called to order.)

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

THE COURT: Good morning, everyone.

(ALL COUNSEL: Good morning, Your Honor.)

THE COURT: You all can have a seat.

Ms. Derro, will you call the case.

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

Counsel, please identify yourselves for the record, beginning with counsel for the plaintiffs.

MR. ROSSMAN: Good morning, Your Honor. Andrew Rossman for the plaintiffs.

MR. COOPER: Good morning, Your Honor. Jonathan Cooper for the plaintiffs.

MR. SANDOVAL-MOSHENBERG: Simon Sandoval-Moshenberg.

MR. RAND: Good morning, Your Honor. Sascha Rand.

THE COURT: And Ms. Sura, good to see you. Okay. Defense?

MR. GUYNN: Good morning, Your Honor. Jonathan Guynn with the Department of Justice on behalf of defendants.

1 **MS. O'HICKEY:** Good morning, Your Honor. Bridget
2 O'Hickey, also for the defendants.

3 **MR. MOLINA:** Good morning, Your Honor. Ernesto
4 Molina for the defendants.

5 **THE COURT:** Good morning. Just give me one second.

6 Okay. Today what I would like to address, and I may or
7 may not resolve all of them, are the following motions: ECF --
8 and we're going to do them in order.

9 ECF 165, the motion to dismiss for lack of jurisdiction;
10 200, the motion to dismiss for lack of jurisdiction; 203, the
11 emergency motion for other relief; and 211, the motion for
12 leave to file an amended and supplemental complaint.

13 And I know that defendants, you have not had an
14 opportunity to formally respond to 211, and that's why we're
15 going to talk about procedurally what are our options here.
16 Okay?

17 But let's start with 165. It's your motion, defense, so
18 what do you want me to know?

19 **MS. O'HICKEY:** Good morning, Your Honor.

20 **THE COURT:** Good morning. You can sit, you can
21 stand, you can use the podium, whatever you're most comfortable
22 with. Okay? All right.

23 **MS. O'HICKEY:** Thank you, Your Honor.

24 For the motion to dismiss, Number 165, the -- the
25 arguments that we made therein because of changing factual

1 circumstances don't quite apply in the same way to the factual
2 landscape we have now.

3 **THE COURT:** Right. But you didn't withdraw it, and I
4 have some questions about it. Okay?

5 **MS. O'HICKEY:** Okay. Yes, Your Honor.

6 **THE COURT:** So first question is, this motion was
7 filed on May 27th, right?

8 **MS. O'HICKEY:** Yes, Your Honor.

9 **THE COURT:** And the first argument is that defendants
10 do not have the power to produce Mr. Abrego, right?

11 **MS. O'HICKEY:** Correct.

12 **THE COURT:** But by that point, the same defendants
13 had already secured an indictment against Mr. Abrego, correct?

14 **MS. O'HICKEY:** I'm --

15 **THE COURT:** May 21? Your client secured an
16 indictment against Mr. Abrego on May 21st in the District of
17 Tennessee, in the Middle District of Tennessee.

18 Am I right about that?

19 **MS. O'HICKEY:** Yes, Your Honor.

20 **THE COURT:** So then how could you, six days later,
21 tell me you have no power to produce him, when clearly you had
22 at least plans to bring him back? Because why else would you
23 file a criminal indictment against someone who you can't
24 produce? It's illogical.

25 So can you explain that to me?

1 **MS. O'HICKEY:** Your Honor, I think the discussions
2 with the foreign sovereign were still ongoing at that point.

3 **THE COURT:** Okay. But you're telling me, in this
4 motion, you have no power to produce him, and yet six days
5 after this motion, you produced him, right?

6 **MS. O'HICKEY:** That's correct, Your Honor, but he was
7 still in the custody of El Salvador, in the custody of a
8 foreign sovereign.

9 **THE COURT:** Okay. But you had the power to produce
10 him because you did produce him. So I'm a little bit confused
11 as to why you are saying otherwise in this motion.

12 **MS. O'HICKEY:** I don't believe we still had the power
13 to produce him. I think we were still in ongoing negotiations
14 with the foreign sovereign to work that out.

15 **THE COURT:** Well, maybe you can illuminate for me how
16 this went exactly. Because the way, from my perspective is, on
17 day -- May 25, 2025, you're telling me defendants do not have
18 the power to produce him, and, therefore, there's nothing I can
19 do in the case, I lack jurisdiction. Those are powerful
20 arguments to say I don't have the power, because you have no
21 power.

22 Yet, at the same time, you're putting in place the power
23 of the prosecutorial arm to charge an individual who you say
24 will never come back to the United States with a crime.

25 The only way that is a logical use of our federal

1 resources is if you're going to bring him back. Otherwise, why
2 are you charging him?

3 So, again, because of the history of this case, and
4 Ms. O'Hickey, you haven't had the pleasure of all the hearings
5 we've had, so understand that it's important to me to remember
6 the history, how can this representation be one that I can
7 credit given the procedural posture of these -- these cases
8 that were moving in parallel?

9 And let me ask it this way, too. If what you say today is
10 changed circumstances should be taken into account, why didn't
11 you move to withdraw this motion?

12 **MS. O'HICKEY:** We didn't move to withdraw the motion,
13 Your Honor, because in the event that the Court determines that
14 this case is not moot, then we would continue to press our
15 argument under 1252(g).

16 **THE COURT:** Okay. But how about this part of the
17 motion? I mean, you tell me on the 27th of May you have no
18 power to produce him. And then six days later, lo and behold,
19 you had the power to produce him, and you did produce him, and
20 now you're saying I lack jurisdiction because you produced him.

21 At some point, don't you have an obligation, as an officer
22 of the Court, to set the record straight to avoid this very
23 colloquy, the very concern that I have about which one is it?
24 I mean, at some point, don't you have an obligation to me to
25 say, "Judge, we had the power, we produced him, moot, we don't

1 have to deal with argument number one"?

2 **MS. O'HICKEY:** Well, Your Honor, we -- I believe that
3 we would say that we fulfilled our obligation to the Court by
4 filing our notice and then our subsequent motion to dismiss
5 stating that this Court now lacks jurisdiction on the grounds
6 of mootness.

7 **THE COURT:** Let me ask you, at the time you filed
8 this motion, did counsel, as officers of the court, know what
9 was in the works with regard to a criminal prosecution that led
10 to Mr. Abrego Garcia's return to the United States? Did you
11 know that was happening? They are your clients.

12 **MS. O'HICKEY:** Your Honor, we were still at that time
13 in negotiations with the foreign sovereign. The indictment had
14 been filed in tandem with those negotiations. And while we
15 were aware that those things were proceeding, it was yet
16 uncertain what agreement would be reached with respect to the
17 foreign sovereign and how all of that would play out.

18 **THE COURT:** Okay. So I guess for the same reasons,
19 the second argument is also off the table, that there's a lack
20 of redressability on this Court's part because you don't --
21 he's in the custody of El Salvador.

22 Clearly he's not, right?

23 **MS. O'HICKEY:** Right, he's no longer in the custody
24 of El Salvador, yes, Your Honor.

25 **THE COURT:** Okay. So that's off the table as well.

1 And it's your representation to me that while you knew you
2 were proceeding in this parallel way, what you didn't know is
3 whether El Salvador would release him at the time you were
4 securing this indictment; is that what you're saying?

5 **MS. O'HICKEY:** That's correct, Your Honor. We
6 weren't certain how El Salvador would respond or how these --
7 the negotiations would play out.

8 **THE COURT:** But there were some negotiations that led
9 you to believe you needed a criminal indictment to secure his
10 release? I just want to understand it, because frankly, to
11 pursue this motion after you clearly had the -- some
12 wherewithal to bring him back is one in which I need some
13 answers, so that's why I want to understand how this all played
14 out.

15 Is it -- is what you're telling me, as an officer of the
16 Court, without getting into the negotiations themselves, that
17 the defendants believed they needed a criminal indictment in
18 order to further the release of Abrego Garcia from custody of
19 El Salvador?

20 **MS. O'HICKEY:** It's hard, without getting into the
21 particular negotiations, what defendants thought that they
22 needed in order to secure his release, but I am aware that
23 the -- that the proceedings were moving in tandem and
24 negotiations were ongoing.

25 **THE COURT:** Is it a fair inference, though, that you

1 had some control and power over this situation, given that you
2 ultimately took steps that resulted in his return?

3 **MS. O'HICKEY:** I think --

4 **THE COURT:** You know, is that fair?

5 **MS. O'HICKEY:** Defendants certainly took steps to
6 facilitate his return, as this Court's injunction required.
7 Whether those were going to be successful is a separate
8 question.

9 **THE COURT:** Is the indictment one of those steps?
10 Since we're talking about fulfilling my court order.

11 **MS. O'HICKEY:** Your Honor, the Court --

12 **THE COURT:** Yep.

13 **MS. O'HICKEY:** We, of course, were undertaking steps
14 to facilitate his return. He was under investigation anyways,
15 so if the Court is asking whether the indictment was for the
16 sole purpose of bringing him back --

17 **THE COURT:** Was it a factor? I mean, he wasn't under
18 investigation until April 28th, correct? A month after this
19 case started.

20 **MS. O'HICKEY:** That --

21 **THE COURT:** That, I believe, has been confirmed in
22 the Tennessee case.

23 **MS. O'HICKEY:** I don't think that's true, Your Honor.

24 **THE COURT:** Okay. All right. If that's your
25 position in this case, that's noteworthy to me because I do

1 believe that your client has taken a different position in
2 front of the Tennessee court. And I believe it's been widely
3 read out as the investigation began on April 28th. And if my
4 memory serves me, it was confirmed by sworn testimony from a
5 DHS officer who is investigating the case.

6 So are you telling me that when that officer said the
7 investigation began on the 28th of April, he was not candid
8 with the Court?

9 **MS. O'HICKEY:** I'm not making that representation,
10 Your Honor. But to my knowledge, that --

11 **THE COURT:** Okay. Well, if it didn't start on the
12 28th, when did it start? Because now I have real concerns, as
13 if I haven't for the last three months. Okay?

14 But in Tennessee, we've got -- again, please, correct me
15 if I'm wrong, plaintiffs' counsel, I'm looking to you as
16 officers of the court as well, but my memory is that sworn
17 testimony in Tennessee was that this investigation, the
18 criminal investigation began on April 28. Okay? So hearing no
19 correction on that, what basis do you have to represent
20 something different to this Court?

21 **MS. O'HICKEY:** I'm unfamiliar with the timeline. I
22 can't represent to you an exact date, Your Honor, but it was my
23 understanding that he was being investigated for some time
24 before that.

25 **THE COURT:** Okay. But if you can't tell me when, and

1 you can't give me any facts, whatever understanding you have is
2 not based in fact. Okay? So I want you to be really careful
3 with me. Okay?

4 Is what you're saying that you do not have any evidence to
5 the contrary that this case, this criminal investigation, in
6 Tennessee, began before the 28th of April?

7 **MS. O'HICKEY:** I am unfamiliar with the timeline,
8 Your Honor.

9 **THE COURT:** Meaning you don't have any other evidence
10 to contradict the DHS officer's testimony in this regard? Am I
11 getting it right?

12 **MS. O'HICKEY:** Not in front of me, Your Honor.

13 **THE COURT:** You don't?

14 **MS. O'HICKEY:** Not that I can produce at this moment.

15 **THE COURT:** Well -- and in preparation for this case,
16 you know, logic would have it that I'm going to ask these
17 questions, so it wasn't as if your clients gave you any other
18 information to pass on to me.

19 Am I right?

20 **MS. O'HICKEY:** I don't have any other information.

21 **THE COURT:** Okay. All right. Okay. So back to my
22 question. It may not have been the sole purpose, but was the
23 indictment, in part, to help facilitate Mr. Abrego's return to
24 the United States; is that the defendants' position?

25 **MS. O'HICKEY:** No, Your Honor, we -- he was not

1 indicted with the purpose of bringing him back. He was
2 indicted because he was under investigation for those criminal
3 charges.

4 **THE COURT:** I'm sorry, he was --

5 **MS. O'HICKEY:** He was indicted because he was under
6 investigation for those criminal charges.

7 **THE COURT:** Did it play any role in his return?

8 **MS. O'HICKEY:** I can't represent that to the Court.

9 **THE COURT:** Can't or won't?

10 **MS. O'HICKEY:** I don't believe so, Your Honor.

11 **THE COURT:** You can't.

12 Can you put on the record why?

13 **MS. O'HICKEY:** I know that he was indicted because he
14 was being investigated for those particular crimes, and that
15 that was the reason for the indictment. Beyond that --

16 **THE COURT:** You have no information as to whether it
17 played any role in his return?

18 **MS. O'HICKEY:** I do not.

19 **THE COURT:** Did you ask your clients before coming to
20 this court?

21 **MS. O'HICKEY:** That specific question, I did not.

22 **THE COURT:** Yeah, well, just get any information that
23 the Court might need in terms of deciding whether your motions
24 to dismiss for mootness are really moot. I mean, just
25 discussing the background of the case, what's transpired

1 between the last time we saw each other for today -- and today.

2 **MS. O'HICKEY:** We certainly discussed with our
3 clients, Your Honor, events in this case.

4 **THE COURT:** Okay. All right. But you have nothing
5 more for me on this.

6 **MS. O'HICKEY:** Not on that point.

7 **THE COURT:** Okay. Now, you also say, though, that we
8 should discuss the third and final argument, which is that 8
9 U.S.C. 1252(g) deprives the Court jurisdiction over the case?

10 **MS. O'HICKEY:** Yes, Your Honor.

11 **THE COURT:** Okay. So you're new to the team. I
12 would assume that you have read my initial decision regarding
13 the injunction?

14 **MS. O'HICKEY:** Yes, Your Honor.

15 **THE COURT:** The Fourth Circuit's affirmance of it;
16 the Supreme Court's affirmance, as modified, of that; and then
17 the -- Judge Wilkinson's opinion after that when you took
18 another appeal. I'm assuming you've read all of those, right?

19 **MS. O'HICKEY:** Yes.

20 **THE COURT:** I squarely addressed this issue in the
21 first motion, yes?

22 **MS. O'HICKEY:** You did address this, yes, Your Honor.

23 **THE COURT:** Squarely, I said 1252(g) does not deprive
24 me of jurisdiction, right?

25 **MS. O'HICKEY:** Yes, in the context of the preliminary

1 injunction; yes, Your Honor.

2 **THE COURT:** Well, because I have to decide whether I
3 have jurisdiction over the case, because I couldn't get to the
4 merits unless I have jurisdiction, correct?

5 **MS. O'HICKEY:** Correct.

6 **THE COURT:** And then the Fourth Circuit said, of
7 course she has jurisdiction, right? That was Judge Thacker
8 said that, that -- that that is not a case which implicates any
9 discretionary authority of the DHS. And so affirmed that I had
10 jurisdiction.

11 **MS. O'HICKEY:** It's our position, Your Honor, that in
12 the Supreme Court and the Fourth Circuit's opinions regarding
13 the stay motions, that that wasn't a decision on the merits --

14 **THE COURT:** Excuse me? Say it again.

15 **MS. O'HICKEY:** It's our position that in the Fourth
16 Circuit and the Supreme Court's orders regarding the various
17 stay motions, that they didn't address these jurisdictional
18 issues squarely, so we don't have a ruling on those particular
19 issues.

20 **THE COURT:** Really? Because the Fourth Circuit said,
21 quote, 1252(g) does not strip us of jurisdiction here.

22 That's jurisdiction over the case, right? I'm -- I'm
23 reading from the first opinion that they issued.

24 Why are you saying that's not binding? Or they didn't
25 squarely address it? That sounds pretty square to me.

1 **MS. O'HICKEY:** Is that from the ruling on the stay
2 motion, Your Honor?

3 **THE COURT:** That's -- yeah, that's the ruling on
4 whether -- you squarely argued to the Fourth Circuit that we
5 shouldn't even get to the merits of this -- this injunction
6 should be kicked out because the Court doesn't have
7 jurisdiction under 1252(g). You agree that was argued to the
8 Fourth Circuit, no?

9 **MS. O'HICKEY:** Yes, Your Honor, but if that is -- if
10 the holding of that opinion is with respect to the stay, then
11 it's our position that that isn't a decision on the merits of
12 that argument.

13 **THE COURT:** Okay. Jurisdiction is not merits.
14 Right?

15 **MS. O'HICKEY:** Yes.

16 **THE COURT:** It's -- it's the threshold, it's about my
17 power.

18 **MS. O'HICKEY:** Yes.

19 **THE COURT:** It's all about the power.

20 So when the Court above me says she has the power to hear
21 the case, why would I revisit that now? It's not she has the
22 power to enjoin the case, because that goes to the merits.

23 Right? Correct?

24 **MS. O'HICKEY:** Correct, Your Honor --

25 **THE COURT:** Tell me if I'm wrong. I'm looking to you

1 for, like, are we understanding one another?

2 **MS. O'HICKEY:** Our position is that if the Court is
3 ruling on the stay motion, then it's limited to the stay motion
4 in that it hasn't made a jurisdictional ruling on this argument
5 with respect to the case as a whole.

6 **THE COURT:** Okay. This wasn't about the merits of
7 the stay, right? The point at which the Court affirmed
8 jurisdiction was before it got to the merits of the stay.
9 Right? Because if I didn't have jurisdiction, it would have
10 been an academic ruling. They would have dismissed the case
11 because I don't have the power to hear it.

12 But that's not what happened, right?

13 **MS. O'HICKEY:** That -- without having the opinion in
14 front of me, that --

15 **THE COURT:** Wait a minute. This is your argument.
16 You are taking up my time with an argument that has been made
17 before me, before the Fourth Circuit, maybe not expressly
18 before the Supreme Court, I don't remember. But the last time
19 I checked, the High Court does not take cases for which it
20 believes it lacks subject matter jurisdiction.

21 A court can sua sponte dismiss a case for lack of subject
22 matter jurisdiction. I find it hard to believe that the High
23 Court would take time in this case if it believed it didn't
24 have jurisdiction. Okay?

25 So I'm going to read from the Thacker decision, because

1 this has got to -- like, at some point, we have to have
2 finality on some decisions. And unless you can distinguish
3 your argument here from this, we're going to move on. Okay?

4 This is what Judge Thacker said for the Court, "I begin
5 with the government's second argument because our first act
6 must always be to determine the existence of jurisdiction. The
7 government argues that the district court and, thus, this court
8 lacks jurisdiction because the INA strips federal courts of
9 jurisdiction to review, quote, any cause or claim by or on
10 behalf of any noncitizen rising from the decision or action by
11 the Attorney General to," ellipses, "execute removal orders
12 against any noncitizen."

13 "But," the judge goes on, "as the Supreme Court has made
14 clear, 1252(g) strips the federal courts of jurisdiction only
15 to review the Attorney General's exercise of lawful discretion
16 to commence removal proceedings, adjudicate those cases and
17 execute orders of removal. There are many other decisions or
18 actions that may be part of the deportation process, but the
19 jurisdictional bar applies only to those three discrete
20 actions."

21 And then they go on to find that they have jurisdiction.

22 So why are we revisiting this argument?

23 **MS. O'HICKEY:** I told -- told Your Honor that it was
24 our position that if that was limited to the stay, that we
25 thought it wasn't a ruling on that particular argument.

1 But I'm happy to move on to the mootness portion.

2 **THE COURT:** All right. Well, there isn't any other
3 arguments with regard to 165, right? Those are the three?

4 **MS. O'HICKEY:** Correct.

5 **THE COURT:** And I do find the position that
6 jurisdiction applies only to the stay to be just -- no
7 foundation in law. Jurisdiction applies to the case. It
8 doesn't apply to a defensive action you might take to ask a
9 court to stop proceedings. And so to tell me that really
10 doesn't do the defense any good.

11 Okay. So let me -- I don't need to hear from the
12 plaintiffs on this motion. The next one, perhaps we do, but
13 this one is an easy one.

14 ECF 165 is the first motion to dismiss and the motion is
15 fully briefed. I'm going to rule from the bench as follows:

16 You make three arguments, defendants, and none are
17 availing.

18 First, you argue that the Court lacks jurisdiction because
19 Mr. Abrego is not in U.S. custody. And through defendants,
20 through their lawyers, have told me, the Court, in this
21 pleading, lacked the power to hear the case because defendants
22 do not have the power to produce him, end quote; ECF 165 at 6.

23 Obviously you do have the power to produce Mr. Abrego
24 because you did produce him not a week later. So the lack of
25 custody argument, as suspected from its inception, appears

1 meritless.

2 I do also find problematic, at best, that the defendants,
3 the Department of Justice, working in concert with other
4 defendants, clearly had a plan, in my view.

5 You began a criminal investigation, according to the sworn
6 testimony of one of your agents, on April 28th, which was a
7 month after this case began. And common sense would dictate
8 that the only possible defensible use of investigative criminal
9 resources would be if you eventually secured an indictment to
10 bring Mr. Abrego Garcia back.

11 And so to say that that wasn't in the works or not have
12 any further information, as officers of the court, I do find to
13 be highly problematic.

14 Because at the time the motion was filed, while it had not
15 been public, the grand jury in Tennessee had issued this
16 indictment, and we knew it was coming. Because eventually, it
17 was unsealed, and it was unsealed on the very day, I believe,
18 that Mr. Abrego Garcia was brought back.

19 Counsel, did you know in advance that Mr. Abrego Garcia
20 was coming back? I mean, how did you learn?

21 **MR. SANDOVAL-MOSHENBERG:** Your Honor, we learned on
22 ABC News.

23 **THE COURT:** Okay. So it just blinks at reality that
24 defendants had no clue what was going on and that this wasn't
25 in parallel, and no one thought, at least common courtesy or

1 decency, to let the plaintiffs know that Mr. Abrego was not
2 only returning, but returning to be criminally prosecuted.

3 So -- but for what it's worth, the motion on this ground
4 is denied, and the defendants have all but conceded as much,
5 because of changed circumstances.

6 And for the same reason, the second argument fails when
7 the defendants, on May 27th, contended that the plaintiffs'
8 injuries aren't redressable, because Mr. Abrego is in the
9 custody of El Salvador, which is a separate sovereign not
10 before this Court.

11 And so defendants argued that this -- it was speculative
12 whether an order to facilitate Mr. Abrego's return would be
13 effective, and yet, defendants took steps contrary to that
14 argument knowing eventually it would likely go nowhere because
15 Mr. Abrego was indicted, and eventually, five days later,
16 brought back. At no point did defendants seek to withdraw this
17 argument, which still remains a question in the Court's mind.

18 Third and final argument is one that has been well tread,
19 and for once and for all, it is put to bed. The defendants,
20 again, argue that pursuant to 8 U.S.C. 1252(g), this Court is
21 deprived of jurisdiction over the case. As we've discussed,
22 counsel, the argument has been made to me and rejected. It was
23 argued to the Fourth Circuit and rejected.

24 I don't recall whether it was specifically argued to the
25 Supreme Court, but the fact that the Court exercised its

1 jurisdiction and reached the merits of the scope of my order
2 certainly is, at a minimum, an implicit acknowledgement, but I
3 would say explicit, of this Court's power to hear the case.

4 So the argument is, once again, rejected for the same
5 reasons already stated, and the motion to dismiss at ECF 165 is
6 denied.

7 Now we move on to ECF 200, which is the second motion to
8 dismiss.

9 Ms. O'Hickey, are you arguing this one as well?

10 **MS. O'HICKEY:** Yes, Your Honor.

11 **THE COURT:** Now, the way I'm reading this motion is,
12 it is now that Mr. Abrego is back, plaintiffs have been
13 accorded all the relief that they have asked for, and so the
14 case is moot.

15 Am I getting that right?

16 **MS. O'HICKEY:** That's correct, Your Honor.

17 **THE COURT:** Okay. Tell me a little bit more about
18 why you believe that to be the case.

19 **MS. O'HICKEY:** Okay. Yes.

20 Plaintiffs bring five claims in their original complaint.
21 At the end of each claim, the -- they request that the Court
22 immediately order defendants to take all steps reasonably
23 available to them to return Plaintiff Abrego Garcia to the
24 United States. They have now received that complete relief.
25 Their prayer for relief reflects the same central request, that

1 he be brought back to the United States.

2 Defendants can do no more to return him to the United
3 States at this point. And for that reason, there's no more
4 ongoing controversy because they have received the relief that
5 they requested.

6 **THE COURT:** So what about the injunction, which, as
7 modified, required Mr. Abrego to be returned to the status quo
8 ante, that is from, at least, I think, a fair interpretation of
9 what the Supreme Court said, which is to return him, to restore
10 him to where he had been before he was unlawfully removed to
11 El Salvador?

12 The plaintiffs argue that injunction means returning to
13 Maryland, essentially the status quo ante being where he was on
14 the day he was unlawfully arrested and detained and taken to
15 the very country he shouldn't be removed from.

16 What's -- and you may -- I'm sure you disagree with that,
17 but isn't that a live question that I have to answer, which
18 does mean the case is still a -- a live one?

19 **MS. O'HICKEY:** I don't think so, Your Honor. I think
20 we have to look to the relief that plaintiffs requested in
21 their complaint, and they never once in their complaint
22 requested that he be returned to Maryland.

23 Moreover, in their TRO papers for their second TRO before
24 this Court, where they discussed the status quo ante,
25 specifically they say since the controversy in this matter

1 arose when defendants removed Mr. Abrego Garcia from the United
2 States, the last uncontested status between the parties was one
3 in which Mr. Abrego Garcia was present in the United States.

4 So even in their TRO papers, they requested his return to
5 the United States, and only now are they asserting that he
6 should be returned to Maryland.

7 **THE COURT:** Okay. They have not pressed the issue
8 that I should fulfill all aspects of my order to return him to
9 the status quo ante so that he can proceed the way he was when
10 he was unlawfully arrested. I mean, he was on an order of
11 supervision, and he was being supervised by ICE in the
12 Maryland -- in the Baltimore district, right? I'm not sure if
13 I'm using the right words. But Mr. Molina, you can probably
14 help me out. But it was the -- right? It was that
15 jurisdiction that was having him come in every year for a
16 checkup?

17 **MR. MOLINA:** That is correct, Your Honor.

18 **THE COURT:** Okay. So isn't the status quo ante to
19 restore him to that procedural and substantive posture? And
20 can't I only do that if I send him back to Maryland or order he
21 be returned here?

22 **MS. O'HICKEY:** Your Honor, I think plaintiffs, they
23 are the masters of their complaint, and the relief that they
24 requested in their complaint was that he be returned to the
25 United States.

1 **THE COURT:** Then let's go to the complaint.

2 You would agree that I do have to view the complaint as
3 take all the facts as true in the light most favorable to the
4 plaintiffs, right?

5 **MS. O'HICKEY:** Yes; on the motion to dismiss
6 standard, yes.

7 **THE COURT:** Yeah. For questions of a facial
8 challenge to jurisdiction, right?

9 **MS. O'HICKEY:** Correct.

10 **THE COURT:** Do they not, in the complaint, lay out
11 what, in their -- in -- taking it as true, an unlawful, illegal
12 arrest that happened in Maryland which took him away from the
13 lawful supervision of Immigration and his family, where he had
14 lived for many, many years, worked, and that that was part of
15 the cause of -- the causes of action and animate many, if not
16 all, of the claims?

17 So while they may not have specifically said "return to
18 Maryland," do I really hold the plaintiffs to such a
19 restrictive reading of the complaint? Wouldn't that, like,
20 turn the burden on its head? Like, turn the presumption on its
21 head? What do I do with all those allegations that at least
22 plausibly aver that his injuries were -- began in Maryland when
23 he was arrested?

24 **MS. O'HICKEY:** They do allege, Your Honor, that he
25 was living in Maryland at the time that he was arrested and

1 removed. However, they never once requested he be returned to
2 Maryland, so defendants do not believe that the Court needs to
3 afford them any relief separate from what they have requested.

4 **THE COURT:** How about the declaratory relief? And
5 the reason why I ask about that is while I know that the law
6 says I can't just issue a declaration that you violated the
7 law, that declaratory relief has to go further, but in a
8 situation in which the defendants have very publicly proclaimed
9 that you will initiate further immigration action, query what
10 that's going to be, we'll get to that in a little bit, but how
11 can a declaration which is that you've historically very
12 specifically violated the INA not be relevant to future
13 proceedings?

14 And not just you violated the INA, but very specifically
15 how you did it, which is the declaration that, I think, would
16 advance the plaintiff cause of action later, you know, down the
17 road.

18 So what do I do with the request for declaratory relief in
19 this matter?

20 **MS. O'HICKEY:** I think it's as Your Honor alluded to,
21 they don't have the -- they lack standing to seek a declaratory
22 judgment regarding class actions when there's no injunctive
23 relief that can be ordered because they have already received
24 all the relief that they requested.

25 **THE COURT:** So we really come back to whether all of

1 the injunctive relief has been accorded given that there is a
2 provision in the order that says he must be restored to the
3 status quo ante.

4 **MS. O'HICKEY:** I think it does turn on whether the
5 injunction has been fully complied with, which the defendants'
6 position is that it has because they received the relief. And
7 even the second portion that requires that his case be handled
8 as if he had never been removed to El Salvador, it's currently
9 being handled that way. He's receiving all the process to
10 which he is due, and the injunction has been fully complied
11 with.

12 **THE COURT:** See, I'm not -- I don't have the Supreme
13 Court opinion in front of me. I can get it, or the plaintiffs,
14 I'm sure, will request me. But I don't think it's as narrow as
15 if he hadn't been removed to El Salvador. It's as if he had
16 not been. And I read that to mean you got to put him back to
17 where he was before you took unlawful action.

18 He was on supervision. He was complying with supervision.
19 He had a valid withholding of removal order. And you have to
20 restore him to that place and then take whatever lawful action
21 you may.

22 But you can't drop him, you know, in the -- somewhere else
23 where he's not in that first position and say you fulfilled the
24 order.

25 I think that's -- so for purposes of jurisdiction, you

1 might be right in the end, right? But there's jurisdiction,
2 because that's a live controversy. Plaintiffs say you haven't
3 accorded Mr. Abrego all the relief that you ordered, Judge, and
4 you haven't accorded all the relief that the complaint
5 contemplates. Defendants say I have. But that gives me
6 jurisdiction to decide that question, right?

7 **MS. O'HICKEY:** I don't think so, Your Honor. The
8 language of the particular thing -- I'll have to find it here,
9 but it says something like that his case must be handled as if
10 he had not been unlawfully removed to El Salvador.

11 **THE COURT:** It says to facilitate Abrego Garcia's
12 release from custody in El Salvador and to ensure that his case
13 is handled as it would have been had he not been improperly
14 sent to El Salvador.

15 Isn't a fair reading of that, the way the plaintiffs want
16 me to read it; your reading is no, it's not as -- as
17 particularized as the plaintiffs say. That may be, but that's
18 the live case in controversy, whether you've exhausted my order
19 or not, and I haven't decided that yet. I suppose that's
20 another way to put it, is you've -- in the alternative, you
21 asked me to dissolve the injunction, and I'm not sure
22 dissolution of the injunction is proper at this juncture
23 because of this.

24 **MS. O'HICKEY:** That's what we're asking Your Honor to
25 decide now on our mootness motion because it's our position

1 that the injunction has been fully complied with.

2 **THE COURT:** Right. And you do, in the alternative,
3 ask for dissolution of the injunction, right? ECF 200.

4 **MS. O'HICKEY:** Yes, Your Honor.

5 **THE COURT:** Which really kind of highlights the
6 point. If I'm still struggling with whether you had fulfilled
7 the injunction completely, then there's jurisdiction over the
8 case, because I have to decide -- I have to decide that issue.
9 And then if I find that I've exhausted -- I've given all the
10 injunctive relief that's due, then we go from there.

11 But at a minimum, I haven't decided that yet.

12 Now, your second argument is, all they ask for, the
13 plaintiffs do, in the complaint, is return to the United
14 States, and we've done that. And so it doesn't really matter,
15 I guess, what the injunction says if you've accorded all the
16 relief requested.

17 Am I getting that right? Is that the sort of other
18 argument you're making, just so the plaintiffs can respond
19 accordingly?

20 **MS. O'HICKEY:** I'm not sure I understand separating
21 it out like that, but it is our position that the injunction
22 was designed to facilitate the relief they requested in their
23 complaint, and that we've now fully complied with the
24 injunction to -- which has provided them all the relief that
25 they have requested in their complaint.

1 **THE COURT:** Let me ask it a different way.

2 If I find that the injunction, again, because a
3 preliminary injunction, it's an extraordinary remedy, it's to
4 preserve the status quo while the case proceeds. In this case,
5 it was a remedy requested because of this just, you know, some
6 might say, outrageous decision to send Mr. Abrego Garcia to
7 CECOT in El Salvador without any authority.

8 So the injunction could be to, again, just preserve the
9 status quo, get him back to where he was so that we can then
10 assess the merits of the complaint.

11 You're -- you're basically saying that's all the
12 defendants asked for, was to come back, and there really isn't
13 any other -- let me -- let me say it this way maybe,
14 Ms. O'Hickey, and you can tell me why it's wrong.

15 Your reply especially sounds as if this is a
16 garden-variety mistaken removal case where, oh, you know, it
17 happens, mistakes are made, and people get sent back to the
18 very country that they should have had more process to
19 challenge.

20 And since we've brought him back, no harm, no foul.
21 Right? Isn't that kind of the -- that's at least the tone of
22 the reply. Am I kind of getting the argument right?

23 **MS. O'HICKEY:** It certainly is our position that that
24 was what they requested. He has been returned, and that
25 there's no further action --

1 **THE COURT:** Necessary?

2 **MS. O'HICKEY:** Yeah.

3 **THE COURT:** Okay. Anything else you want to add
4 before I turn to the plaintiffs on this motion?

5 **MS. O'HICKEY:** It sounds like Your Honor has had a
6 chance to review the reply. Is there anything specifically you
7 would like me to address in our reply?

8 **THE COURT:** Not at this juncture, but you'll
9 certainly have the opportunity to respond to whatever the
10 plaintiffs say.

11 **MS. O'HICKEY:** Okay, Your Honor.

12 **THE COURT:** All right. Great. Mr. Rossman?

13 **MR. ROSSMAN:** Your Honor, Andrew Rossman, and I'm
14 going to begin -- and with Your Honor's permission, may I take
15 the --

16 **THE COURT:** Sure, of course.

17 **MR. ROSSMAN:** I'm just accustomed to this style.
18 Where I fall short, Mr. Cooper is going to assist me,
19 given the play of all the different motions. I hope that's
20 acceptable to the Court.

21 **THE COURT:** Yeah.

22 **MR. ROSSMAN:** So we're loathe -- given all that the
23 Court has done, we're loathe to ask the Court for more, but
24 more is necessary as the job is unfinished.

25 And what we -- I think Your Honor alighted on precisely,

1 you know, the right language in the Supreme Court's opinion.
2 And I'll turn back to where we started, which is Your Honor's
3 preliminary injunction order itself, which was entered on
4 April 4, I believe, if my memory is right. And Paragraph 3 of
5 the preliminary injunction order --

6 **THE COURT:** Can you give me the ECF number, so I see
7 exactly where you are? I don't --

8 **MR. ROSSMAN:** 21. It's the -- I'm sorry, it's 21 on
9 the ECF, Your Honor.

10 **THE COURT:** Got it. And you're at Paragraph 4?

11 **MR. ROSSMAN:** Paragraph 3, Page 2.

12 **THE COURT:** Okay. Got it.

13 **MR. ROSSMAN:** Where the Court wrote: This
14 preliminary relief is used to restore the status quo and to
15 preserve Abrego Garcia's access to due process in accordance
16 with the Constitution and governing immigration statutes.

17 And there remains a live controversy in this case today,
18 and the case, therefore, is not moot, and the Court continues
19 to have jurisdiction, because the government has not assured
20 the plaintiff that the government will refrain from another
21 illegal removal of the plaintiff.

22 So in two respects, there is a very live, critical
23 controversy before the Court. One is we do not have the
24 complete fulfillment of the injunctive order as affirmed by the
25 Supreme Court, because Mr. Abrego Garcia has not been returned

1 to Maryland. And that was the status quo ante, and that would
2 be the complete fulfillment of his rights under -- under the
3 Court's order.

4 **THE COURT:** Do you agree with the government, though,
5 that the only relief you requested that is actionable at this
6 point is to return him to the United States? In the complaint.

7 **MR. ROSSMAN:** So I have two points on that, one
8 substantive and one procedural, Your Honor.

9 The substantive point, Your Honor, if we're bound by the
10 existing complaint, then Your Honor is quite right, that we're
11 entitled to all inferences in our favor, including in the
12 prayer, where we ask for other such or further different relief
13 as is necessary, as is customary in the prayer.

14 But the complaint itself, also, Your Honor, seeks in
15 Paragraph A of the prayer, a declaration that defendants'
16 actions as set forth herein violated the laws of the United
17 States and the Fifth Amendment to the U.S. Constitution. That
18 remains a critical protection for the plaintiff here because
19 the threat of removing Mr. Abrego Garcia again without due
20 process is real.

21 And on that point, Your Honor, we can typically look to
22 what the government has told the Court in the Middle District
23 of Tennessee in the criminal proceeding, where they gave a
24 fairly astonishing proposition, we cited in our emergency
25 motion itself, at Docket 203. And it's 203-3, which is

1 Exhibit C to that motion. We actually have the government's
2 brief filed in that case.

3 And the government said, in -- in seeking a stay of the
4 order finding that Mr. Abrego Garcia should not be detained by
5 the criminal authorities in Tennessee, the government writes,
6 should this Court not order a stay, and the defendant is moved
7 to ICE custody and deported from the United States, the
8 prosecution would lose the meaningful opportunity to try its
9 case.

10 It goes on, how fast the defendant could or would be
11 deported remains to be seen, and concludes in that paragraph,
12 yet these immigration proceedings exist as real, potential,
13 substantial and irreparable harm to the United States.

14 Putting aside the irony of that statement, that the United
15 States needs to be protected from itself, as a district court
16 judge observed in the Middle District of Tennessee, putting
17 that to the side, what the United States has said, has
18 represented to the Court in Tennessee, is that the moment
19 Mr. Abrego Garcia is released from the custody of the criminal
20 authorities, released from the U.S. Marshals' custody, he's at
21 immediate, real, potential, substantial risk of being deported
22 again.

23 And it's uncertain to us, and perhaps the government can
24 clarify this, whether their position is that they intend to
25 remove him again to El Salvador, which would be plainly

1 illegal, because in violation of withholding order in 2019.

2 And that's not my word illegal, that's the United States

3 Supreme Court's word illegal, okay? One.

4 Two, they have raised the spectre in a motion before this
5 court that they may instead remove him to a third country. And
6 it is our proposition, and we think it's well-established
7 Supreme Court law, we obviously would like to have that
8 protection in this particular case, to protect my client's
9 interest. But it's our proposition that Mr. Abrego Garcia
10 cannot be removed to a third country without notice and an
11 opportunity to be heard. And that opportunity to be heard
12 should be in front of a court.

13 **THE COURT:** Well, I don't even know yet, and I'll ask
14 the defense of this, because I have nothing in front of me that
15 there's any immigration proceedings pending, and that's the
16 rub, because the first time around, Mr. Abrego was removed
17 without a scrap of paper from Immigration supporting that
18 decision.

19 So if today, we're in the same position, which is lots
20 of -- lots of readouts to the world about what's going to
21 happen, some doubling back on each other and inconsistent with
22 one another, but no real paper. Like, no notice of removal to
23 a third country, or no notice of re-initiation of, you know,
24 termination of withholding of removal. I think that's the
25 title.

1 If I don't have a paper, then what am I to presume other
2 than the risk of reoffending is real? And under the voluntary
3 cessation doctrine? That's where I'm kind of living is, the
4 voluntary cessation doctrine, the -- the government hasn't met
5 the burden, the defendants haven't met the burden.

6 **MR. ROSSMAN:** I don't think that is quite -- quite
7 exactly right, Your Honor. I think the threat is real, they
8 have indicated it's real, and the risk the government returns
9 to its old ways, in the language of one of the Supreme Court
10 cases that we cite, Your Honor.

11 We do need protection from the government waking up
12 tomorrow, and upon Mr. Abrego Garcia's release from criminal
13 custody in Tennessee, immediately deporting him to somewhere
14 where they haven't even identified yet, pursuant to a process
15 that they haven't identified, if any process at all. And
16 that's fundamentally, we think, still a live, critical
17 controversy.

18 **THE COURT:** Can I ask you, and maybe this will be
19 your bailiwick, Mr. Rossman, or one of your co-counsels', but I
20 want to start the conversation, if a person, in the ordinary
21 course, is now facing removal to a third country, in a similar
22 procedural posture, right? So not at the time that withholding
23 of removal is granted, but rather five years later, what does
24 that look like in the ordinary course? I mean, is there a
25 notice that is usually given to the -- to the person facing

1 that?

2 **MR. ROSSMAN:** On the mechanics, I'm going to phone a
3 friend, Your Honor. But I would just observe, before I turn it
4 over, I would observe that the *AARP* case, the United States
5 Supreme Court case, did find that no person, no person could be
6 removed without notice and an opportunity to be heard.

7 **THE COURT:** Some notice, something.

8 **MR. ROSSMAN:** Some notice.

9 **THE COURT:** Right.

10 **MR. ROSSMAN:** So we think that's the constitutional
11 point.

12 But in terms of the immigration mechanics, I would ask
13 Mr. Sandoval --

14 **THE COURT:** Yeah, it doesn't have to be lengthy,
15 Mr. Moshenberg, but just so I understand what it looks like
16 when it's done in the ordinary course.

17 **MR. SANDOVAL-MOSHENBERG:** Certainly, Your Honor.

18 The government's current position is that as long as they
19 have received assurances from a country that an individual will
20 not be tortured in that country, they can put a person on a
21 plane to that country with no notice whatsoever. And that is
22 their position in light of the Supreme Court stay of the
23 nationwide class action in the *DVD* case. Obviously, we
24 disagree with that.

25 Mr. Abrego Garcia, the last time he was put on a plane,

1 they didn't know where that plane was going until it landed at
2 the airport in El Salvador. The sum and substance of what
3 we're trying to do today is to prevent that from happening a
4 second time.

5 **THE COURT:** So in the ordinary course, before *AARP*,
6 you, as an immigration attorney, if you had a client that had
7 been on release, as Mr. Abrego was, and then, you know, the
8 client walks into your office, or a family says the DHS is
9 trying to remove him to a third country, what -- how would that
10 case unfold?

11 **MR. SANDOVAL-MOSHENBERG:** Well, Your Honor, this
12 was -- as we explained in our amended complaint, this was
13 extraordinarily rare. It happened in only about 1.6 percent of
14 cases of people granted withholding of removal were ever
15 removed to a third country, and that includes dual nationals,
16 right? That includes cases in which they later determined that
17 someone's, you know, mother's mother was a citizen of Honduras,
18 and so, therefore, they were a national of Honduras.

19 So I had -- in my 18 years of practice, I had one such
20 case prior to January of this year.

21 There have been several cases before the District of
22 Maryland in which individuals were -- in this position were
23 arrested by ICE, out of the Baltimore field office, for
24 third-country removal. And other than the -- through the *DVD*
25 preliminary injunction out of Massachusetts, which did require

1 notice, it -- you know, in no such case did we receive any
2 particularized notice. And that's why this Court was being
3 flooded with TROs for a period of time.

4 **THE COURT:** Although, I will note that at least in
5 one case we had, there was a notice that was given. There was
6 actually a form that was used to say pursuant to this
7 authority, we're taking you into custody because we're removing
8 you to a third country.

9 **MR. SANDOVAL-MOSHENBERG:** Yes, Your Honor. That was
10 the notice -- I think I know which case you're referring to,
11 and that was the notice specifically under the *DVD* preliminary
12 injunction.

13 But I had several cases within the past few months in
14 which individuals were taken into custody -- individuals with
15 prior grants of withholding of removal were taken into custody
16 and given a notice of revocation of their order of supervision,
17 which didn't even happen here.

18 But leaving that aside, were given a notice of revocation
19 of the order of supervision which says DHS intends to remove
20 you to a third country, and didn't even designate which
21 country.

22 In the end, our contention is that they need to name a
23 specific country and then given a reasonable period of time for
24 him to seek protection as to that country.

25 **THE COURT:** And the only reason we're having this

1 conversation is because when we had our last recorded status,
2 the government -- defendants represented, through counsel, that
3 they were seeking removal to a third country but didn't know
4 when.

5 **MR. SANDOVAL-MOSHENBERG:** Your Honor, that was the
6 very first time in either of the two district court actions,
7 either before this Court, or before the Middle District of
8 Tennessee, in which any representative of the government
9 mentioned the possibility of third-country removal, that's
10 right.

11 **THE COURT:** Up until then, the only public readout is
12 Mr. Abrego would return to El Salvador once he's convicted in
13 the criminal case?

14 **MR. SANDOVAL-MOSHENBERG:** Yes, that's both -- you
15 know, there's statements to the press, but, of course, we leave
16 those aside. But their filings in the Middle District of
17 Tennessee were all about, you know, we're going to get this
18 conviction and we're going to re-deport him to El Salvador.

19 Thank you, Your Honor.

20 **THE COURT:** All right. Thank you for that.

21 Mr. Rossman?

22 **MR. ROSSMAN:** Yeah, all I would say before I pause at
23 this moment on this motion, Your Honor, is the government can
24 clarify all of this and make a further ruling unnecessary if
25 the government would in a binding way stipulate to the due

1 process rights that I think we all believe that Mr. Abrego
2 Garcia is entitled to.

3 So if the government is willing to say that upon his
4 release from detention, that he will be brought back here to
5 Maryland, if the government is willing to say that upon his
6 release, they will not seek to remove him again without notice
7 and an opportunity to be heard in a court, then we wouldn't
8 have a case or controversy. But that's not the position -- as
9 I understand it, that's not the position that they are willing
10 to take, or they can stand up and clarify.

11 **THE COURT:** And so I understand it, Mr. Rossman. I
12 think -- I mean, in my view, if the defendants were willing to
13 do that, it would be very limited to the facts of this case
14 because of the historic error that was done. In other words,
15 it doesn't bind the defendants anywhere else except here.

16 **MR. ROSSMAN:** It could be, that's right, Your Honor.
17 We could reach a stipulation that applies to one case.

18 **THE COURT:** And that is, under the voluntary
19 cessation doctrine, one way to moot for sure an issue, right?

20 **MR. ROSSMAN:** It could be, if they were willing to do
21 that in a binding way, Your Honor.

22 **THE COURT:** Okay. Anything else?

23 **MR. ROSSMAN:** Not for the moment.

24 **THE COURT:** All right. Ms. O'Hickey?

25 So this does raise the voluntary cessation doctrine, and

1 how one -- you know, what the plaintiffs' views are on it, and
2 how it can really be put to bed.

3 Do you have anything to add?

4 **MS. O'HICKEY:** So my colleague is going to address
5 further.

6 But first, regarding voluntary cessation, I would say,
7 Your Honor, that ordinarily, the voluntary cessation doctrine
8 concerns a particular policy that the government ceases
9 complying with or enforcing.

10 Here, there's no -- the government doesn't have a policy
11 that it stopped enforcing. It made an isolated error in this
12 case.

13 **THE COURT:** No, but the Fourth Circuit has said it's
14 not a policy, it's not confined to a policy; it says wrongful
15 behavior. When there is wrongful behavior, that now the
16 defendants have ended that challenged policy or practice --
17 okay? -- then the Court -- well, first, you bear a formidable
18 burden. It's a formidable burden of showing that it is
19 absolutely clear the alleged wrongful behavior could not
20 reasonably be expected to recur. And you have to satisfy that
21 burden.

22 So maybe I can ask it this way: How have you satisfied
23 the burden? Just by merely bringing Mr. Abrego back, or is
24 there something else you've done?

25 **MS. O'HICKEY:** Your Honor, yes, we have acknowledged

1 that this was an error, and we have now remediated that error
2 and have no intention of making that error a second time.

3 **THE COURT:** You know that your own clients have said
4 the opposite to the world, right? Repeatedly. "No error
5 here," "Not a problem," "Deserves to be right where he is."

6 So I understand that you, as an officer of the Court, is
7 acknowledging the error, and I think that's wise, but I don't
8 believe your clients have taken that position of acknowledging
9 the error.

10 **MS. O'HICKEY:** To the extent Your Honor is referring
11 to statements that the plaintiffs have made in their
12 papers from --

13 **THE COURT:** You mean the defendants have made to the
14 world? Like, in interviews and Senate hearings and things like
15 that?

16 **MS. O'HICKEY:** Well, have -- if -- if Your Honor is
17 talking about the Attorney General's statements that he will be
18 returned to El Salvador, I think those statements are recorded
19 out of context because, of course, if he were to be returned to
20 El Salvador, he -- we would have to reopen immigration
21 proceedings and the withholding of removal would have to be
22 terminated. Of course that hasn't happened yet. And the
23 government has every intention of providing Mr. Abrego Garcia
24 with all the process which he is due.

25 **THE COURT:** Okay. All right. But you're saying now

1 that because you have acknowledged the error and brought
2 Mr. Abrego back, that that's enough to sustain your formidable
3 burden, that you won't do it again?

4 I mean, again, if voluntary cessation means anything, it's
5 got to be more than just ending the historic bad conduct;
6 otherwise, why would there be any burden at all? You just have
7 to stop and then we take your word for it.

8 But the law says something different, it says you have to
9 give a showing, you have to show me. And you can satisfy the
10 burden -- and I'm reading from *Porter v. Clarke*, you can
11 satisfy the burden by entering, for an example, an
12 unconditional and irrevocable agreement that prohibits the
13 defendant from returning to the challenged conduct. Or in the
14 case of a governmental entity, where the entity has not
15 asserted its right to enforce the challenged policy at any
16 future time.

17 I'm not reading that restrictive to just a policy, and if
18 it were, you had the policy of removing Abrego without lawful
19 authority.

20 So either way, it's -- it's conduct that was historically
21 wrong, you've acknowledged it, but what other showing have you
22 made that you won't do it again in the future?

23 **MS. O'HICKEY:** Your Honor, it's our position that
24 this was an isolated mistake, and that we engaged in
25 substantial efforts to remediate the mistake, and that we have

1 no intention of --

2 **THE COURT:** For three months, your clients told the
3 world they weren't going to do anything to bring him back.
4 Doesn't that matter? I mean, the President said it in two
5 interviews. Defendant Noem said it. Arguably Defendant Bondi
6 said it.

7 Like, am I really supposed to ignore all that and say,
8 well, no, we were -- all along, we were in good faith trying to
9 bring Mr. Abrego back? I mean, isn't that relevant to the
10 voluntary cessation doctrine?

11 **MS. O'HICKEY:** I don't think so, Your Honor. He's --
12 he's now back. We've acknowledged the error and have corrected
13 the error.

14 **THE COURT:** So in a -- let's just take a
15 garden-variety Title VII case, someone is being discriminated
16 against in the workplace, and they stop discriminating, but
17 they tell the world they are going to keep on discriminating.
18 The voluntary cessation doctrine should just mean that the case
19 is dismissed? It's moot because they stopped for a day or so
20 their discriminatory ways, but they told the world they were
21 going to keep doing it? I mean, you see what I'm saying?
22 Like, how is that not relevant to this inquiry?

23 **MS. O'HICKEY:** Your Honor, I think this situation is
24 unique. We have acknowledged that this was an administrative
25 error. And the government doesn't have a policy of committing

1 administrative errors in this regard, and so --

2 **THE COURT:** Do you realize that you're co-counsel at
3 other hearings, and I'm not sure if it was you, Mr. Gynn, or
4 Mr. Ensign, that I have been told by lawyers representing the
5 defendants that there was no error.

6 I was told there was an error by Mr. Reuveni. We talked
7 about it at the first hearing. And then at subsequent
8 hearings, I was told no error. Now I'm being told we
9 acknowledge from the beginning there was an error.

10 Okay. That's not going to persuade me.

11 How about we talk about Mr. Rossman's suggestion? Is
12 there any appetite from the defendants to enter into any sort
13 of agreement about how things will proceed so that it truly is
14 mooted? It also would address the motion for emergency relief,
15 I believe.

16 **MS. O'HICKEY:** I'm sorry, what was that, Your Honor?

17 **THE COURT:** I said it might also address the
18 emergency motion for other relief, which we'll get to. But in
19 other words, if there is an appetite for a binding agreement,
20 then we may have some room to wrap things up, but you tell me.

21 **MS. O'HICKEY:** We're always open to meet and confer,
22 but they haven't requested that from us on this particular
23 issue, so we haven't had the opportunity to consider it.

24 **THE COURT:** Then you haven't offered it either,
25 knowing that -- I mean, you haven't offered it either, fair?

1 **MS. O'HICKEY:** We have not.

2 **THE COURT:** Okay. All right. Well, you tell me what
3 you want to do, then, because I don't find that at this moment
4 the case is moot. And I'll read my order in, but I -- I'm open
5 to the notion that if you come to a binding agreement, an
6 irrevocable agreement that really deals with the notice issues
7 and the due process issues, that doesn't mean I'm at all
8 sticking my nose in where it doesn't belong. In other words,
9 if you intend -- and we'll talk about this in a minute, you
10 intend to proceed on third-party -- third-country removal
11 grounds, or if you intend to proceed on terminating withholding
12 of removal at some point, that's not my jurisdiction. I just
13 need to assure that you're doing it lawfully, that you start
14 the process lawfully. That's it.

15 Understood?

16 **MS. O'HICKEY:** Your Honor, it's the defendants'
17 position that because the injunction in our position has been
18 fully complied with, that this Court, in fact, doesn't have
19 jurisdiction to consider whether any future proceeding proceeds
20 in any particular manner.

21 **THE COURT:** Okay. Well, then it sounds like I need
22 to address this motion, and then you can go from there.
23 Because unless you get a ruling on that, then it sounds like
24 your position still remains -- we don't get it out of the box
25 because the plaintiff has been given all relief he sought.

1 Am I right about that? Okay.

2 Okay. Then let me address ECF 200, which is the second
3 motion to dismiss. Again, I'm going to read my ruling into the
4 record.

5 Defendants separately argue that the case is moot because
6 they have accorded all relief by returning Mr. Abrego to the
7 United States, thus, they say, quote, there's no longer a live
8 controversy, and plaintiffs' claims are moot.

9 They quote, *Friedman's, Inc., v. Dunlap*, 290 F.3d 191,
10 197, Fourth Circuit, 2002. And I am reading from the Fourth
11 Circuit case *Ross v. Reed*, 719 F.2d 689, 693, Fourth Circuit,
12 1983. Quote, to be justiciable, under Article III of the
13 Constitution, a conflict between the litigants must present a
14 case or controversy both at the time the lawsuit is filed and
15 at the time it's decided. As Mr. Abrego rightly points out,
16 the controversy is not over simply because defendants have
17 returned him to the United States.

18 First, the plaintiffs are correct that the scope of
19 injunctive relief contemplates return to the status quo ante,
20 that is, arguably return to Maryland to the last place
21 Mr. Abrego had been before his unlawful arrest and unlawful
22 detention and when he was on supervised release with
23 Immigration lawfully pursuant to the INA and its implementing
24 regulations. That relief has not yet been accorded, so this
25 Court can't conclude that all aspects of injunctive relief have

1 been.

2 And to the extent that there is actually a live
3 controversy over whether the scope of the injunction
4 contemplates return to Maryland, well, then that makes the
5 point, that the case isn't over until I resolve that.

6 So in the alternative, when you ask me to dissolve the
7 injunction, I'm taking that part of the motion under
8 advisement. I'm not going to reach that, because I do need to
9 think more deeply about that.

10 Second, the risk of future violations is not -- is not off
11 the table. Mr. Abrego alleges in his -- in his complaint, and
12 what has now been conceded, was deportation in error. I would
13 call it unlawful. And he seeks declaratory and injunctive
14 relief which would bar unlawful deportation, essentially.

15 That's what you're asking me to find, is that he was
16 unlawfully deported without any authority, and that this is
17 precisely because currently Mr. Abrego has a lawful, valid
18 withholding-of-removal order to El Salvador. And simply
19 because the government has rewound that challenge practice
20 today alone does not deprive the federal court of its power to
21 determine the legality of the practice.

22 And I'm citing you to *Porter v. Clarke*, 852 F.3d 358, 363,
23 Fourth Circuit, 2017. Quote, if it did, the courts would be
24 compelled to leave the defendant free to return to its old
25 ways.

1 And that quote comes from *Friends of the Earth, Inc., v.*
2 *Laidlaw Environmental Services, TOC, Inc.*, 528 U.S., 167, 189,
3 2000. When a party claims that it voluntarily ended the
4 challenged policy or practice, the Court must consider whether
5 the cessation is a temporary alteration, quote, questionable
6 behavior to evade judicial review, or whether a permanent
7 change that obviates the need for judicial intervention.

8 And that comes from *Porter*.

9 In this context, the defendant bears, quote, a formidable
10 burden of showing that it is absolutely clear the allegedly
11 wrongful behavior could not reasonably be expected to recur.

12 Also from *Porter* at 366, quoting *Laidlaw*.

13 The defendant may satisfy the burden by entering, for an
14 example, an unconditional and irrevocable agreement that
15 prohibits it from returning to the challenged conduct, or in
16 the case of a governmental entity, where that entity has not
17 asserted its right to enforce a challenged policy at any future
18 time.

19 Here, in many ways, we have the opposite. We've got --
20 despite the defendants having returned Mr. Abrego to the United
21 States, we have certain representations that, upon conviction,
22 Mr. Abrego would return to El Salvador. That's the very
23 country in which he's categorically barred as of today.

24 There's also representations through counsel that, no, he
25 will be returned to a third -- he will be deported to a third

1 country, but we don't have a time and we don't have a place,
2 and we don't have any -- most fundamentally, I have no document
3 which suggests that either of those actions are imminent, are
4 lawful, and are clear.

5 And so what I'm left with is a record that despite these
6 representations that Mr. Abrego will be removed, no lawful
7 basis to do it. And what I mean by that is, in the ordinary
8 course, we've all seen them. There's a notice of removal to a
9 third country, or there is a -- there is a notice pursuant to
10 the INA and the regulations that apply that termination of
11 withholding is imminent or will proceed.

12 I don't have anything in front of me. So without any
13 indication that the same conduct will not repeat itself, I -- I
14 cannot find that the defense has met its formidable burden. So
15 the motion to dismiss for -- because -- and let me be clear,
16 because the record does not demonstrate that defendants have
17 irrevocably eradicated the effects of the violation such that
18 no case or controversy exists.

19 So the motion to dismiss for lack of subject matter
20 jurisdiction is denied, and I take under advisement the motion
21 to dissolve the injunction because while I do believe that the
22 injunction has been met in part, I have yet to really
23 conclusively determine the remainder of the injunction, and
24 what -- where we go from here in that regard.

25 Okay. So that's ECF 200.

1 **MR. GUYNN:** Your Honor, can I ask you a question?

2 **THE COURT:** Sure.

3 **MR. GUYNN:** Based on that ruling? And I'm not making
4 any representation that defendants are planning this, but I
5 want to understand your order.

6 Is it -- is it the Court's understanding that if the
7 defendants provided Mr. Abrego Garcia with a notice of removal
8 to a third country, then the Court would conclude that the case
9 is moot?

10 **THE COURT:** I don't know that. Because the next
11 motion we're going to get to is we're really going to get down
12 into the weeds as to what you're doing and when. Okay?

13 **MR. GUYNN:** Okay.

14 **THE COURT:** Because the whole basis of the
15 plaintiffs' motion is, you know, you're -- Mr. Abrego is caught
16 between two actions, one criminal, one immigration, that your
17 clients are taking.

18 And, again, it's chaos. And it's chaos that can be
19 completely avoided because I'm not going to buy for a second
20 that you can't tell this Court, or the plaintiffs, what the
21 plan is. You may not be able to tell me, you know, not in
22 every case, but in this case, Mr. Abrego is detained in
23 criminal custody, and what's going to happen next will inform
24 this motion, right? Could moot it.

25 **MR. GUYNN:** Understood. And we're prepared to

1 address what you just mentioned today.

2 I just want to make sure I understand --

3 **THE COURT:** So we would have to see what you do,
4 right?

5 **MR. GUYNN:** Sure, okay.

6 **THE COURT:** And we have to see in what form it comes,
7 and whether there is -- whether it meets the definition of
8 formidable -- whether you met your formidable burden. Is it
9 unconditional? Is it irrevocable? Whether that's what really
10 *Porter* contemplates. That's where you all need to talk and
11 figure out if there's room for --

12 **MR. GUYNN:** Again, it just sounds to me that what the
13 Court is concerned about, based on your discussion of voluntary
14 cessation, is that you're not sure that you know right now that
15 you have -- you know, the formidable burden has been met, that
16 the government doesn't plan to make the same mistake to remove
17 him to El Salvador again.

18 **THE COURT:** Although that's not the only mistake,
19 right? So it's without any sort of lawful authority or
20 process.

21 **MR. GUYNN:** And my question is, is if we provided a
22 notice of removal to a third country that, you know,
23 contemplates and describes what the process will be for that
24 removal, does that address the Court's concerns on voluntary
25 cessation?

1 **THE COURT:** I don't know yet. I don't know. So you
2 have to -- what I would suggest you do is you meet and confer
3 with the plaintiffs, that's what -- and we'll get into what you
4 have today and what you're prepared to do.

5 **MR. GYNN:** Sure.

6 **THE COURT:** But on that separate question, I think
7 it's fair to first require you to meet and confer with the
8 plaintiffs. Because, again, if the plaintiffs agree, you're
9 going to get a lot further than if they don't agree, because
10 then it's a live controversy, and I've got to deal with it,
11 right?

12 But I do think if you come to some agreement, it -- it may
13 very well. It's just hard for me to say.

14 **MR. GYNN:** Sure. And my question, I think the Court
15 appreciates it, I may already have my answer, but absent an
16 agreement, if we were to provide that notice, it sounds like
17 the Court is uncertain right now if that were to resolve the
18 voluntary cessation issue.

19 **THE COURT:** Why don't we do this, why don't we turn
20 to the next motion. Because again, I want to talk to you about
21 timing. I'm happy to do it out of order, Mr. Gynn, or hear
22 from the plaintiffs first. But I think this is going to come
23 up in the next motion. Again, my preliminary comments to both
24 sides is the order of operations, in my view, is everything,
25 right?

1 We've got Mr. Abrego Garcia detained until July 16. And
2 one of two things are going to happen, either Judge Crenshaw
3 will affirm, maybe modify but affirm Judge Holmes or reverse
4 Judge Holmes. If he reverses Judge Holmes and Mr. Abrego is
5 detained in criminal custody, that's where he is, and I can't
6 do anything to affect that order.

7 If he's released, he will be released under the conditions
8 that I understand Judge Holmes was prepared to -- she was
9 addressing in open court, he would be released to Maryland. He
10 would be supervised criminally by pretrial services in
11 Maryland. He would be under, I thought I read, electronic
12 monitoring.

13 He's not going anywhere. He's here. And he's under the
14 watchful eye of the Court. That's a different than, you
15 know -- at least as to the plaintiffs' first request that he be
16 returned to Maryland, that would be a -- that would result if
17 he were permitted to return on his own after the release order
18 hits.

19 So the real question is going to be for the defendants, if
20 Mr. Abrego is released on or about July 16, what are you going
21 to do? And under what authority? And I -- it's July 7, you
22 know that. Like, I just don't believe for a second that the
23 defense doesn't know what they are going to do on July 16 if
24 he's released. So that's my current -- that's my preliminary
25 thinking.

1 Plaintiff, it's your motion, so why don't you start, and
2 then we'll turn to the defense.

3 **MR. ROSSMAN:** Well, Your Honor, I'll cede all my time
4 if I can get a straight answer from the government to that
5 question.

6 **THE COURT:** Well, that's the plan. If I don't get a
7 straight answer, we might have a witness in the next couple of
8 days to give me a straight answer because we need to know. It
9 will take a lot of judicial resources that I can put to another
10 case if you can tell me.

11 **MR. GUYNN:** The plan? You want me to tell you the
12 plan for Mr. Abrego?

13 **THE COURT:** I do, yes, please.

14 **MR. GUYNN:** So I would just like to go back maybe a
15 week or two because I think a lot of that is informing the
16 Court's thinking on this issue, either immediately before or
17 after the emergency motion was filed.

18 So, look, there's been some executive personnel who have
19 reacted to some misleading reports that the United States
20 doesn't intend to criminally prosecute Abrego Garcia. It does.

21 **THE COURT:** Okay.

22 **MR. GUYNN:** But the U.S. Attorney's Office and DHS,
23 despite the representation of plaintiffs and certain folks in
24 the media, they are not working at cross purposes with one
25 other. They are both working towards the same purpose of

1 protecting the United States public from a manifestly dangerous
2 illegal alien.

3 **THE COURT:** Okay. So then you are working in concert
4 with one another. You are communicating. You are joined in
5 your forces. Am I right about that?

6 **MR. GUYNN:** Well, there are mutually exclusive means
7 to protect the public.

8 **THE COURT:** No, I understand that. I'm asking
9 whether you are working together. That's what you just said.

10 **MR. GUYNN:** Well, you know, we are -- we are the
11 Executive Branch.

12 **THE COURT:** Yeah.

13 **MR. GUYNN:** And so if -- if Mr. Abrego Garcia is --
14 if the public can be protected from him by him remaining in
15 U.S. Marshal custody, and then he's criminally prosecuted,
16 we'll pursue that.

17 But if he's going to be released to the public, we -- I
18 can go through the indictment, Your Honor, but like --

19 **THE COURT:** No, no, you don't need to go through the
20 indictment. You need to tell me what DHS and ICE will do --

21 **MR. GUYNN:** I'll do that.

22 **THE COURT:** -- on -- that's all I want to know. It's
23 a real simple question.

24 **MR. GUYNN:** Okay. This isn't someone that you would
25 want in your community. And neither will Americans.

1 **THE COURT:** Mr. Guynn, that's nonresponsive.

2 **MR. GUYNN:** And so my --

3 **THE COURT:** I'm asking you as an officer of the Court
4 to answer my question. As a matter of fact, I'm directing you
5 to. I do not need the stumping. What I need to know is on
6 July 16th, if he is released on conditions of release in his
7 criminal case, what will your clients do?

8 **MR. GUYNN:** We will detain him for removal.

9 **THE COURT:** Okay. On what authority?

10 **MR. GUYNN:** Okay. So currently he is subject to a
11 final order of removal.

12 **THE COURT:** Yeah.

13 **MR. GUYNN:** Does the Court dispute that?

14 **THE COURT:** Yes, I dispute that -- and the Fourth
15 Circuit said it, I have said it, the Supreme Court has
16 implicitly said it, he is also subject to a lawful withholding
17 of removal.

18 **MR. GUYNN:** To El Salvador.

19 **THE COURT:** Correct.

20 **MR. GUYNN:** But he can be removed elsewhere.

21 **THE COURT:** Yeah, we don't have to go back over this.
22 We know that. So what you're saying --

23 **MR. GUYNN:** All right. Well -- what I'm saying is
24 the Court has -- the government has two options here for
25 removing Abrego Garcia from the United States. First, it can

1 remove him to a third country.

2 Second -- and these are some of the comments that need to
3 be interpreted with greater nuance, as Ms. O'Hickey mentioned
4 earlier, and I'm going to try to provide that to the Court now,
5 the defendants could seek to revisit Abrego Garcia's order of
6 withholding of removal.

7 **THE COURT:** Okay.

8 **MR. GUYNN:** And to do so, they could present evidence
9 that conditions in El Salvador have changed, that the order of
10 withholding of removal is no longer justified.

11 **THE COURT:** Yep.

12 **MR. GUYNN:** Or they could present evidence
13 establishing a statutory bar to withholding of removal.

14 **THE COURT:** Understood. And you told me all the
15 things you could do. Now, what are you going to do?

16 **MR. GUYNN:** Well, defendants are going to consider
17 their options for removal based on the evidence available
18 against him when they take him into custody.

19 **THE COURT:** Okay. What evidence is going to change
20 between now and the 16th that you think will -- will help you
21 decide door number one versus door number two?

22 **MR. GUYNN:** I think it will determine on what --
23 well, it's not clear that he will be released on July 16th.

24 **THE COURT:** Okay. I know that. I know that.

25 Assuming he is, okay? You have laid out two options. I

1 don't disagree that these two options are available. I'm
2 asking you, which one will you choose?

3 **MR. GUYNN:** Assuming he is, DHS's current plan is to
4 attempt to remove him to a third country.

5 **THE COURT:** Okay.

6 **MR. GUYNN:** It is possible, however, that in
7 evaluating the evidence that is available from the U.S.
8 Attorney's Office that may have been developed in the interim,
9 that that might bear on that second option, it is possible that
10 DHS may actually say, you know what? We would like to revisit
11 his notice of withholding of removal; that will be done through
12 the immigration judge and the immigration proceedings.

13 **THE COURT:** Right. Okay. So what you're saying is
14 you haven't made a decision yet as to which one you'll do.

15 **MR. GUYNN:** At this point, Your Honor, and it's --
16 it's speculative. We don't know what the evidence is --

17 **THE COURT:** See, I don't buy that for a second.

18 **MR. GUYNN:** Well, I told you, Your Honor.

19 **THE COURT:** Let me tell you why, though, and then you
20 can respond.

21 You've had a multiple-day hearing in Tennessee. You've
22 had your witness testify to the investigation, the bona fides
23 of the investigation, the facts of the investigation. This is
24 not unobtainium for you. You know it. Okay?

25 So what exactly, without more, for you to say it would be

1 speculation ten, nine days before the --

2 **MR. GUYNN:** Well, Your Honor, I think I just told you
3 that the plan currently is to remove him to a third country.

4 **THE COURT:** Okay.

5 **MR. GUYNN:** But what I'm not -- I'm not -- I'm not
6 prepared at this point to say that we definitely will not look
7 at the option -- option number two, which is to revisit
8 withholding of removal.

9 **THE COURT:** All right.

10 **MR. GUYNN:** I'm not saying -- I'm just trying to -- I
11 don't want to say something to Your Honor that may -- that may
12 change if DHS looks at the evidence again and says, you know
13 what? We actually think that an IJ would look at this and
14 determine that a statutory bar applies.

15 **THE COURT:** Okay. So when is that decision going to
16 be made?

17 **MR. GUYNN:** It will be made when he is taken into ICE
18 custody.

19 **THE COURT:** How can you do that? Don't you have to
20 have a basis to hold someone?

21 **MR. GUYNN:** We already have a basis to remove him to
22 a third country.

23 **THE COURT:** So you're saying -- let me try to be
24 really crystal clear. You're saying that no matter what we
25 decide downstream, we know we're going to take him into custody

1 if he's released on July 16th or thereabouts because we're
2 deporting him to a third country?

3 **MR. GUYNN:** Yes.

4 **THE COURT:** Okay. What third country? Since you
5 know it today, and you know that's where you're headed, what
6 third country?

7 **MR. GUYNN:** I do not believe that that has been
8 determined yet.

9 **THE COURT:** So how do you know you're going to deport
10 him to a third country if you don't know the country he's going
11 to? Don't you have to get reassurances from that country?

12 **MR. GUYNN:** I think there's a number of countries
13 with whom we have treaties and agreements, Your Honor, who are
14 willing to accept aliens, such as Mr. Abrego Garcia, and DHS
15 would explore its options for removal closer to the time when
16 they would be taking him into custody.

17 **THE COURT:** So if I set in an evidentiary hearing for
18 closer to when you would be taking him into custody, maybe we
19 can get an answer from a person under oath with personal
20 knowledge, since I'm not getting very far this way? I mean,
21 nondescript third countries that apply generally, not
22 necessarily to Mr. Abrego Garcia, in this context when the --
23 at least the proposed amended complaint raises refoulement
24 questions or, you know, re-deportation back to El Salvador,
25 what am I to do other than to try to nail some of this down?

1 **MR. GUYNN:** Sure. So you had a colloquy earlier with
2 plaintiffs' counsel about the procedure --

3 **THE COURT:** Yeah.

4 **MR. GUYNN:** -- that the parties usually go through
5 when removal proceedings are reopened or their notice is
6 served.

7 Mr. Molina, is there some additional context that you
8 think would be helpful for the Court to explain how that
9 process unfolds, how third-party countries identify and the
10 like?

11 **MR. MOLINA:** Well, that's ordinarily what happens,
12 Your Honor, is an individual who is subject to a final order of
13 removal, that, you know, the immigration forces, ICE and CBP,
14 do have statutory authority to take those people into custody
15 under 8 U.S.C. 1231 and take steps to begin to process them for
16 removal to a potential third country.

17 **THE COURT:** Right.

18 **MR. MOLINA:** Now, that is more of a -- removal to a
19 third country is a little bit more fluid. There are no
20 standing, you know, agreements that I'm aware of. But I do
21 know that there are -- you know, ICE and CBP do have
22 communications with other countries and are able to ask them on
23 occasion to accept somebody.

24 **THE COURT:** But you do have a memorandum, though, in
25 place, correct? That was issued on, I think, the 30th of March

1 regarding the process that you --

2 **MR. MOLINA:** Yes.

3 **THE COURT:** -- undergo to find that third country?

4 **MR. MOLINA:** Yes, Your Honor.

5 **THE COURT:** Have you started that process in this
6 case?

7 **MR. MOLINA:** I'm unaware of that process having been
8 started in this case.

9 **THE COURT:** That we know.

10 **MR. MOLINA:** Yes. Just recall, Your Honor, that the
11 circumstances for third-country removal have been a little bit
12 fluid as of late. So I do not know that in this particular
13 circumstance those measures have been taken in the few weeks
14 that Mr. Abrego Garcia has been back in the country.

15 **THE COURT:** Okay. Well, you may not have done it,
16 but you acknowledge that there is a -- at least at a minimum,
17 when you're attempting -- DHS is attempting to identify a third
18 country, that you reach out to that third country for
19 assurances that the alien will not be persecuted or tortured;
20 am I right about that?

21 **MR. MOLINA:** Yes, Your Honor, that's -- that's my
22 understanding of the process.

23 **THE COURT:** And have you done that here? The answer
24 is no, right?

25 **MR. MOLINA:** I do not have information indicating

1 that we have that information. I know I do not have that
2 information, but I do not know whether, at this point, ICE has
3 pursued that.

4 **THE COURT:** But this is your client, right?

5 **MR. MOLINA:** Yeah.

6 **THE COURT:** I mean, this is this case, you're coming
7 to court in this case with an extraordinary motion that's been
8 filed about what's happening next from your client's
9 perspective, and you haven't -- are you telling me you haven't
10 asked this question?

11 **MR. MOLINA:** I have not asked this question, yet,
12 Your Honor.

13 **THE COURT:** And you haven't been given the
14 information?

15 **MR. MOLINA:** And I have not been given the
16 information, correct.

17 **THE COURT:** And that is acceptable to your client and
18 to the Court, you think?

19 **MR. MOLINA:** Well, I'm certain --

20 **THE COURT:** I mean, it's really like I'm just not
21 going to look.

22 **MR. MOLINA:** I'm certain it's not acceptable to the
23 Court.

24 **THE COURT:** No, it's not.

25 **MR. MOLINA:** And I did not envision this as a

1 particular question in this case, but -- because I know that,
2 you know, it's hard for the agency to begin to process somebody
3 when they don't have that person to begin the process.

4 **THE COURT:** Why not?

5 **MR. MOLINA:** Because you need to be able to get
6 certain information from the folks, you got to be able to
7 communicate information about that person to --

8 **THE COURT:** They have, like, ten lawyers. If you
9 need information, you call up the lawyer and you ask for the
10 information. You're saying that you can't make these
11 determinations until he's in your custody in this case?

12 **MR. MOLINA:** I -- I can only imagine that they have
13 not been made at this point, Your Honor.

14 **THE COURT:** I'm sorry?

15 **MR. MOLINA:** I can only imagine that they have not
16 been made. Again, I have not confirmed this with my client,
17 but I do know that, you know, circumstantially, knowing how
18 busy ICE and CBP are, ordinarily getting a lot of things done
19 in advance is a little bit tougher.

20 **THE COURT:** How about in this case, though, wouldn't
21 you wish to put all of this to bed by just having a lawful
22 order in place that is based on the memorandum we just read,
23 the INA, the directive, so that there's no doubt that you are
24 complying with the statute and the regs?

25 **MR. MOLINA:** It is the agency's obligation to make

1 sure that it does comply with the statute and the regs. And
2 I'm sure that they -- the agent -- because of the agents I
3 know, I know they are committed to doing exactly that, and I am
4 confident that they will.

5 **THE COURT:** Let me ask you another question. Which
6 field office would be responsible for this?

7 **MR. MOLINA:** It would depend on where the individual
8 would be, you know, generally held. Ordinarily, as you pointed
9 out, in this case, would usually expect the local office, the
10 Baltimore office where Mr. Abrego Garcia had his order of
11 supervision --

12 **THE COURT:** Right.

13 **MR. MOLINA:** -- where he was obliged to report, and
14 other such items, ordinarily they would be the ones to start in
15 on that process or begin in the process.

16 But other circumstances do occur. Sometimes there's not
17 room at a detention facility for somebody to be processed and
18 someone will be moved to another detention facility, then that
19 group will then -- that ERO will then begin that process.

20 **THE COURT:** So if I understand it, if, on day one,
21 DHS had determined it wished to deport Mr. Abrego Garcia to a
22 third country, that would go through the field office in
23 Baltimore, right?

24 **MR. MOLINA:** That would be the normal starting point,
25 Your Honor, because again they have the order of supervision.

1 **THE COURT:** Right. So it kind of makes the
2 plaintiffs' point, right? That that's the status quo ante.
3 Because then you can start the proceedings if Mr. Abrego Garcia
4 is in the jurisdiction of the Baltimore field office, right?

5 **MR. MOLINA:** Sure. But again, I guess the government
6 would have to figure out what the status quo ante is. Because
7 again, it was -- it was -- the arrest of Mr. Abrego Garcia was
8 lawful. It was his removal to El Salvador that it was
9 incorrect.

10 **THE COURT:** Well, the arrest -- there was no basis
11 for the arrest because there wasn't even a warrant for the
12 arrest.

13 It brings me to another question I have for you, is have
14 you produced the A file to the plaintiffs yet?

15 **MR. MOLINA:** That was produced, I believe, mostly in
16 discovery, that's my understanding.

17 **THE COURT:** Was it?

18 **MR. MOLINA:** As far as I know, the EARM may have --
19 we may have had difficulty in the EARM, but I think the A file
20 went through.

21 **THE COURT:** And if the A file went through, there
22 would be a warrant for arrest in it? That's where it would
23 live, right?

24 **MR. MOLINA:** There should be, yes, Your Honor.

25 **THE COURT:** Was there a warrant for arrest? There

1 never has been, as far as I've seen. I've asked for it from
2 day one.

3 So I'm not accepting that Mr. Abrego was lawfully arrested
4 if there is not a warrant for his arrest. That was -- I mean,
5 we've had that conversation --

6 **MR. MOLINA:** Yes, Your Honor.

7 **THE COURT:** Okay. So to get back to the question,
8 then, is -- your position is you can't know what third country
9 Mr. Abrego Garcia would -- you would start proceedings to
10 remove him until he's physically in ICE custody?

11 **MR. MOLINA:** That would be incorrect, Your Honor. I
12 would tell you, of course, I'm admitting I do not know. I do
13 know that the agency in dedicating its resources, if they have
14 time, they may try to get -- ascertain that third country ahead
15 of time.

16 **THE COURT:** And if I ordered testimony in this
17 regard, what would you do next? You would go back and -- say I
18 leave -- we leave today and I say, you know, I really want a
19 person with personal knowledge as to what DHS and ICE's
20 intentions are if Mr. Abrego Garcia is released from the
21 criminal case for supervision, and I would like you to produce
22 that person. You know, we'll pick a date in the end of the
23 week. What would you do next? Who would you identify?

24 **MR. MOLINA:** Well, I wouldn't identify the individual
25 myself, Your Honor. I would be in contact with DHS's Office of

1 the General Counsel and work with them to begin to identify a
2 person who would be able to communicate about that process.

3 **THE COURT:** Okay. So if I am accepting as true that
4 the first order of business is to hold Mr. Abrego so that you
5 can deport him to a third country, and if I wish for testimony
6 on that, you would work with the agency to find someone who can
7 give me that testimony?

8 **MR. MOLINA:** Yes, we would work with the agency to
9 find somebody on that, Your Honor.

10 **THE COURT:** Okay. And -- and I guess Mr. Guynn, you
11 had turned over the mic to Mr. Molina on the process. If I'm
12 getting it right, though, there is no additional information
13 that you have today for me as to what third -- whether you're
14 going to do this, and what third -- no, you have confirmed
15 you're going to do it, it's just a matter of what third country
16 would be considered?

17 **MR. GUYNN:** And, again, Your Honor, he is in U.S.
18 Marshal custody. What DHS will do, is if he is released from
19 U.S. Marshal custody, they would take him into custody, and
20 they would go along the lines that I described. They would
21 begin the removal process. And the current plan is to remove
22 him to a third country.

23 But there would also be -- there would still be -- I think
24 DHS would consider whether there was an option to revisit the
25 withholding of removal.

1 **THE COURT:** Okay. And last question before I turn to
2 the plaintiffs on their motion, is would you hold -- is your
3 plan to hold Mr. Abrego in custody, in immigration custody but
4 defer any action until the criminal case is over?

5 **MR. GUYNN:** No. My understanding is that we would be
6 getting the removal -- the removal process would proceed as it
7 normally would and should, consistent with due process.

8 **THE COURT:** But what I mean by that is, you would --
9 you would not wait for the criminal case, you would move -- I
10 mean, DHS is deporting people --

11 **MR. GUYNN:** That's correct, Your Honor.

12 **THE COURT:** -- very, very fast, right? 93,000 people
13 have been deported from this country since the beginning of the
14 administration. Are you going to take the same speed with
15 Mr. Abrego, or are you going to wait for the criminal case?

16 **MR. GUYNN:** If your question is -- because I want to
17 understand -- I want to make sure I understand the full
18 indication of your question. There's no intention to just put
19 him in limbo in ICE custody while we wait for the criminal
20 process to unfold.

21 If he -- if he is released from U.S. Marshal custody and
22 he's taken into custody by ICE, he will be removed, as would
23 any other illegal alien, through that process.

24 **THE COURT:** Okay. So you're not waiting, you're not
25 going to press pause --

1 **MR. GUYNN:** That's right.

2 **THE COURT:** -- until after the criminal case.

3 We don't have a date for the trial yet, do we? The
4 criminal trial?

5 **MR. GUYNN:** So last Wednesday, the government moved
6 for a trial date, but I don't believe that motion has been
7 ruled on yet.

8 **THE COURT:** This was very helpful. I appreciate it.
9 Let me turn to the plaintiff on the motion, and then I'll
10 obviously come back to you.

11 **MR. ROSSMAN:** Thank you, Your Honor. Mr. Rossman
12 again.

13 I think you understand why we're here.

14 So the obvious concern is that the moment that he is
15 released from Marshals' custody, he will be taken into ICE
16 custody, put on a plane, and sent to a third country. We don't
17 know which country, we don't know under what circumstances, we
18 don't know whether it would be lawful or not. Our position
19 would be it would not be lawful.

20 I have not heard from the government that they would
21 provide for notice and an opportunity for a court hearing
22 before actually removing Mr. Abrego Garcia to a third country,
23 and that's quite disturbing.

24 So, in fact, what we have is the very real risk that in
25 nine days, we could be faced with the same set of circumstances

1 that -- that got us here in the first place, an illegal
2 removal.

3 And I want to be very clear about that. It is our
4 position that he cannot simply be removed to a third country
5 without the opportunity of first notice of what that country
6 is, and why, and the basis of appropriate warrant for his
7 arrest and detention.

8 And second, an opportunity to be heard in front of a
9 neutral judicial officer on the propriety of the proposed
10 removal because there are real concerns. One is the
11 refoulement concern that Your Honor has identified.

12 **THE COURT:** Let me ask you this question.

13 **MR. ROSSMAN:** Of course.

14 **THE COURT:** Isn't that for the immigration process --
15 because I don't even know what the process is. I'm trying to
16 understand it. But isn't that for the -- for DHS and ICE and
17 its authority over immigration to decide?

18 **MR. ROSSMAN:** And ultimately an immigration court.
19 And beyond that, the Bureau of Immigration Appeals --

20 **THE COURT:** And then the Fourth Circuit.

21 **MR. ROSSMAN:** -- the circuit court, on up the APA
22 chain, as Your Honor well knows, right?

23 **THE COURT:** Right.

24 **MR. ROSSMAN:** But the particular thing, the
25 particular thing that we're asking the Court to do is to fill

1 in the cracks here created by the government's, and I'll say
2 it, bad intentions. Okay? The government's intention -- the
3 government's intention appears to be that the moment that he is
4 let out on bail, they will take Mr. Abrego Garcia into ICE
5 custody and immediately proceed to remove him. I don't want to
6 be caught in any semantic games here.

7 When we think of removal proceedings, we think of
8 proceedings with a court. The court can be an immigration
9 judge for sure. We think the appropriate place for that to all
10 unfold is here in Maryland. The status quo ante is where
11 Mr. Abrego Garcia resides. There is an ICE Maryland -- there
12 is an ICE Baltimore field office here, and that would be -- and
13 it could very well, and we think should, land on the desk of
14 the same immigration judge who heard his case in 2019, okay?

15 We think that is the appropriate way to proceed.

16 That is not how the government has indicated that they
17 intend to proceed.

18 So the way in which we are asking the Court, right? To
19 fill in that gap, is with due process, due process required by
20 the Constitution. And that is before -- before
21 Mr. Abrego Garcia is removed anywhere, he should be given
22 notice and an opportunity to be heard by a court. Okay?
23 That's the baseline of what we are asking for.

24 We are also asking that he be returned here to Maryland,
25 the starting point of this saga. And that is the fulfillment

1 of the preliminary injunction, it is within the Court's All
2 Writs Act authority to order him here. And here, we get the
3 benefit to Mr. Abrego Garcia of -- among other things, we have,
4 you know, a field office that is familiar with his case, and we
5 would expect the opportunity for him to present it.

6 **THE COURT:** So what do I do with the fact that if I
7 were inclined to do what you're asking me to do, there isn't an
8 ICE detention facility in Maryland? And if -- if I were to
9 find that there's no impediment to DHS taking him into custody,
10 assume that's proven out, how do I -- what do I do then?
11 Because I can't -- I mean, are you asking me to order his
12 release from there? Or are you asking me to house him -- to
13 direct that he be housed closer to -- what are you asking me?

14 **MR. ROSSMAN:** Two separate issues, Your Honor.

15 **THE COURT:** Okay.

16 **MR. ROSSMAN:** So there's a jurisdictional juridical
17 issue, if you will, of giving him the full measure of his
18 rights as if his rights were not deprived of him in the first
19 place. And that requires, in our view, brining him back to
20 Maryland, so that that can be square one. Okay?

21 And if ICE is not -- it's merely because ICE does not have
22 a detention facility here presumably has not prevented them --
23 we know it has not in this case prevented them from detaining
24 people and seeking to remove them via a process. Okay.

25 So we can appropriately start from square one here in

1 Maryland.

2 And I'm not asking the Court to make a determination of
3 what facility he should be held in during ICE detention. We
4 are asking the Court to make sure that he gets the process that
5 is afforded him under the Constitution and under the
6 immigration laws, which we contend and the government seems to
7 dispute, but we contend means notice, workable notice, okay?
8 Meaning more than minutes' notice, okay? And an opportunity to
9 be heard by an appropriate court of competent jurisdiction.

10 And that court can be an immigration court. It does not
11 necessarily have to be the federal district court. But I
12 believe that the -- what I would submit to the Court, that the
13 unique jurisdictional space that you occupy in this particular
14 dispute, is that you can assure a clean handoff. You can
15 assure that in between the space between Mr. Abrego Garcia
16 leaving the U.S. Marshals' custody and his being placed in ICE
17 detention, that he is assured a day in court. That's all that
18 we are asking for.

19 We think that's best delivered here in Maryland. But at a
20 minimum, we think that that is an appropriate extension of the
21 Court's existing injunction order, we think it's within the
22 contemplation of the United States Supreme Court order, and we
23 think it's well within Your Honor's All Writs Act authority to
24 extend that order to provide him with that constitutional due
25 process. That's the basis for the injunctive motion.

1 And it's within the government's power to alleviate the
2 need for the Court to rule on any of these things. The
3 government can provide binding assurances and, you know, that
4 would need to be in the form of some kind of stipulated order,
5 to be clear, so that we can, you know, trust but verify, as the
6 phrase goes.

7 But, you know, the government can do that, and the
8 government's unwillingness to do that should signal all the
9 Court, you know, needs to hear about what the government's
10 intentions are, which are to, once again, remove Mr. Abrego
11 Garcia in the dark of night or on no notice to a country that
12 they won't even say, out loud in this courtroom, is their
13 intention.

14 And, you know, that's more than a little bit surprising,
15 that nine days out, they haven't identified a country, haven't
16 begun a process.

17 **THE COURT:** What's your response to Mr. Molina saying
18 they can't begin the process until he's in custody?

19 **MR. ROSSMAN:** I didn't hear him quite say that.

20 **THE COURT:** Maybe I misheard it.

21 **MR. ROSSMAN:** Right. And I didn't hear --

22 **THE COURT:** Of identifying a third country.

23 **MR. ROSSMAN:** I do think that it would be appropriate
24 for the Court to extend the injunction until that process is
25 given, until the country is identified, right? Appropriate

1 notification of what their intentions are, and an opportunity
2 to be heard before a competent court.

3 And that does not necessarily -- you know, I don't want to
4 repeat myself, but it could be an immigration judge if not Your
5 Honor.

6 But where we are at -- where my client is at grave risk is
7 without that protection, without this Court's protection, then
8 he'll never get a day in court on third-country removal.

9 That's the open issue that we have right now.

10 And we think in terms of we cite all the cases in our
11 brief, as to Your Honor's authority at issue, that what I think
12 is a fairly modest extension of the existing order, if it even
13 is an extension at all as opposed to an enforcement of the
14 order, but from the *AARP* case to the *Suri v. Trump* case, which
15 was just affirmed in the Fourth Circuit, the *Ozturk* case from
16 the Second Circuit, we think Your Honor has all the authority
17 that Your Honor needs under the due process clause itself to
18 ensure that my client gets his day in court.

19 We're not asking Your Honor to adjudicate his immigration
20 status. We're not asking Your Honor to be his jailer, if you
21 will, to adjudicate his detention status. Okay? All we ask is
22 that before we have a repeat of Mr. Abrego Garcia being dragged
23 away to a foreign country, a foreign prison without ever having
24 an opportunity to present his case, we want to avoid that, I
25 think Your Honor can readily do that, and that's what we're

1 asking for in this motion. And that's why we set it up the way
2 we have, which is, you know, one, bring him back to Maryland;
3 and, two, ensure that he gets his due process rights.

4 I'll pause there, Your Honor.

5 And I'll say, you know, reflecting on Your Honor's
6 questions about an evidentiary hearing, I think it's
7 appropriate for the Court to get straight answers from the
8 government. If the government lawyers genuinely can't give you
9 that information as they sit here today, then the Court has all
10 the mechanisms in the world to require them to come forward
11 with that mechanism, including putting a witness in the chair
12 who could be examined, you know, by us, by the Court, in order
13 to provide that information.

14 And what we would ask, while the Court sorts that out, is
15 that my client get the blanket of this Court's protection to
16 ensure that his rights aren't taken away from him.

17 **THE COURT:** Well, we would do that this week.

18 **MR. ROSSMAN:** We can do that this week, Your Honor,
19 we're at your disposal.

20 **THE COURT:** That's where I'm moving, is that we would
21 have someone with personal knowledge. And I'll hear more from
22 Mr. Molina, perhaps, as to the official title or, you know, who
23 that person is. Is it the -- is it the field director? Is it
24 the field officer? Is it, you know, Officer Baker? Is it
25 someone else?

1 But I need to know who has personal knowledge who, under
2 oath, can explain what the next steps will be, what is known,
3 what is not known. And I can make, you know, sufficiency and
4 credibility determinations. That's where I'm headed, because
5 it's -- again, it's like trying to nail Jello to a wall, like,
6 to figure out what's going to happen next week.

7 And I can -- because all depending on what happens, it may
8 moot your motion. It just -- it just may take it off the
9 table.

10 And so I feel like I'm bound to make the record before I
11 decide what to do.

12 **MR. ROSSMAN:** I agree with that, Your Honor, very
13 much.

14 And we're here for it, whatever timing, whatever process
15 Your Honor wants, we will be available for it.

16 Thank you, Your Honor.

17 **THE COURT:** Okay. Thank you. All right.

18 **MR. GUINN:** Your Honor, just a couple of points in
19 response.

20 First, there's an indisputable -- undisputed testimony
21 that ICE doesn't have a facility in Maryland where it can hold
22 Mr. Abrego Garcia. And yet, I nevertheless hear plaintiffs'
23 counsel saying, well, order them to hold him there anyway, even
24 though it might be totally inappropriate.

25 **THE COURT:** No, I don't think he said that. But let

1 me ask you this:

2 What's so wrong with ICE complying or permitting the very
3 stringent release conditions that Magistrate Judge Holmes set
4 to take effect? I mean, it's really your position that after a
5 several-day hearing in front of a neutral arbiter in Tennessee,
6 if it's affirmed, and I understand -- listen, I hear from the
7 Department of Justice there's going to be more evidence. And
8 Judge Crenshaw may disagree. But if Judge Crenshaw agrees, now
9 you got two judges, what is so improper? Or why aren't you
10 exercising your discretion, I suppose, to just let the release
11 order take effect?

12 **MR. GUYNN:** Well, I appreciate that you recognize
13 that it's the defendants' discretion on --

14 **THE COURT:** It is.

15 **MR. GUYNN:** And it's unreviewable.

16 **THE COURT:** What's that?

17 **MR. GUYNN:** And it's unreviewable, where he's held,
18 pending the removal proceedings.

19 **THE COURT:** I don't know if that's accurate because
20 there's more than one court which has ordered detention in
21 another facility, return to the jurisdiction, that's been
22 affirmed. It's been affirmed by this Fourth Circuit, it's been
23 affirmed by the Second Circuit. So I don't know if what you're
24 saying is actually true, that it's unreviewable.

25 I was just asking more of a question. Why aren't you, in

1 your discretion, if you will, just agreeing to let Mr. Abrego
2 Garcia be under the restrictive conditions set by the -- by
3 the --

4 **MR. GUYNN:** I'll just -- I'll say, Your Honor, I
5 don't know what all the bases are going to be for the Middle
6 District of Tennessee judge's decision. I don't know if the
7 judge is going to decide if Mr. Abrego Garcia should be
8 detained or not.

9 **THE COURT:** If the release order is affirmed -- okay.
10 I'll give it to you.

11 **MR. GUYNN:** I can't say at this point why I would or
12 would not disagree with that.

13 What I can say is that defendants' view is that this is --
14 plaintiff is a danger to the public.

15 **THE COURT:** Okay. You can't tell me right now, based
16 on the order that was about to be entered, until the
17 defendant -- and wisely, I think -- just pressed pause on it?

18 Hold on.

19 Again, the magistrate judge went through a several-day
20 evidentiary hearing. She issued a 51-page opinion. She went
21 through not only whether the government is entitled to a
22 detention hearing, but even if they were, that they hadn't met
23 their burden of showing that Mr. Abrego is a danger to the
24 community or a flight risk, given the very stringent release
25 conditions that would be put in place to reasonably assure

1 appearance, right? And to mitigate danger. And you've
2 presumably read all that, right?

3 **MR. GUYNN:** Yes, Your Honor. My -- the point I'm
4 trying to make is, I don't know what the bases are going to be
5 for the Court's decision after the hearing on June -- on
6 July 16th, pardon me. So I don't want to prejudge and say why
7 the judge is wrong. I don't know what that is at this point
8 exactly.

9 **THE COURT:** For my hypothetical, assume that the
10 government had not appealed it, and Magistrate Judge Holmes'
11 order is to take effect. Again, why, in the government's
12 discretion, would you not cede to such a restrictive release
13 order? This isn't to go free and -- you know, freewheeling,
14 fancy, footloose. No. My memory is that he would be on
15 electronic monitoring in his home, right? In this district.

16 **MR. GUYNN:** And the defendants' position is that
17 because he's a danger to the public, they would seek to remove
18 him.

19 **THE COURT:** Okay. And so your answer is simply
20 that -- discretion, you disagree --

21 **MR. GUYNN:** They believe that he is a dangerous
22 person.

23 **THE COURT:** So you disagree with the magistrate
24 judge, and that's it.

25 **MR. GUYNN:** We respectfully disagree with the

1 magistrate judge, yes.

2 **THE COURT:** All right. Okay. So back to then why
3 would we not then take some evidence as to what's going to
4 happen next? Because it sounds like no matter what, if
5 Mr. Abrego is released, no matter how stringent the conditions
6 are, your clients will move to detain him. And isn't it fair
7 and proper for me to at least get the information? I'm not
8 doing anything. I just need the information.

9 **MR. GUYNN:** I don't think so, because this court does
10 not have jurisdiction to oversee or preside over the
11 immigration judge's process.

12 **THE COURT:** I have jurisdiction to maintain my
13 jurisdiction, and I do have jurisdiction to the extent the
14 Fourth Circuit has said so in *Suri*. It may be narrow, but I
15 still have it.

16 **MR. GUYNN:** But what plaintiffs are asking you to do
17 is really twofold. One is to preside over, either directly or
18 indirectly, what the immigration judge does. That's not
19 proper.

20 **THE COURT:** They are not asking for that. They are
21 asking just give him some process.

22 Mr. Rossman, if he said it once, he said it five times,
23 if -- if it's before an immigration judge, we'll accept that.

24 **MR. GUYNN:** Right. So I have already told you that
25 the plan is to initiate removal proceedings in the immigration

1 process.

2 **THE COURT:** And you told me no detail after that. In
3 other words, where it will be, when it will be, what the next
4 step will be, where will he get his notice and due process.

5 **MR. GUYNN:** So then if the question is where, then we
6 get back to 1252(g). And our position is that the Court
7 doesn't have -- that where Mr. Abrego Garcia is detained,
8 pending the immigration proceedings, is an issue that is within
9 the discretion of the Secretary of the Department of Homeland
10 Security.

11 **THE COURT:** Put to the side whether I can order
12 anything.

13 **MR. GUYNN:** Sure.

14 **THE COURT:** Okay? I'm entitled to the information,
15 no? I mean --

16 **MR. GUYNN:** I would love to provide it to you, but --

17 **THE COURT:** -- all I'm asking for is information.

18 **MR. GUYNN:** -- if it's in service of an order that
19 you can't enter, I'm not sure you are entitled to it.

20 **THE COURT:** Well, if it's in service of resolving an
21 open motion, I am entitled to it.

22 **MR. GUYNN:** If you have jurisdiction to resolve that
23 motion.

24 **THE COURT:** I do. I found I have jurisdiction over
25 this case. That ship has sailed. So now the pending motion is

1 the plaintiffs' motion for emergency relief.

2 **MR. GUYNN:** Which they bring pursuant to the All
3 Writs Act, which does not give you jurisdiction here. So under
4 *United States v. Ferguson*, for example, where a statute
5 specifically addresses a particular issue at hand, it is that
6 authority and not the All Writs Act that is controlling.

7 **THE COURT:** Which statute are you saying controls?

8 **MR. GUYNN:** INA Section 1252(g).

9 **THE COURT:** The one that I just said does not deprive
10 me of jurisdiction over this case?

11 **MR. GUYNN:** Well, except that what they are asking
12 you to do here is order him detained in a specific place. The
13 portion of the statute that governs that is 1252(g), or 1252,
14 and you do not have jurisdiction to make a ruling as to where
15 he is detained.

16 **THE COURT:** So the courts that have blessed -- Fourth
17 Circuit, Second Circuit that have blessed in certain context
18 ordering ICE to make the defendant available in a particular
19 forum, to retain jurisdiction, what would you say to those?
20 What would you say to *Suri*? How would you distinguish *Suri*,
21 for example?

22 **MR. GUYNN:** I would say, for example, most of the
23 Fourth Circuit cases that they reference are unpublished, and
24 they also involved habeas proceedings that when they were
25 commenced, the -- the detainee was in the district when they

1 were commenced. That's not the case here.

2 **THE COURT:** No, the detainee was in a third country
3 that you disavowed any control over. I mean, this is a --
4 we're going to get to the merits of this question of the
5 unknown custodian, but that's not what's driving the bus here.
6 I'm -- I'm asking a different question. I'm asking, under *Suri*
7 and *Ozturk*, why it isn't within the bounds of my jurisdiction
8 to order this interim step to assure Mr. Abrego is not spirited
9 away again.

10 And like Mr. Rossman said, it doesn't -- I haven't decided
11 what that would look like, so it may not be commanding he come
12 back to Maryland. It may not be any particular -- in other
13 words, the devil is in the details.

14 **MR. GUYNN:** Again, Your Honor, looking at *Suri* and
15 *Ozturk*, as we said on Page 8 of our opposition, those were
16 habeas petitioners who were located in the district of
17 confinement when the habeas petitions were filed.

18 **THE COURT:** Where was Mr. Abrego when the habeas
19 petition was filed? It wasn't just a habeas petition, I've
20 already reached that. This was not the core of this case in
21 the beginning, it was not only habeas, right? But where was he
22 exactly?

23 I'll answer it for you: He was in CECOT. He was in
24 El Salvador. He was in --

25 **MR. GUYNN:** I was going to confer with my clients

1 whether he was in Texas, Louisiana, or in El Salvador.

2 **THE COURT:** He was nowhere.

3 And the amended complaint makes clear in the light most
4 favorable to the plaintiffs that that was by design. He was
5 kept on a bus for a day. He was shuttled back and forth. That
6 sounds a whole lot like *Suri* and --

7 **MR. GUYNN:** I think, Your Honor, though, has put her
8 finger on exactly why *Ozturk* and *Suri* are distinguishable,
9 though, because in those cases, the habeas petitioner was in
10 the district of confinement when their petitions were filed.

11 **THE COURT:** Not *Ozturk* -- not *Suri*. *Suri* was on a
12 plane. *Suri* was in between. That's my memory of Judge Giles'
13 findings of fact. It was an unknown custodian at the time.
14 Because on day one, she had been moved to four different
15 detention facilities. On day two, she was on the way to
16 Louisiana, but she was in the air, or whatever day that the
17 petition was filed.

18 So she made a very specific finding on -- after an
19 evidentiary hearing, I thought, on that.

20 So how is it different here?

21 **MR. GUYNN:** Your Honor, I'm happy to reread *Ozturk*
22 and *Suri* the way, you know, we read those cases, Your Honor.
23 The habeas petitioner was in the district of confinement, and
24 that's how it's distinguishable from this case.

25 **THE COURT:** Then why did she have to reach the

1 unknown -- why did Judge Giles have to reach the unknown
2 custodian rule if the habeas was filed in the district? She
3 wouldn't have had to go there unless, as a matter of fact, the
4 custodian was unknown. And then that's what the Fourth Circuit
5 affirmed, right?

6 **MR. GUYNN:** Your Honor, I think that we would -- Your
7 Honor, I think we're just going to stand on our papers on this
8 point.

9 **THE COURT:** Okay. Okay. All right. Anything
10 further from the parties? I'm going to take a break.

11 **MR. GUYNN:** Which, Your Honor, includes *Benson v.*
12 *McMahon*, which includes *Kiyemba v. Obama*, which includes
13 *Joshua M. v. Barr*. I mean, these are all cases that support
14 the government's position today.

15 **THE COURT:** Which is what? How do they support you?

16 **MR. GUYNN:** Which is -- which is that a habeas claim
17 must be filed in the district of confinement. And here,
18 Mr. Abrego Garcia was not in this district.

19 **THE COURT:** Okay. Well, okay. But, again, begs the
20 question, where was he on the day that it was filed? By your
21 own hand, he was in maximum detention facility in El Salvador.
22 And it just is remarkable to me that that point isn't conceded.

23 And how exactly am I supposed to enforce the immediate
24 custodian rule in this case when it's so clear that from the
25 moment he was picked up, it was -- it was, according to the

1 amended complaint, which we'll talk about in a moment, it
2 was -- it was a matter of trying to find out where he was and
3 trying to overcome this lulling him into believing he was going
4 to see a judge.

5 How does this not at least arguably fall into the
6 exception to the immediate custodian rule on one of the claims,
7 given the factual predicate of *Suri*?

8 **MR. GUYNN:** Your Honor, I would just encourage you --
9 you know, in *Trump v. JGG*, the Court made very clear that
10 claims fall within the core of the writ of habeas -- that
11 claims that fall within the core of the writ of habeas corpus,
12 jurisdiction lies in only one district, the district of
13 confinement. That was not the District of Maryland at any
14 point during this case.

15 **THE COURT:** Do you not find it persuasive that the
16 Supreme Court said that in *JGG* but yet affirmed my order
17 without any concern, at least in terms of the order saying that
18 to facilitate his return, bring him back to the United States,
19 and put him back to where he would have been but for the
20 unlawful --

21 **MR. GUYNN:** I don't find that persuasive. The
22 Supreme Court doesn't make jurisdictional decisions ab
23 silencio, and it did not specifically address this issue.

24 **THE COURT:** So you say that the Court steps out there
25 and exerts jurisdiction when it doesn't have it? And it

1 knows -- since the argument is obvious to you, and obvious to
2 the Court --

3 **MR. GUYNN:** I'm not saying that, Your Honor. I'm
4 saying there were multiple claims that were -- that plaintiffs
5 brought. What we're saying is that this motion sounds more in
6 habeas, which is one of the claims.

7 **THE COURT:** Oh, the motion does.

8 **MR. GUYNN:** That's right. Which the Court did not
9 necessarily have to address in *JGG v. Trump* or in the prior
10 orders here.

11 But this motion sounds in habeas, and as a result, this
12 procedural rule of habeas applies. That's our position.

13 **THE COURT:** Okay. Understood.

14 Anything else before I make sure the plaintiff has the
15 last word, before we take a break, on this motion?

16 **MR. GUYNN:** Nothing further, Your Honor.

17 **MR. ROSSMAN:** Your Honor, briefly, *Suri* was
18 physically present in Louisiana when his habeas petition was
19 filed. I'm reading from the circuit's decision in --

20 **THE COURT:** Yeah, the district decision, I thought,
21 actually mentioned that he had been on a plane when it was
22 filed, which I just found to be noteworthy. But maybe -- maybe
23 I'm wrong.

24 **MR. ROSSMAN:** That's right.

25 And the circuit's opinion also quotes from concurrence

1 from Justice Kennedy in 2004, the -- I think it's
2 *Rumsfeld v. Padilla*, in that case.

3 **THE COURT:** Yeah.

4 **MR. ROSSMAN:** And the unknown custodian rule plainly
5 is designed to address situations like this one where the
6 government is playing a shell game and moving the physical body
7 of a person that they are seeking to remove around to try to
8 defeat their opportunity to be heard I think is not one that,
9 you know, should result in there being no place where the
10 person can seek appropriate relief, and the Fourth Circuit has
11 so held in this case.

12 **THE COURT:** But now I think Mr. Gynn is making the
13 point, that over this motion, this motion sounds in habeas,
14 and, therefore, we're back to the immediate custodian rule, and
15 I shouldn't be wading into this because it's all about
16 according relief and habeas.

17 **MR. ROSSMAN:** Your Honor, we don't think we need
18 habeas for this motion to be adjudicated. We think All Writs
19 Act authority is all that Your Honor needs. And that's what
20 the courts found in *Suri*, and in *Ozturk*, and in *AARP* as well,
21 the existence of the All Writs Act is all that Your Honor
22 needs.

23 If the question of habeas were to rise in this case, we
24 think, Your Honor, the right answer to that question is, there
25 was a habeas claim in the alternative raised in the original

1 complaint, it was a habeas claim in the amended complaint,
2 you'll have a chance to address that.

3 The relation back doctrine under Rule 15 should bring us
4 back to the jurisdiction that the Court had on the day the
5 action was commenced. On the day the action was commenced,
6 where else could such a claim be filed? Should we have filed
7 it in El Salvador? This is the obvious place where the --

8 **THE COURT:** Well, I think it turns on you did bring a
9 habeas claim, but the core wasn't habeas.

10 **MR. ROSSMAN:** Correct, correct, Your Honor.

11 **THE COURT:** I mean, it's a claim. But the initial
12 wrongful action took place in Maryland, and you brought several
13 counts, some of which were sounding in habeas and others
14 weren't.

15 **MR. ROSSMAN:** Correct.

16 And the primary, you say the -- I forgot Your Honor's
17 precise phrasing, but the primary claims were not sounding in
18 habeas, absolutely, Your Honor, and we don't think we needed a
19 habeas claim in order to vindicate the clients' rights, the
20 plaintiffs' rights under due process and under the immigration
21 statutes. And those were the primary causes of actions.

22 So I said in the original complaint, there's an
23 alternative claim for habeas.

24 All I'm trying to convey to Your Honor is that even if
25 Your Honor reached that basis, even if Your Honor were to

1 consider this as a habeas motion, we think we have a valid
2 basis for hearing it here, although we don't think you need to
3 reach that.

4 **THE COURT:** Your first position is, under the All
5 Writs Act, to preserve my jurisdiction.

6 **MR. ROSSMAN:** Correct.

7 **THE COURT:** I can order this relief simply to have
8 jurisdiction over the case, because if I don't, and he's
9 removed summarily, then I would lose jurisdiction; is that the
10 argument?

11 **MR. ROSSMAN:** That is the argument, Your Honor.

12 One second, Your Honor.

13 And to prevent frustration of the existing injunction. So
14 it's the equivalent of, you know, repetition evading review,
15 Your Honor.

16 **THE COURT:** Mr. Guynn, do you want to respond to that
17 before we take a break, or are you good?

18 **MR. GUINN:** I think we're good, Your Honor.

19 **THE COURT:** All right. Let's take 15, and then we
20 will address -- I'm not going to be able to rule, obviously, on
21 this motion today, but we will address the motion for leave to
22 amend.

23 **DEPUTY CLERK:** All rise. This Honorable Court stands
24 in recess for 15 minutes.

25 (Recess taken from 1:19 p.m. to 1:44 p.m.)

1 **DEPUTY CLERK:** All rise. This Honorable Court
2 resumes in session.

3 **THE COURT:** All right, counsel, thank you for your
4 patience.

5 All right. So what I would like to do is, on Thursday,
6 take some testimony from an individual, or individuals,
7 witnesses with personal knowledge about the defendants' next
8 steps, if Mr. Abrego is released from the -- from custody in
9 the criminal case in terms of what the lawyers have told me
10 will be to initiate removal proceedings to a third country.

11 And the purpose -- I'll try to get you all a written order
12 as quickly as possible laying out the contours of this
13 testimony, but it's consistent with what we've talked about.
14 And for lack of a better way to put it, the who, what, when and
15 where of the process, what the process is and how it will be
16 conducted.

17 **MR. MOLINA:** That makes sense, Your Honor.
18 There's -- the only reason you're seeing a question on my face
19 is that I want to make sure that, you know, the Court
20 understands the government may not have decided by that time
21 what -- what action it will take. But we will have somebody
22 here that can describe that process to you. I mean --

23 **THE COURT:** Well, I guess it would have to be
24 someone, too, who is laying out -- so I heard Mr. Guynn say is
25 that first order of business will be removal to a third

1 country. And then what has not been decided is whether there
2 would be termination of withholding to El Salvador.

3 **MR. MOLINA:** That's correct.

4 **THE COURT:** Do you agree with that?

5 **MR. MOLINA:** That's the way I heard him, and that's
6 my understanding as well.

7 **THE COURT:** So what is the part you are concerned by
8 Thursday you would not have decided?

9 **MR. MOLINA:** I don't know -- the agency right now --
10 I guess you've kind of explained it away for me, Your Honor.
11 The agency, it presently has its current plans as to what it
12 will do. You know, some of those may still be indefinite, you
13 know, for example, like a third country may not have yet been
14 identified, but they may be working on it.

15 **THE COURT:** And you can have the person tell me how
16 they are working on it, right?

17 **MR. MOLINA:** Yes, that's -- yes.

18 **THE COURT:** Here's the bottom line with what I want
19 to accomplish, is if, in fact, the testimony is substantive and
20 persuasive that you are engaging in the very process you're
21 permitted to engage in, and then there is no due process
22 infirmity, then it moots ECF 203. Right? Because plaintiff is
23 seeking to return Mr. Abrego to the district of Maryland and to
24 ask me to issue an order that prohibits his removal to outside
25 the United States absent further order of the Court. I can't

1 really decide that unless I know what, if anything, you're
2 planning to do and the details of it.

3 That doesn't mean I'm going to interfere with it, right?
4 That's what I'm trying to avoid. I'm trying to avoid getting
5 out there and issuing an order that may be at cross purposes
6 with what DHS is lawfully permitted to do.

7 But given the history of this case, of an unlawful action,
8 a series of unlawful actions, I do believe it's well within my
9 authority to at least get the information, and then determine
10 whether there's any there-there to this motion or not.

11 So that's the spirit.

12 Does that make -- that's why I want someone, Mr. Molina,
13 or more than one, with firsthand knowledge who will, for lack
14 of a better term, bind the defendants, bind the agencies, who
15 can answer these questions about the immediate next steps, if
16 Mr. Abrego is released from criminal custody.

17 And we'll -- we'll flesh it out more. It will be subject
18 to examination by you in the first instance, whoever from the
19 team wishes to direct examine, cross-examination by the
20 plaintiffs, and then if I have any questions. And it can be
21 more than one witness. I will let you decide.

22 And I don't believe we need any -- I'm going to do it on
23 Thursday, so it's a quick turnaround. So we'll see of -- the
24 morning of, please give me and the plaintiffs notice as to who
25 it is, and then we'll set in the hearing for -- let's see. Can

1 we say 1:00?

2 **MR. MOLINA:** Yes, Your Honor.

3 **THE COURT:** Okay. All right. So 1:00 p.m. And then
4 we'll go from there, once I just get the facts. Okay?

5 Any questions about that, plaintiffs?

6 **MR. ROSSMAN:** No, Your Honor.

7 **THE COURT:** Okay. All right. So we'll see you
8 Thursday at 1:00. And by 9:00 a.m. that morning, if you could
9 tell me who the witness or witnesses will be, and the
10 plaintiffs, that will be helpful.

11 **MR. MOLINA:** Yes, Your Honor.

12 **THE COURT:** All right. Thank you.

13 Last up for today is 211, which is plaintiffs' motion for
14 leave to amend the complaint. And I actually want to start
15 with defendants, because in my view, there's two procedural
16 avenues that this can go down. And I need to get your input as
17 to which you prefer.

18 So you know that leave to amend is freely granted. It's
19 only denied if it's bad faith, futility, and one other I can't
20 remember because it really doesn't apply. It seems like the
21 one that would really apply here would be futility; am I right
22 about that? That if you were to oppose the motion for leave to
23 amend, you would be doing it on futility grounds?

24 **MR. MOLINA:** I would imagine so, yes, Your Honor.

25 **THE COURT:** Because you asked to be heard on this, so

1 that's why I wanted to know on what basis you would oppose
2 amendment, and it seems to be futility.

3 **MR. GUYNN:** Your Honor, so futility, I think, would
4 be the primary argument we would advance, but we do have
5 concerns about some of the amended allegations, and we're not
6 sure whether -- we believe they are false and they might not
7 have been brought in good faith, and we need to explore that
8 with plaintiffs' counsel.

9 **THE COURT:** Okay. Well, here's the options, here's
10 the procedural doors you've got.

11 You got door number one, which is I can give you an
12 opportunity to respond to the motion for leave.

13 Apart from any other arguments you might make, you would
14 be expected to make all of your futility arguments in your
15 response.

16 And because futility is assessed under the same grounds as
17 12(b)(6), it's the same standard, right, a motion to dismiss
18 for failure to state a claim or for any other 12(b) reasons,
19 right? Then your response would satisfy that purpose. And I
20 would be assessing the sufficiency of the complaint.

21 If I deny -- if I grant the motion in whole or in part,
22 that's it. I'll file the amended complaint, and then you're
23 going to have to answer it. Okay? Because you've made all
24 your futility arguments, which are the same arguments that you
25 would make on a 12(b)(6) basis.

1 Alternatively, I could accept amendment, because I think
2 the great weight of the law says I must accept the amendment.
3 I have to give leave when -- you know, I have to freely grant
4 leave.

5 And then I would permit you the opportunity to move to
6 dismiss one more time, right? Just one more, to take up -- to
7 take your best shot at all of the claims, response, reply. And
8 once I decide that if any of the claims survive, then you will
9 answer the complaint.

10 So you're asking for an opportunity to respond. I just
11 want to be clear, if you respond, you're going to make all of
12 your arguments now so that I can fully and fairly resolve them.
13 And if any of the claims survive, the next step is answering so
14 that we don't have any delay in the case.

15 And I think I'm procedurally, you know, giving you the
16 floor to tell me which one you would like.

17 **MR. GUYNN:** Under the federal rules, Your Honor, I
18 think we're actually entitled to both, to raise futility
19 arguments in the motion for leave to amend. And if those are
20 overruled, we nevertheless have the option to then file a
21 motion to dismiss.

22 **THE COURT:** I disagree with you. I don't think
23 that's -- you're entitled to that. I think that's in my
24 authority to control the litigation. I'm giving you about as
25 crystal clear notice on this one as possible.

1 I mean, again, absent any changed circumstances, the
2 amended complaint is what it is. You make your -- that you
3 take your best shot on futility, all the 12(b) grounds, and if
4 I deny the motion, then you've got your answer, your arguments
5 were persuasive.

6 If I grant the motion in hole or in part, you've made your
7 arguments and we don't need to hear them again because you keep
8 making many arguments over and over again. I just want to
9 consolidate them all in one place and let's duke it out and let
10 me make a final decision.

11 **MR. GUYNN:** Thank you, Your Honor.

12 And I hope you appreciate that we are making many
13 arguments for two reasons. We think there's many infirmities
14 with their complaint. And also, we need to preserve --

15 **THE COURT:** I understand.

16 **MR. GUYNN:** So I appreciate the Court's position. I
17 hope the Court appreciates ours.

18 We will oppose the motion.

19 **THE COURT:** For leave?

20 **MR. GUYNN:** Yeah, our intention is to oppose the
21 motion for leave to amend. We will raise our futility
22 arguments.

23 **THE COURT:** All right. Plaintiffs, my inclination is
24 to give the defendants the opportunity to do that, you reply.
25 And then I fully intend at this juncture, whatever I decide, we

1 then, if there's any claims that survive, then we go forward,
2 and the defendants are directed to answer. And we proceed
3 accordingly with discovery.

4 It does seem to be the most efficient way of doing it, and
5 so I'm certainly not going to stand in the way of efficiency.

6 Plaintiffs, do you have any cause or concern about
7 proceeding this way?

8 **MR. SANDOVAL-MOSHENBERG:** No, that's very good, Your
9 Honor. Thank you.

10 **THE COURT:** Okay. So then the motion for leave to
11 amend was filed on the 2nd. That would give you two weeks to
12 oppose. So it would be the 16th that I'd hear from you.

13 Does that work?

14 **MR. GUYNN:** Yes, under the federal rules.

15 **THE COURT:** All right. Great. And then replies, and
16 then we'll turn right to it, unless something happens, I don't
17 know. So anyway, good?

18 Any questions or concerns from the plaintiff?

19 **MR. SANDOVAL-MOSHENBERG:** No, Your Honor. It's very
20 clear. Thank you.

21 **THE COURT:** All right. So is there anything else,
22 then, that we need to discuss today?

23 **MR. MOLINA:** Your Honor, I think I was just asked to
24 provide one clarification. I'm not making argument here. I'm
25 just sort of clarifying.

1 **THE COURT:** Right.

2 **MR. MOLINA:** *Suri, Ozturk*, and this case, just since
3 there was some confusion over the facts. *Suri* was a case where
4 the person at issue was in detention in Virginia, was in flight
5 to -- in ICE -- through -- in ICE custody going to Louisiana.

6 **THE COURT:** Right.

7 **MR. MOLINA:** And filed while in flight. So there was
8 no idea who the custodian would be at that time.

9 **THE COURT:** Right. So I was remembering it
10 correctly.

11 **MR. MOLINA:** You were remembering all the pieces
12 correct. It's just I just wanted to make sure those came
13 together.

14 *Ozturk* was a case where an individual filed in
15 Massachusetts but had been transferred to Vermont, and
16 thereafter transferred to Louisiana. And the Court there held
17 that if it had been properly filed at the time it was filed in
18 Massachusetts, the proper custodian would have been Vermont;
19 therefore, the Court transferred it to Vermont.

20 Of course, that was another individual who at all times
21 was in custody of the -- of the Immigration and Customs
22 Enforcement.

23 **THE COURT:** Right. But part of what the Second
24 Circuit affirmed was the directive to bring the plaintiff back
25 to the district of Vermont, correct?

1 **MR. MOLINA:** Yeah, I was only going for the
2 underlying facts to make sure that everyone was staying clear
3 on those.

4 **THE COURT:** Sure.

5 I'm also right, though, about the scope of affirmance, is
6 that part of that order was to bring it back to ICE custody in
7 Vermont?

8 **MR. MOLINA:** That is correct, Your Honor.

9 **THE COURT:** And I understand that we don't have an
10 ICE detention facility in Baltimore, but to just be -- to
11 remind me that was, in part, the scope of the affirmance.

12 **MR. MOLINA:** Correct, Your Honor.

13 **THE COURT:** Okay. Great. Thank you.

14 Anything else?

15 **MR. ROSSMAN:** Not from plaintiffs, Your Honor. Thank
16 you.

17 **THE COURT:** Thank you.

18 **MR. GUYNN:** Nothing further from defendants, Your
19 Honor.

20 **THE COURT:** All right. Thank you all. See you
21 Thursday.

22 **DEPUTY CLERK:** All rise. This Honorable Court stands
23 adjourned.

24 (Proceedings were concluded at 1:57 p.m.)
25

CERTIFICATE OF OFFICIAL REPORTER

I, Paula J. Leeper, Federal Official Court Reporter, in and for the United States District Court for the District of Maryland, do hereby certify, pursuant to 28 U.S.C. § 753, that the foregoing is a true and correct transcript of the stenographically-reported proceedings held in the above-entitled matter and the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Dated this 8th day of July 2025.

/S/ Paula J. Leeper

Paula J. Leeper, RPR, CRR
Federal Official Reporter

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