

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

KILMAR ARMANDO ABREGO GARCIA,)
)
Petitioner,)
)
vs.) Civil Case Number
) 8:25-cv-02780-PX
)
KRISTI NOEM, et al.,)
)
Respondents.)

TRANSCRIPT OF EVIDENTIARY HEARING
BEFORE THE HONORABLE PAULA XINIS
UNITED STATES DISTRICT COURT JUDGE
THURSDAY, NOVEMBER 20, 2025, AT 11:45 A.M.

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COMPUTER-AIDED TRANSCRIPTION OF STENOTYPED NOTES

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15 ***COMPUTER-AIDED TRANSCRIPTION OF STENOTYPED NOTES***

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I N D E X

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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. You all can have a seat.

Mr. Ulander?

DEPUTY CLERK: Yes, Your Honor. The matter now pending before the Court is Civil Action Number PX25-2780, Kilmar Armando Abrego Garcia v. Secretary Kristi Noem, et al. The matter comes before this Court for a motions hearing.

Counsel, please identify yourselves for the record.

MR. ROSSMAN: Good morning, Your Honor. Andrew Rossman for petitioner Kilmar Abrego Garcia.

MR. SANDOVAL-MOSHENBERG: Good morning, Your Honor. Simon Sandoval-Moshenberg for petitioner.

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

MR. ROSSMAN: Good morning, Your Honor. Sascha Rand for petitioner.

MS. HORTON: Good morning. Olivia Horton for petitioner.

MS. DAUKAS: Good morning, Your Honor. Courtney Daukas for petitioner.

1 **MS. ANASTASIO:** Good morning. Morgan Anastasio, also
2 for petitioner.

3 **MS. PATHALAM:** And good morning, Your Honor. Nithya
4 Pathalam, also for petitioner.

5 **THE COURT:** Okay. Good morning.

6 **MR. GUYNN:** Good morning, Your Honor. Jonathan Guynn
7 on behalf of the respondents.

8 **MR. ENSIGN:** Good morning, Your Honor. Drew Ensign
9 on behalf of the United States.

10 **MR. MOLINA:** Good morning, Your Honor. Ernesto
11 Molina on behalf of the respondents.

12 **MR. YOUNG:** Good morning, Your Honor. Shane Young on
13 behalf of the respondents.

14 **THE COURT:** And who else is with us at counsel table?

15 **MR. GUYNN:** This is -- this is Mr. Jonathan --

16 **MR. CANTÚ:** Good morning, Your Honor. Jonathan
17 Cantú, ERO.

18 **THE COURT:** Hi, Mr. Cantú. Good to see you. And
19 thank you for being here today.

20 Okay. Counsel, what I'd like to do -- first, I want to
21 welcome everyone here again. I expect that this is probably
22 going to be the last hearing, barring unforeseen circumstances,
23 on the petition for habeas corpus and the motion to dissolve.
24 We have a lot to do today.

25 The order of operations is going to be the following:

1 There's a number of outstanding motions to seal that I
2 think we can actually take care of pretty quickly, and that
3 will guide the rest of today in terms of how we break it up.

4 So I'd like to do that first as much we can in open court.
5 And to the extent we can't, you can approach the bench, and
6 we'll deal with any remaining argument.

7 Then we'll have Mr. Cantú's testimony, and we'll break it
8 up as we have in the past, the open-record testimony as well as
9 the -- followed by any under-seal testimony, if necessary.

10 And then there will be argument. We'll start argument
11 with regard to the petition first and all counts of the
12 petition. And then I'll turn to the motion to dissolve.

13 Any question about that?

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

15 **THE COURT:** All right. So the motions to seal that I
16 think are most relevant to today's conversation is ECF 74, 76,
17 and 83.

18 I resolved 86 yesterday, which is I'm going to, at least
19 for now, remain -- have Exhibits T and U of ECF 85 remain under
20 seal.

21 ECF 85 has now been refiled unredacted at ECF 98. And I
22 find those redactions to be appropriate. They're very, very
23 minor, and they're really consistent with some other, I think,
24 heated issues on what is to remain sealed or unsealed. So I
25 find that appropriate.

1 I don't think there's anything more for me to do at this
2 juncture on ECF 86.

3 ECF 74, I suppose I'd turn to -- well, you're sort of both
4 using these documents, if I'm getting it right. And in taking
5 a look at them, I see no -- well, it seems like sealing is
6 warranted for those documents, but -- so I wanted to ask if
7 there's any objection or any concern about having the exhibits
8 that are referenced in ECF 74 remain sealed.

9 And I can give you what -- maybe I have the -- whose
10 motion it is messed up. But, in any event, I can give you the
11 short titles of each and then ask if there's any objection to
12 have them remain sealed.

13 And they are the -- DHS's determination concerning the
14 Republic of Liberia's diplomatic assurances, Secretary
15 Rubio's -- and that's ECF -- Exhibit A to ECF 74. Secretary of
16 State Rubio's letter at Exhibit B. The diplomatic notes at
17 Exhibit C. A press -- I don't see why a press release from the
18 Republic of Liberia would be sealed. That's Exhibit D; so
19 perhaps that's unsealed.

20 **MR. MOLINA:** Your Honor, just for clarification, the
21 government submitted that not under seal.

22 **THE COURT:** D?

23 **MR. MOLINA:** D. So that one was submitted not under
24 seal; so that should be --

25 **THE COURT:** Very good. Then I can cross that out.

1 F is the third-country screening notice.

2 G is the government's worksheet with regard to
3 third-country screening.

4 And H are interview notes for the same screening.

5 And I assume that those three, in part, were sealed
6 because of sensitive personal information. So maybe they're
7 oversealed. Maybe some of it can be redacted.

8 But does anyone right now object to those documents
9 remaining sealed?

10 **MR. ROSSMAN:** Just as a practical matter, we're not
11 going to fight the sealing, Your Honor. I just want Your Honor
12 to understand we filed a motion -- sorry -- I'm leaning over.

13 But we filed a motion as a protective matter because we
14 understood the government was asserting some rights there. We
15 don't think any of it needs to be sealed. But for purposes of
16 today, we're not going to make a fuss about that.

17 So we're content to have it stay under seal, although I'm
18 not sure that any of it actually meets the standards.

19 **THE COURT:** So this is where I am with much of what
20 happens in these sealing situations is that they're oversealed.
21 They're often oversealed.

22 And I would say that, certainly with regard to the
23 third-country worksheets and the screening sheets, I think
24 there's a way to have those meet the public eye and redact any
25 sensitive personal information that really meets the sealing

1 requirements.

2 I would likewise say the same, I think, with regard to
3 some of the assurance exhibits. But I -- I note that -- also
4 that it's sensitive, that when you have diplomatic notes or the
5 Secretary of State offering a letter with respect to diplomatic
6 assurances, it's not something that I'm going to get out there
7 and do willy-nilly.

8 But I did want to raise it because I'm sure the fact or
9 the existence, perhaps the timing, will come up today. And
10 without -- you know, I would assume we speak freely in open
11 court about the existence -- the fact of -- the fact that there
12 are these documents without there being great heartburn about
13 doing so.

14 Government?

15 **MR. ENSIGN:** That's acceptable from the government.
16 Essentially, the bottom-line conclusion of the documents, I
17 think we can refer to in open court. To the extent it would go
18 into the details or the contents of them, that would be a
19 different matter.

20 **THE COURT:** Okay. So let's do this: At least for
21 purposes of today, we'll call -- ECF 74, I'm going to take it
22 sort of more particularly under advisement; but I'm ultimately
23 going to grant it in part and deny it in part.

24 And I'm going to ask you all at some point to go back to
25 the drawing board and figure out whether there is, in your

1 view, an unredacted version that can be put on the public
2 document to -- to just reduce the level of dispute that has to
3 occur and the level of work that has to be done by the Court
4 because there does seem to be sufficient public information
5 that can be shared with the public that doesn't impinge on --
6 on privileges that the government has raised in the past.

7 **MR. GUYNN:** Your Honor, that's -- those points are
8 very well taken. I'll just say that, in addition to what
9 Mr. Rossman said, I think you're correct to point out some of
10 the information is petitioner's personal identifying
11 information about his background.

12 **THE COURT:** Right, right.

13 **MR. GUYNN:** That's information we think that they
14 would have an interest in at least having it sealed or being
15 part of that conversation. So we can meet and confer with the
16 petitioner, Your Honor.

17 **THE COURT:** That would be -- at least as to the
18 screening notices, there is -- I think there's personal
19 information in there.

20 **MR. ROSSMAN:** Yeah, I think there's a very modest
21 amount of information that could be easily redacted. And we're
22 happy to work with the government on that, Your Honor.

23 **THE COURT:** Okay. That's great. So that's 74.

24 76, I think, is perhaps more -- well, one, it's -- it's
25 duplicative, right? 76 has a number of the same documents

1 as --

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

3 **THE COURT:** -- 74?

4 **MR. MOLINA:** Yes.

5 **THE COURT:** I think the one document that is not in
6 74 is Mr. Cantú's declaration.

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

8 **THE COURT:** Okay. I'll tell you my -- my provisional
9 thought on that is I'm going to unseal it because I don't see
10 any of the information that Mr. Cantú shared as privileged in
11 and of itself.

12 It may reference the existence of privileged information
13 that may affect the questions that may be put to Mr. Cantú in
14 open court, but the affidavit or the declaration itself doesn't
15 appear to include any privileged information.

16 So I'm sensitive to the -- because I did grant the
17 petitioner the evidentiary hearing that petitioner requested,
18 that there's likely to be public information today that
19 Mr. Cantú can offer, and then under-seal information.

20 But as to the declaration itself, respondents, do you
21 persist in the sealing? And --

22 **MR. MOLINA:** I'm sorry. I think -- we've conferred,
23 and I think that we're okay with the unsealing of the document.

24 **THE COURT:** Okay. So then I'm going to -- let me
25 make sure. I'm taking 76 under advisement with regard to --

1 for the same reasons we've discussed. But I am denying the
2 motion as to ECF 75-6, which is Exhibit S. And that document
3 shall be unsealed on the public record.

4 Likewise, as to 83, which is the interim motion to seal
5 the letter motion to strike, I'm going to deny that as moot.
6 The unredacted version can be filed because the only part that
7 was redacted was Mr. Cantú's -- the quote from his declaration.

8 So that takes care of 83 in total, and most importantly, I
9 think it frees us up a bit to proceed with Mr. Cantú's
10 testimony in a way where there will be a public --

11 I'm sorry. Yeah.

12 **MR. RAND:** I'm sorry, Your Honor, to interrupt. One
13 note of clarification. If the declaration is coming unsealed,
14 on the top of respondent's -- the government's opposition
15 motion on page 7 -- it's Docket 85 -- there's one line of
16 redaction that should come out, we believe.

17 **THE COURT:** Okay. And that is because it's a direct
18 quote from the declaration that I've now unsealed?

19 **MR. RAND:** I don't want to characterize what I think
20 it is, but it relates to the declaration. It makes an
21 assertion. It should be unsealed. There's nothing --

22 **MR. MOLINA:** Your Honor, I think I know the line.
23 And that was sealed just as a precaution. I think, with the
24 unsealing of the -- of Exhibit S, that line that I'm thinking
25 of can come undone. I believe it's -- we can do --

1 **THE COURT:** So perhaps --

2 **MR. MOLINA:** We can check that just real quickly,
3 Your Honor.

4 **THE COURT:** Sure. And maybe what you can do is check
5 it. And then, during one of the breaks, meet and confer. If
6 you agree with petitioner on that, Mr. Ulander, is it possible
7 just to get the unredacted swapped out -- the unredacted page?
8 So, in other words -- because we have the unredacted
9 memorandum.

10 **DEPUTY CLERK:** We would be able to attach it to the
11 same ECF entry as a dash 1, and we would be able to lock the
12 initial document so it wouldn't be viewed. But they would both
13 be on the docket; one would just not be accessible.

14 **THE COURT:** So then I guess it's up to -- it may make
15 more sense to -- I hate to have another ECF entry now -- 99, I
16 suppose it's going to be -- of the same memorandum.

17 But it may be easier to figure out what, if anything,
18 in -- in the responsive memorandum now needs to remain sealed.
19 And if nothing, then -- or what you've just filed, file a new
20 version. Does that make sense?

21 **MR. MOLINA:** Yes, Your Honor, that makes sense. And
22 that's a minimal inconvenience.

23 **THE COURT:** Okay. That's great. I appreciate that.
24 Okay.

25 Anything else before Mr. Cantú is sworn in for the

1 parties?

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

3 **THE COURT:** Okay. I have one quick question for you
4 all.

5 Are respondents going to examine Mr. Cantú, or is
6 Mr. Cantú being made available for the petitioner's
7 examination?

8 **MR. GUYNN:** Your Honor, we're planning to do a very
9 quick direct. And I think it will be especially quick now that
10 the declaration has been unsealed. And that will help us move
11 things along very, very quickly.

12 **THE COURT:** Okay. Great.

13 Mr. Cantú, if you would approach Mr. Ulander, I'd
14 appreciate it.

15 **THE WITNESS:** Absolutely.

16 **JOHN EDWARD CANTÚ**

17 having been first duly sworn, was examined and testified as
18 follows:

19 **THE WITNESS:** I do.

20 **DEPUTY CLERK:** Thank you. You may be seated.

21 Please speak loudly, closely, and clearly into the
22 microphone. State your full name for the record, and spell
23 both your first and last name.

24 **THE WITNESS:** Good afternoon. John Edward Cantú,
25 J-O-H-N -- middle or last name?

1 **DEPUTY CLERK:** Just first and last.

2 **THE WITNESS:** C-A-N-T-Ú.

3 **DEPUTY CLERK:** Thank you.

4 **DIRECT EXAMINATION**

5 **BY MR. GUYNN:**

6 **Q.** Good morning, Mr. Cantú.

7 **A.** Good morning.

8 **Q.** Where are you currently employed?

9 **A.** U.S. Immigration -- U.S. Immigration and Customs
10 Enforcement, Enforcement and Removal Operations.

11 **Q.** What position do you currently hold with -- with
12 Enforcement Removal Operations?

13 **A.** I'm currently the acting assistant director for the
14 removal division.

15 **Q.** Okay. In your work, Mr. Cantú, to what does the acronym
16 I-C-E or ICE refer?

17 **A.** It stands for Immigration and Customs Enforcement.

18 **Q.** So if, during your testimony, I refer to ICE, will you
19 understand that I'm referring to Immigration and Customs
20 Enforcement?

21 **A.** Yes, sir.

22 **Q.** To what does the acronym ERO refer?

23 **A.** Enforcement and Removal Operations.

24 **Q.** So if, during your testimony, I refer to ERO, will you
25 understand that I'm referring to Enforcement and Removal

1 Operations?

2 **A.** Yes, sir.

3 **Q.** How long have you been serving as an acting assistant
4 director for ERO?

5 **A.** Roughly three and a half weeks.

6 **Q.** And what are your responsibilities in that role?

7 **A.** I serve in support of the removal operations that ERO does
8 throughout the country. I coordinate with our 25 field offices
9 to make sure that we are conducting our removals as quickly and
10 as efficiently as possible once the case has arrived to final
11 order status.

12 **Q.** How long have you worked for the federal government?

13 **A.** Since 1997.

14 **Q.** When you joined in 1997, were you working for the agency's
15 predecessor entity, Immigration and Naturalization Services?

16 **A.** Yes, sir, I was.

17 **Q.** Can you just give us a sketch of the roles and, like, the
18 rough timelines that you -- in your federal service from when
19 you joined in 1997 until the present day?

20 **A.** Sure. August 1997, law enforcement communications
21 assistant, U.S. Border Patrol, McAllen sector.

22 Roughly 2000, United States Customs Service customs
23 inspector, Hidalgo, Texas.

24 Subsequently, 2002 detention enforcement officer,
25 Immigration and Naturalization Service, Tucson sector, U.S.

1 Border Patrol.

2 May 2010, deportation officer, Eloy Detention Center.

3 I believe it was December 2013, assistant field office
4 director, Eloy Detention Center.

5 And then October 2017, officer in charge, Florence
6 Detention Center.

7 I also had a tour at headquarters in 2019 as the acting
8 special -- I'm sorry -- deputy assistant director over the
9 special operations division.

10 And then in January 2021, I was the acting field office
11 director for the field office of Los Angeles ERO.

12 And then in May of 2021, I assumed the role as field
13 office director for Phoenix ERO.

14 **Q.** Okay. Mr. Cantú, in the context of your employment with
15 ERO, under what conditions are aliens sometimes removed to a
16 third country rather than their country of origin?

17 **A.** We seek third-country removals when an immigration judge
18 has determined after proceedings that the subject of the case
19 is not able to return to his or her country.

20 There's also cases where the receiving or the home
21 countries will not accept their citizenship -- or their
22 citizens, I should say.

23 **Q.** So in one of those situations, Mr. Cantú, how does ERO
24 identify a third country when it's attempting to remove an
25 alien to a third country?

1 **A.** We work with the Department of State to identify those
2 countries.

3 **Q.** And which federal agency actually identifies the third
4 country for removal?

5 **A.** The Department of State.

6 **Q.** Which federal agency handles discussions with foreign
7 nations to negotiate third-country removal agreements?

8 **A.** That would be the Department of State.

9 **Q.** Do you work for the Department of State?

10 **A.** No, sir, I don't.

11 **Q.** Mr. Cantú, what is Mr. Abrego Garcia's immigration status?

12 **A.** Presently, he has a final order of removal, with
13 withholding of removal, to El Salvador.

14 **Q.** Okay.

15 **MR. GUYNN:** Your Honor, I'm going to mark a document
16 as Government Exhibit 1.

17 May I approach?

18 **THE COURT:** Have you shown Mr. Rand the document?

19 **MR. GUYNN:** Yes.

20 **THE COURT:** Let's make sure there's no objection.

21 **MR. GUYNN:** This is the declaration.

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

23 **MR. GUYNN:** It's his declaration.

24 **THE COURT:** Great. Okay. Yeah, I'm assuming there's
25 no objection. It's in.

1 **THE WITNESS:** Thank you.

2 **THE COURT:** Thank you.

3 **BY MR. GUYNN:**

4 **Q.** Mr. Cantú, do you recognize this document?

5 **A.** Yes, sir.

6 **Q.** What is it?

7 **A.** This is the declaration that I submitted to the Court.

8 **Q.** Did you prepare this declaration in consultation with DHS
9 and ICE lawyers?

10 **A.** Yes, sir, I did.

11 **Q.** Did you sign this declaration?

12 **A.** Yes, sir, I did.

13 **Q.** Is it your declaration?

14 **A.** Yes, sir, it is.

15 **Q.** What country has ERO identified as Mr. Abrego Garcia's
16 country of removal?

17 **A.** That would be Liberia.

18 **Q.** How did ERO identify Liberia as Mr. Abrego Garcia's
19 country of removal?

20 **MR. RAND:** Objection. Foundation.

21 **THE COURT:** Can you lay the foundation?

22 **BY MR. GUYNN:**

23 **Q.** Do you know how ERO identified Liberia as Mr. Abrego
24 Garcia's country of removal?

25 **A.** I was told by the Department of State that Liberia was the

1 country for removal.

2 **Q.** To the extent you know, has the Department of State shared
3 any documents with ERO regarding the viability of removing
4 Mr. Abrego Garcia to Liberia?

5 **A.** Yes.

6 **Q.** What documents are those?

7 **A.** I received an e-mail from a state department attorney
8 outlining the basis for those assurances that Liberia would be
9 the country of removal.

10 **Q.** And have you reviewed documents that contained those
11 assurances?

12 **A.** Yes, sir.

13 **Q.** Okay. What is your understanding of assurances, if any,
14 that Liberia has provided to the United States regarding how
15 third-country nationals will be treated if they're removed from
16 the United States to Liberia?

17 **A.** They have provided the Department of State assurances that
18 they will not torture, prosecute, and that they will abide by
19 all of the international laws and conventions that they are
20 sworn to.

21 **Q.** I think I heard you say "prosecute." Is that your
22 understanding of what their assurance is?

23 **A.** Yes, sir.

24 **Q.** Not persecute?

25 **A.** I'm sorry. You're correct. It's persecute.

DIRECT OF JOHN EDWARD CANTÚ BY MR. GUYNN

1 It's persecute, torture, and they will abide by the
2 laws -- the international laws and the conventions that they
3 have signed on to.

4 **Q.** What, if any, is your understanding of whether the
5 Department of State has assessed those assurances from Liberia?

6 **A.** It's my understanding that they have assessed those to be
7 credible.

8 **Q.** What is your understanding of assurances, if any, that
9 Liberia has provided to the United States specifically with
10 regards to Mr. Abrego Garcia and how he will be treated if he's
11 removed from the United States to Liberia?

12 **MR. RAND:** Objection. Foundation.

13 **MR. GUYNN:** He said that he's reviewed the documents.

14 **THE COURT:** Do you know? Do you know? Do you know
15 what assurances, if any, have been provided regarding
16 Mr. Abrego Garcia by the Department of State?

17 **THE WITNESS:** Yes, ma'am.

18 **THE COURT:** How do you know that?

19 **THE WITNESS:** I saw it -- I saw it in a diplomatic
20 note.

21 **THE COURT:** Okay. All right.

22 **THE WITNESS:** Sorry.

23 **THE COURT:** No, that's okay. The existence, I think,
24 is not a problem; it's the --

25

1 **BY MR. GUYNN:**

2 **Q.** At a high level, what, if any, is your understanding of
3 those assurances that were provided?

4 **A.** So my understanding are that they have assured the State
5 Department of the United States that they will not persecute,
6 they will not torture, nor will they refoule Mr. Abrego Garcia
7 to El Salvador.

8 **Q.** If the Court and --

9 **MR. GUYNN:** Your Honor, can I approach before I ask
10 my next question?

11 **THE COURT:** Sure. Yep. Let's go under seal.

12 (A bench conference was held on the record as detailed
13 below:)

14 ****The following proceedings are SEALED by order of the Court****

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(The bench conference concluded and proceedings resumed as follows:)

*****THIS ENDS THE SEALED PORTION OF THE TRANSCRIPT*****

BY MR. GYNN:

Q. Mr. Cantú, if ERO had a green light to remove Mr. Abrego Garcia from the United States, what is its plan for removing him from the United States?

A. We would -- we would schedule a commercial airline flight to Liberia or -- and/or a charter via ICE Air.

Q. And I'm sorry if I missed it, but to where would those flights be chartered -- would they be headed?

A. To Liberia.

Q. All right. Mr. Cantú, would you please refer to the document that's in front of you as Government Exhibit 1.

1 Would you please turn to the second page that says
2 paragraph 4. I'm just going to read that to you.

3 "As part of this process, I have been in communication
4 with U.S. Department of State personnel regarding petitioner's
5 removal from the United States. During" --

6 **DEPUTY CLERK:** Mr. Guynn, could you read a little
7 slower?

8 **MR. GUYNN:** Sure.

9 **BY MR. GUYNN:**

10 **Q.** "During these communications, I have learned that, on
11 August 21st, 2025, following sensitive discussions at senior
12 levels between the government of Costa Rica and the Department
13 of State, the government of Costa Rica provided written
14 assurances as to its willingness to receive the transfer of
15 Mr. Abrego Garcia from the United States to Costa Rica.

16 "I was advised that those assurances were nonbinding and
17 were extended based on certain understandings and contingencies
18 not reflected in the assurances themselves."

19 Did I read that correctly?

20 **A.** Yes, sir.

21 **Q.** So regarding paragraph 4 and regarding the substance of
22 your declaration, with which Department of State personnel did
23 you communicate regarding the substance of your declaration?

24 **A.** That would be a Department of State attorney.

25 **Q.** Who else, if anyone, did you communicate with at the

1 Department of State regarding your declaration?

2 **A.** No one else.

3 **Q.** What's your understanding, if any, of the ultimate source
4 of the information that you received from the Department of
5 State attorney?

6 **MR. RAND:** Objection. Foundation.

7 **THE COURT:** Do you know the original source of the
8 information of paragraph 4?

9 Do you understand my question?

10 **THE WITNESS:** I do not, Your Honor. I'm sorry.

11 **MR. GUYNN:** I can try to ask it differently.

12 **THE COURT:** Thank you.

13 **BY MR. GUYNN:**

14 **Q.** Do you know -- do you know where the Department of State
15 lawyer got the information that he conveyed to you that's now
16 contained in paragraph 4?

17 **THE WITNESS:** Oh, yes, Your Honor, I do know that.

18 **THE COURT:** Okay. Go ahead.

19 **THE WITNESS:** Department -- I'm sorry -- the Deputy
20 Secretary of State, U.S. Department of State.

21 **THE COURT:** And how do you know that?

22 **THE WITNESS:** I believe the attorney told me that in
23 a verbal conversation, if I recall.

24 **THE COURT:** Thank you.

25

1 **BY MR. GUYNN:**

2 **Q.** Did you participate in discussions with Costa Rica
3 alongside the Department of State representatives?

4 **A.** No, sir.

5 **Q.** So if you look at paragraph 4, if you look at the final
6 sentence, do you see where it says the words "certain
7 understandings"?

8 So paragraph 4, final sentence, do you see where it says
9 the word -- the words "certain understandings"?

10 **A.** I found it.

11 Yes, I do. I see it.

12 **Q.** What are the certain understandings referenced in the last
13 sentence?

14 **A.** I don't know.

15 **Q.** Later in that sentence, you see where it uses the word
16 "contingencies"?

17 **A.** Yes, sir, I do.

18 **Q.** What are the contingencies referenced in the last
19 sentence?

20 **A.** I do not know.

21 **Q.** All right. Take a look at paragraph 5. I'm going to read
22 that as well, and I'll read it slowly.

23 "Several months have passed since those assurances were
24 provided. And due to interim developments, the Department of
25 State assesses that the government of Costa Rica would not

1 accept the transfer of Mr. Abrego Garcia to Costa Rica at this
2 time without further negotiations and likely additional
3 commitments by the United States."

4 Did I read that correctly?

5 **A.** Yes, sir.

6 **Q.** So if you take a look in that sentence going from the
7 first line to the second, do you see where it uses the words
8 "interim developments"?

9 **A.** Yes, sir.

10 **Q.** What are the interim developments referenced in
11 paragraph 5?

12 **A.** I don't know.

13 **Q.** Why does the Department of State believe that Costa Rica
14 would not --

15 **THE COURT:** Can I ask a question first?

16 Did you write this, Mr. Cantú? Did you write this
17 declaration?

18 **THE WITNESS:** I did write it, yes, with the help of
19 counsel.

20 **THE COURT:** With the help of counsel. I mean, these
21 words that were selected, were they your words or were they
22 somebody else's words?

23 **THE WITNESS:** They were in a document that I was
24 given by this attorney from U.S. Department of State.

25 **THE COURT:** That e-mail that you referenced?

1 **THE WITNESS:** (Nods head.)

2 **THE COURT:** Yes?

3 **THE WITNESS:** Yes, ma'am.

4 **THE COURT:** You have to say yes or no for the court
5 reporter's sake.

6 **THE WITNESS:** Yes. Sorry.

7 **THE COURT:** So today when you're saying you don't
8 know what the words mean, is it because it was taken from this
9 e-mail and put in this declaration without any further work?

10 **THE WITNESS:** There was no further discussion; it was
11 just relayed to me and --

12 **THE COURT:** Okay.

13 **THE WITNESS:** -- meeting over.

14 **THE COURT:** All right.

15 Go ahead, Mr. Guynn.

16 **BY MR. GUYNN:**

17 **Q.** Why does the Department of State believe that Costa Rica
18 would not accept Mr. Abrego Garcia without further negotiations
19 and commitments by the United States?

20 **MR. RAND:** Objection, Your Honor. No foundation.
21 Double hearsay. I could go on.

22 **THE COURT:** Right. Sustained. I'm not sure --

23 **BY MR. GUYNN:**

24 **Q.** Mr. Cantú, you said "I don't know" in response to a few of
25 my questions. Who knows these details about the U.S.'s

1 negotiations with Costa Rica?

2 **A.** The Department of State.

3 **THE COURT:** Do you know any particular person who may
4 know, or is your contact that attorney that you referenced?

5 **THE WITNESS:** It would be the attorney, Your Honor.

6 **THE COURT:** Do you have the name of that person?

7 **THE WITNESS:** If my recollection is correct, it's
8 Carl Anderson.

9 **THE COURT:** Okay. Thank you.

10 **THE WITNESS:** Yes, ma'am.

11 **BY MR. GUYNN:**

12 **Q.** All right. So looking at paragraph 6, "Department of
13 State personnel have advised that the Republic of Liberia is at
14 present the only state willing to accept Mr. Abrego Garcia
15 without further negotiations and additional commitments from
16 the United States."

17 Did I read that correctly?

18 **A.** Yes, sir.

19 **Q.** Is that what the Department of State told you that it
20 believed?

21 **A.** That is what they said.

22 **Q.** If ERO got the green light to remove Mr. Abrego Garcia
23 from the United States, what has the Department of State told
24 you about the viability of removing Mr. Abrego Garcia from the
25 United States to Costa Rica?

1 **A.** That it's not an option at the -- at the moment.

2 **MR. GUYNN:** No further questions.

3 **THE COURT:** Okay.

4 Mr. Rand?

5 **MR. RAND:** Your Honor, with the Court's permission?

6 **THE COURT:** Sure.

7 **MR. RAND:** Thank you.

8 **CROSS-EXAMINATION**

9 **BY MR. RAND:**

10 **Q.** Good afternoon, Mr. Cantú. How are you?

11 **A.** Good. Good afternoon.

12 **Q.** A couple of preliminary questions for you.

13 On direct you testified about a final order of removal.

14 Do you recall that?

15 **A.** Yes, sir.

16 **Q.** Based upon your many years of experience you described to
17 us, you know what a final order of removal looks like, right,
18 sir?

19 **A.** I do.

20 **Q.** And have you seen a final order of removal in regard to
21 Mr. Abrego Garcia?

22 **A.** I have not.

23 **Q.** Okay. How do you know a final order of removal exists,
24 then?

25 **A.** Because that was what was discussed in our prep. And I

1 believe -- I believe there was a mention of that in Secretary
2 Noem's memo.

3 **Q.** Okay. So your belief that there's a final order of
4 removal is based upon representations made to you by counsel
5 and a line in Secretary Noem's memorandum?

6 **MR. GUYNN:** Objection, Your Honor.

7 **THE COURT:** Well, that --

8 **MR. GUYNN:** I would move to -- I would move to strike
9 his reference to attorney-client information. And then Mr. --
10 and then I would object to Mr. Rand's attempt to repeat and
11 reinforce it.

12 **THE COURT:** No, I think he's trying to clarify it.
13 Maybe I can do it really simply.

14 Mr. Cantú, when you say that there is a final order of
15 removal, are you basing that, one, on the conversation you
16 had -- or the exchange you had with the attorney for the
17 Department of State? Is that where you're saying it comes
18 from?

19 **THE WITNESS:** No, not the Department of State.

20 **THE COURT:** I'm sorry. Where does it come from?

21 **THE WITNESS:** Counsel.

22 **THE COURT:** Oh, counsel sitting at counsel table.

23 **THE WITNESS:** Yes, ma'am.

24 **THE COURT:** Counsel told you.

25 **THE WITNESS:** Yes, ma'am.

1 **THE COURT:** Okay. That's one place. And then the
2 other is the letter authored by Secretary Noem?

3 **THE WITNESS:** If my memory serves me correct, I
4 thought I read a line in there stating that.

5 **THE COURT:** Understood. Anywhere else?

6 **THE WITNESS:** No, ma'am.

7 **THE COURT:** Okay. Very good. Thanks.

8 **BY MR. RAND:**

9 **Q.** Now, Mr. Anderson was the Department of State attorney
10 that you spoke to?

11 **A.** Yes, sir.

12 **Q.** And you spoke to Mr. Anderson on or around November 6th,
13 you figure?

14 The declaration, I'll remind you, was signed by you
15 electronically on November 7th.

16 **A.** I think the meeting actually occurred on the 7th. Would
17 that --

18 **Q.** I'm sorry. Please.

19 **A.** Was that a Friday?

20 **Q.** Yes, it is, sir.

21 **A.** I believe the meeting occurred on a Friday, which would
22 have been the 7th.

23 **Q.** So you were in person with Mr. Anderson?

24 **A.** No, sir, it was a Teams.

25 **Q.** It was a Teams meeting Mr. Anderson was on with you,

1 correct?

2 **A.** Yes, sir. Correct.

3 **Q.** How long did this Teams meeting last?

4 **A.** I would say it was no more than five minutes.

5 **Q.** Did you ask any questions during this Teams meeting?

6 **A.** No, sir.

7 **Q.** So Mr. Anderson just told you some things during these
8 five minutes -- this five-minute Teams meeting, correct?

9 **A.** Correct.

10 **Q.** Then Mr. Anderson sent you an e-mail that attached a draft
11 declaration for you to consider and sign, fair?

12 **A.** I'm sorry. Who sent me the e-mail?

13 **Q.** Mr. Anderson. Did he send you an e-mail with a draft
14 declaration?

15 **A.** No, sir, he did not.

16 **Q.** Where did you -- you referred in your direct to an e-mail
17 you received from somebody at the Department of State. Who was
18 that?

19 **A.** Mr. Anderson sent me -- what he told me on the meeting via
20 Teams, he sent me an e-mail with that verbiage. So there was
21 no declaration; it was just a message.

22 **Q.** And the message was shared with you during the Teams?

23 **A.** I believe it was at the same time.

24 **Q.** Was it by e-mail, or was it in the Teams chat?

25 **A.** I believe it was e-mail, sir.

1 Q. So you received an e-mail during the Teams five-minute
2 meeting from Mr. Anderson including the verbiage of what he
3 wanted you to put into a declaration, fair?

4 A. Well, he gave me the verbiage that came from the Deputy
5 Secretary, which then is part of my declaration that I wrote.

6 Q. Okay. And the language that he provided to you, is that
7 the language that is set forth in paragraphs 3, 4, and 5, and 6
8 of the declaration you have in front of you that is Government
9 Exhibit 1?

10 MR. GUYNN: Objection, Your Honor. Attorney-client
11 and attorney work product. We -- we have the declaration.
12 They have that. But to the extent there's additional
13 language --

14 THE COURT: Wait, wait, wait. Hold on.

15 The attorney from the Department of State attorney-client
16 work product and privilege? You made much at the last hearing
17 that they're not a party.

18 MR. GUYNN: They're not a party.

19 THE COURT: So overruled.

20 MR. GUYNN: But we are a unitary executive.

21 THE COURT: Well, which one is it? Are they at the
22 table or aren't they?

23 Do you wish to approach?

24 MR. GUYNN: I can -- I can -- okay.

25 No, Your Honor. Never mind.

1 **THE COURT:** Okay.

2 **MR. GUYNN:** I'll withdraw the objection.

3 **THE COURT:** Reask the question, Mr. Rand.

4 Overruled.

5 **MR. RAND:** Very good.

6 **BY MR. RAND:**

7 **Q.** Let me ask the question again, if I could, Mr. Cantú.

8 The verbiage that you received from Mr. Anderson in an
9 e-mail on November 7th, is that the verbiage that appears in
10 paragraphs 4, 5, and 6 of the declaration you have in front of
11 you as Government Exhibit 1?

12 **A.** Yes, sir, it is.

13 **Q.** And verbatim it's the verbiage, correct, sir? You did not
14 change a comma in that verbiage that's set forth in 4, 5, and
15 6?

16 **MR. GUYNN:** Objection. Asked and answered.
17 Argumentative.

18 **THE COURT:** No, it isn't.

19 Overruled.

20 Did you change any of the language, sir?

21 **THE WITNESS:** Well, I -- I wrote 3, 4, and 5, I think
22 is what your reference was?

23 **BY MR. RAND:**

24 **Q.** My reference was to 4, 5, and 6.

25 **A.** 4, 5, and 6. Yes, I did write that. But it's not

1 verbatim, meaning the entire paragraph is not what the attorney
2 sent me.

3 **THE COURT:** Okay. So --

4 **THE WITNESS:** But --

5 **THE COURT:** Yeah.

6 **THE WITNESS:** Or however, the other verbiage, right,
7 so the -- like, the first part of paragraph 4 --

8 **THE COURT:** Okay.

9 **THE WITNESS:** -- "during the communications," right?

10 **THE COURT:** Yeah.

11 **THE WITNESS:** "Sensitive senior levels." All of
12 that, that's not verbatim -- it is verbatim what he said there;
13 I just -- I just put some other stuff in there.

14 And then the assurances, the nonbinding, understandings,
15 and the contingencies also not reflected in the assurances
16 thereof, that was in there as well.

17 **THE COURT:** When you say, "that was in there," do you
18 mean that was in the content of --

19 **THE WITNESS:** That was in the content that was
20 provided to me.

21 **THE COURT:** Okay.

22 **THE WITNESS:** I believe that the entire fifth
23 paragraph was also in that --

24 **THE COURT:** Communication.

25 **THE WITNESS:** -- communication that was provided to

1 me.

2 And I believe that Number 6, that paragraph was also in
3 the communication that was provided to me.

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

5 **THE WITNESS:** Does that make sense?

6 **THE COURT:** Yes, it does. Thanks.

7 **BY MR. RAND:**

8 **Q.** And when you received this -- when you received this
9 e-mail from Mr. Anderson, did the cover of the e-mail include
10 any other information other than the language you've described
11 to us that made its way into your declaration?

12 **A.** No. I don't believe there was anything else.

13 **Q.** Was there anything, when you looked at this language, that
14 you thought you wanted to clarify or understand better once you
15 received this e-mail from Mr. Anderson?

16 **A.** No, I did not.

17 **Q.** Did it cross your mind that maybe you wanted to ask the
18 questions of Mr. Anderson, what sensitive discussions? for
19 instance, in paragraph 4?

20 **MR. GUYNN:** Objection, Your Honor. That's
21 argumentative.

22 **THE COURT:** Well, he --

23 **MR. GUYNN:** Saying he should have thought to ask
24 that.

25 **THE COURT:** Sustained. Sustained.

1 Rephrase. Rephrase.

2 **MR. RAND:** I'll ask another question. Fair enough.

3 **BY MR. RAND:**

4 **Q.** Did -- I believe we've established you asked no questions
5 of Mr. Anderson whatsoever.

6 **A.** No, I did not.

7 **Q.** Did you understand in your mind that you were allowed to
8 ask Mr. Anderson questions about the substance of what he had
9 communicated to you in the e-mail?

10 **A.** Yes, sir, I did.

11 **Q.** And no questions came to mind at all as to what you might
12 want to ask him, fair?

13 **A.** No, no questions.

14 **Q.** And am I correct that if I spent 20 minutes walking
15 through each of the words in paragraphs 4, 5, and 6 of your
16 declaration, Government Exhibit 1, and asked you, for instance,
17 what sensitive discussions are being referred to or who had
18 those discussions or what the contingencies or certain
19 understandings were, you would have nothing to offer by way of
20 understanding, fair?

21 **A.** Can you repeat that question.

22 **Q.** Yeah. I'm asking you the question -- well, let's do it
23 this way. That was very compound.

24 On paragraph 4 -- are you with me, sir? -- on Government's
25 Exhibit 1, your declaration.

1 You with me, sir?

2 **A.** Paragraph 4.

3 **Q.** You say it's part of this process. You see that?

4 **A.** (Nods head.)

5 **Q.** All right. And this process you're referring to is the
6 five-minute call with Mr. Anderson and looking at his e-mail
7 and incorporating it in the declaration that sits before you
8 right now, right, sir?

9 **A.** I would say so.

10 **Q.** All right. You've had no involvement whatsoever with
11 Mr. Abrego Garcia's case prior to having this call with
12 Mr. Anderson on November 7th, correct, sir?

13 **A.** That is correct.

14 **Q.** All right. You hadn't even been in your acting role until
15 the very end of October in ERO, correct?

16 **A.** That's not correct.

17 **Q.** All right. When did you assume the acting directorship
18 position you've described to us?

19 **A.** I believe it was November 3rd.

20 **Q.** Okay.

21 **A.** Yeah, 3rd.

22 **Q.** So -- again, my question, right. Before November 3rd, you
23 weren't even in this acting directorship role at ERO, fair?

24 **A.** That is correct, sir.

25 **Q.** And then four days later, that Friday of that week, your

1 only involvement with the Garcia matter was this five-minute
2 Teams call with Mr. Anderson, fair?

3 **A.** Correct.

4 **Q.** All right. So let's go back to paragraph 4 of
5 Government's Exhibit 1.

6 You say, "I've been in communications" -- excuse me --
7 "communication with U.S. Department of State personnel."

8 You see that?

9 **A.** Yes, sir.

10 **Q.** There's only one person, Mr. Anderson, right?

11 **A.** Correct, sir.

12 **Q.** There was only one call, right? It was the five-minute
13 call you've described to us?

14 **A.** Correct, sir.

15 **Q.** Since November 7th and this moment that you are speaking
16 to me, you've spoken to nobody else at the Department of State
17 about Mr. Abrego Garcia, correct?

18 **A.** That is correct.

19 **Q.** All right. Was -- were you provided with a copy of Her
20 Honor's order in regard to your testimony here today about what
21 kind of preparation was expected of you by the counsel sitting
22 to my left?

23 **A.** Can you repeat that question.

24 **Q.** Were you provided with an order that Her Honor issued
25 about how you were to be prepared to speak today on behalf of

1 DHS?

2 **A.** No, I was not.

3 **Q.** Did you -- did you make any inquiry of anybody outside of
4 the attorneys sitting to my left from November 7th to today
5 about Abrego Garcia in any shape or form?

6 **A.** No, sir.

7 **Q.** Were you asked to do so?

8 **A.** No, sir.

9 **Q.** Did you ask to do so?

10 **A.** No, sir.

11 **Q.** Do you know whether you -- whether you're here as a
12 designee on behalf of DHS in regard to DHS's knowledge about
13 the current situation with Costa Rica and Mr. Abrego Garcia's
14 removal?

15 Do you understand my question?

16 **A.** I'm sorry. I do not.

17 **Q.** Do you understand that you're here today to bind and speak
18 on behalf of the Department of Homeland Security and ICE on the
19 questions about Mr. Abrego Garcia and his potential removal to
20 Costa Rica?

21 Do you understand that?

22 **A.** Yes, sir.

23 **MR. GUYNN:** I --

24 **BY MR. RAND:**

25 **Q.** Yes? Correct, sir? You do understand that?

1 **A.** Can you repeat the question one more time. I'm sorry.

2 **Q.** Do you understand that you're here today to speak on
3 behalf of the Department of Homeland Security and ICE and bind
4 that agency in regard to Mr. Abrego Garcia's situation
5 vis-a-vis Costa Rica and potential removal there?

6 Do you understand that?

7 Or did no one explain that to you?

8 **MR. GUYNN:** Objection. Argumentative, Your Honor.

9 **THE COURT:** Do you understand that you're here to
10 bind DHS?

11 And if you have any -- any question about that, just tell
12 me.

13 **THE WITNESS:** I'm here representing ERO; so I -- I'm
14 not sure if that means the department. I guess it does. I
15 don't know.

16 **THE COURT:** Okay. All right. Did you have any
17 conversation with anyone -- not the substance of it -- but that
18 there was an order I filed which says the witness will bind
19 the -- the department --

20 **THE WITNESS:** No, Your Honor.

21 **THE COURT:** -- or the defendants?

22 No?

23 **THE WITNESS:** No, Your Honor.

24 **THE COURT:** Okay. All right.

25

1 **BY MR. RAND:**

2 **Q.** Let's go back to paragraph 4 of Government Exhibit 1, your
3 sworn declaration.

4 Oh, by the way, you signed your declaration electronically
5 on November 7th. Were you in the office or at home --

6 **MR. GUYNN:** Objection.

7 **BY MR. RAND:**

8 **Q.** -- on November 7th?

9 **MR. GUYNN:** Objection. Relevance.

10 **THE COURT:** Well, I'll overrule.

11 **BY MR. RAND:**

12 **Q.** Were you at home or in the office?

13 **A.** I was not at home; I was at a hotel.

14 **Q.** You were at a hotel. Okay. And that's the reason you
15 signed it electronically?

16 **A.** Yes, sir.

17 **Q.** What did Mr. Anderson tell you during that five-minute
18 phone call about Mr. Landau, the Deputy Secretary of State, and
19 his conversations with Costa Rica, if any?

20 **A.** All he told me was that he had information that he had to
21 pass to me. And then he read it to me. He sent it to me in an
22 e-mail. And that was it.

23 **Q.** And the information he had passed to you was verbatim
24 what's set forth in your declaration, what was set forth in his
25 e-mail to you, correct, sir?

1 **A.** Well, I don't think it's verbatim because I didn't -- I
2 didn't put everything in there. But --

3 **Q.** Let me ask it differently.

4 This Teams meeting that you had with Mr. Anderson.

5 Please, and I don't mean to be weird, sir, but keep your
6 eyes on me if you could. It's distracting. Please, I'm
7 examining you right now. Stay with me. Okay?

8 This Teams meeting you had with Mr. Anderson, is all it
9 encompassed was him reading something to you, saying "I got
10 this from the Deputy Secretary of State," and then forwarding
11 it to you by e-mail? Was that the sum and substance of what
12 happened?

13 **A.** Yes, sir.

14 **Q.** And there was no other conversation whatsoever, fair?

15 **A.** No, sir, there wasn't.

16 **Q.** And you -- sitting here today, you can't tell me whether,
17 in fact, what Mr. Anderson read to you has any basis in
18 conversations that actually occurred with anybody from Costa
19 Rica, right, sir?

20 In other words, you sitting here have no idea where this
21 information might have come from other than what Mr. Anderson
22 read to you, fair?

23 **A.** Correct.

24 **Q.** You -- I used Mr. Landau's name. Did you know that that's
25 the Deputy Secretary of State?

1 **A.** I'm not aware of that.

2 **Q.** Mr. Landau wasn't even mentioned to you by name on this
3 five-minute call, correct?

4 **A.** No. I'm pretty sure he just said "the Deputy Secretary."

5 **Q.** And, again, you made no inquiry as to who that might be?

6 **A.** No, sir.

7 **Q.** Sitting here today, you can't tell me whether anyone from
8 the U.S. government -- secretary -- excuse me -- the Department
9 of State or otherwise, has contacted Costa Rica since August 21
10 of 2025, right, sir?

11 **MR. GUYNN:** Objection. Asked and answered.

12 **THE COURT:** Well, do you have any independent
13 knowledge of that, sir?

14 **THE WITNESS:** I'm sorry, Your Honor?

15 **THE COURT:** Do you have any independent knowledge of
16 whether anyone from the Department of State has been in touch
17 with Costa Rica?

18 **THE WITNESS:** No, Your Honor, I don't.

19 **BY MR. RAND:**

20 **Q.** Let me go back to paragraph 4 of your declaration, sir.

21 I'm in the second sentence, "During these communications."

22 Do you see that, sir?

23 **A.** Yes.

24 **Q.** Well, there were only two communications, right? There
25 was an e-mail and the Teams. Those are the two?

1 **A.** Correct.

2 **Q.** Right?

3 "I've learned that on August 21st, following sensitive
4 discussions at senior levels," you see that language, sir?

5 **A.** Yes, sir.

6 **Q.** If I were to spend some time asking you questions -- what
7 were the nature of the discussions and who were the people
8 involved? -- you would have no information to offer me, fair?

9 **A.** That's correct.

10 **Q.** All right. And that was my -- my convoluted question
11 before.

12 If I were to walk through paragraphs 4, 5, and 6 and pick
13 out various words that describe things that happened and ask
14 you what is your understanding as to what that means, there's
15 nothing you could offer me, right, sir?

16 **A.** That's correct.

17 **MR. GUYNN:** Objection. Calls for speculation.

18 **THE COURT:** Overruled.

19 **MR. RAND:** Fair enough. We'll walk through some more
20 of it.

21 **THE COURT:** You don't need to. I think the point has
22 been made.

23 **MR. RAND:** All right. Fair, fair, fair.

24 **THE COURT:** This witness has zero information about
25 the content of the declaration.

1 **MR. RAND:** Fair enough.

2 **THE COURT:** No shade on you, Mr. Cantú. You have
3 been very candid with the Court, and the Court appreciates
4 that.

5 But the point has been made. There hasn't been any -- any
6 offering from the witness of -- that he would know personally
7 or otherwise any more detail.

8 **BY MR. RAND:**

9 **Q.** Do you have any idea, Mr. Cantú -- I know you've only been
10 in your position as acting -- what's today? -- for 17 days.

11 Do you have any idea, sitting here today, as to who the
12 right person might be at the Department of Homeland Security
13 who would know more information in regard to the sum and
14 substance of your declaration?

15 Is there somebody who comes to mind and strikes you, based
16 on your experience of the last two weeks, of being
17 knowledgeable about the things that are set forth in your
18 declaration that we can go talk to?

19 **A.** No, sir, because, as far as I know, I was the -- I'm the
20 only one that he talked to.

21 **Q.** Okay. Now, you were the head of the Phoenix field office
22 for ERO until late October, correct?

23 **A.** Correct.

24 **Q.** When were you removed from that position?

25 **MR. GUYNN:** Objection. Misstates testimony.

1 **MR. RAND:** I'm asking -- I'll ask --

2 **THE COURT:** Well, I think the removed part is the
3 part that you -- can you rephrase.

4 **MR. RAND:** Fair enough.

5 **BY MR. RAND:**

6 **Q.** Were you removed in your role as the field officer in
7 Phoenix for ERO at the end of October as a part of a
8 reorganization that involved four other field offices, sir?

9 **A.** I was already programmed to come up on a TDY and
10 subsequently was instructed that the assignment was going to be
11 permanent.

12 **Q.** And what is a TDY, please?

13 **A.** Temporary duty assignment.

14 **Q.** And when did you receive that TDY, if you recall
15 generally?

16 **A.** I believe it was the first week of October.

17 **Q.** And when did you find out that you would be moved into
18 specifically the role of the acting assistant director for
19 removal?

20 **MR. GUYNN:** Objection, Your Honor. Relevance.

21 **THE COURT:** It's his background. Overruled.

22 Put him on. Go ahead.

23 **BY MR. RAND:**

24 **Q.** Best of your recollection, sir.

25 **A.** I think it would have been the week of October 24th.

1 Q. And then you spent approximately a week or so not having a
2 post?

3 A. No. I did the job in Phoenix, sir.

4 Q. You did the job in Phoenix until November 2nd?

5 A. Correct.

6 Q. At the time that you left the job in Phoenix, are you
7 aware of whether four field officers -- four directors of field
8 offices were also moved to other positions --

9 MR. GYNN: Objection. Relevance.

10 BY MR. RAND:

11 Q. -- in DHS?

12 THE COURT: Can you all approach. Real briefly.

13 (A bench conference was held on the record as detailed
14 below:)

15 THE COURT: Mr. Rand, can you put a proffer as to
16 what the relevance is of this?

17 MR. RAND: Yeah, this witness literally, frankly, was
18 terminated from his role as part of a purge, brought into this
19 acting role on November 3rd, and then put into this situation
20 of this declaration. I don't know what his current status is.
21 But, frankly, it goes to --

22 THE COURT: Bias?

23 MR. RAND: It goes to the good faith of the
24 government in terms of proffering this witness -- or this
25 declaration based upon his recent past in terms of how he came

1 into this acting role.

2 **THE COURT:** What's your response to that?

3 **MR. GUYNN:** I don't know. This is the first I'm
4 hearing of this purge and this potential source of bias. I
5 think it's absurd. I'm embarrassed for Mr. Rand --

6 **THE COURT:** Really? Because the -- the declaration
7 is absurd. If there is a sham declaration so far, it's this
8 one. It -- sir, you going to let me finish.

9 **MR. GUYNN:** Okay.

10 **THE COURT:** Okay?

11 **MR. GUYNN:** Yes.

12 **THE COURT:** This is the quintessential triple
13 hearsay. Doesn't say a thing, was sealed until 15 minutes ago
14 for reasons beyond my ken. And now this witness is basically,
15 "I was given the words by a guy, and I don't know if that guy
16 is the guy who knows it or not. He got it from another guy. I
17 don't know that guy's name. I just know they call him the
18 Deputy Secretary of State. And I know nothing about anything."

19 It doesn't get more empty than that. Now, I don't know
20 why you're doing it, and I don't know why you did it under
21 seal. But it's going to come out in oral argument that there's
22 a representation by the Department of State that Costa Rica
23 will no longer take Mr. Abrego Garcia, and we'll take it from
24 there as to whether that's even trustworthy because this
25 witness has zero information for me.

1 And I hear you, from your -- from your proffer at the last
2 call, that the Department of State is not a party. But if
3 you're asking me to accept the reliability of what's in here,
4 then you have to show its bona fides and you haven't yet.

5 To say it's absurd to then allow --

6 **MR. GUYNN:** Well, the purge. This purge.

7 **THE COURT:** I don't know. We'll have to see what the
8 witness says. Maybe he denies it. Maybe he says, "There's no
9 purge. I'll explain to you what happened to me. It's totally
10 aboveboard."

11 And I'll certainly -- I won't -- Mr. Rand, you can't --
12 you know, you can't characterize before you get the evidence.

13 If you don't get the evidence --

14 **MR. RAND:** Fair enough.

15 **THE COURT:** -- then you can't call it a termination
16 because that really is slanderous to him.

17 **MR. RAND:** Fair enough.

18 **THE COURT:** So how are you going to do it in a way
19 that gets the underlying information?

20 **MR. RAND:** I'm going to ask it in the way of a
21 question.

22 **THE COURT:** Okay. That's fair. And open-ended.

23 **MR. RAND:** And I will represent to the Court and
24 counsel that there were numerous newspaper articles discussing
25 that -- that --

1 **THE COURT:** So you've got a good-faith basis for
2 asking questions, for sure.

3 **MR. RAND:** I would never do something like that with
4 a witness without --

5 **THE COURT:** Understood.

6 **MR. RAND:** Especially this witness, frankly.

7 **THE COURT:** Right. Because he has no dog in this
8 game.

9 **MR. RAND:** I agree. I agree. And I didn't mean in
10 any way to snap at the witness.

11 **THE COURT:** Okay. And that's probably a harsh word
12 from my perspective.

13 **MR. RAND:** It's a fair consideration. And given the
14 stakes in this case, I probably -- I will restrain myself.

15 **THE COURT:** Okay. So if you ask open-ended
16 questions, we'll see where it goes. It's not going to go too
17 far. But the point is that if he had some recent adverse
18 employment action, and now your theory would be there's an
19 opportunity to get in the good graces of those higher-ups,
20 it's -- it's proper for my consideration.

21 So I'll allow you a little bit of leeway. And be general.

22 **MR. RAND:** I will be. Thank you.

23 **THE COURT:** All right.

24 **MR. GYNN:** So I would just -- so two points, Your
25 Honor.

1 One, I hear your -- your views and your interpretation of
2 what the content and the significance of the declaration is.
3 As you know, respectfully, Your Honor, we disagree.

4 **THE COURT:** Sure.

5 **MR. GUYNN:** Our theory of the case and how these
6 removals do and how the division of labor between the
7 departments is, you know all of that.

8 I'll just say I told you this was exactly what was going
9 to happen. He's not a department --

10 **THE COURT:** See, you put this affidavit in play
11 because you want to make this legal argument that the
12 Department of State's assurances as to third-country removal
13 for the petitioner's choice is under the same rubric that your
14 clients have made up under the March 30th memorandum -- and
15 elsewhere that you haven't made up, right?

16 **MR. GUYNN:** And the Supreme Court confirms.

17 **THE COURT:** Well, no, they haven't. They have stayed
18 an order in an emergency situation. You -- you ascribe too
19 much to it. But that -- I'm not going to chase that ball of
20 yarn. Okay?

21 **MR. GUYNN:** Sure.

22 **THE COURT:** But the point being that, one, I don't
23 necessarily know if you're right on the law.

24 But, two, if you want that fact in evidence, you got to
25 prove it. Okay? And an affidavit that says nothing about

1 nothing of a guy who knows nothing because he learned it from a
2 guy who learned it from a guy -- and I don't even know if these
3 people are men -- I know Mr. Landau is.

4 It's -- it's -- that is not a reliable declaration. I
5 mean, it's exactly what the petitioner said and what they
6 wanted -- why they wanted this evidentiary hearing. They
7 suspected, as other witnesses have been, to be a conduit for
8 multiple levels of hearsay.

9 **MR. GUYNN:** I think, Your Honor, that it is reliable
10 of --

11 **THE COURT:** Do you want to show me the documents?

12 **MR. GUYNN:** -- what the Department of State
13 believes --

14 **THE COURT:** You want to show me the documents on
15 Costa Rica and when they were obtained and what the
16 negotiations were?

17 I don't know. You have diplomatic notes from four African
18 countries. You have zero in front of me from Costa Rica.
19 You've given me no indicia of reliability that what's in this
20 affidavit, which is triple hearsay, is accurate.

21 So I -- you know, up to you.

22 **MR. GUYNN:** Sure. I would actually refute the
23 hearsay --

24 **THE COURT:** How?

25 **MR. GUYNN:** -- characterization. I mean, this is --

1 this is the Department of State's state of mind. This is what
2 they believe the state of play is with respect to whether --

3 **THE COURT:** Who is the "they"? It's this monolith --

4 **MR. GUYNN:** The Department of State.

5 **THE COURT:** No. It's some lawyer who's sitting at a
6 desk saying, "I've been given directive to" --

7 **MR. GUYNN:** It's a Department of State lawyer.

8 **THE COURT:** -- "give you this information --

9 So? It's a lawyer. And I don't know the identity of the
10 individuals or the information behind it. Certainly, this
11 witness doesn't, and he hasn't helped me at all. And I have to
12 be able to weigh the reliability of the information.

13 So I'm just pointing -- I'm not telling you how to do it
14 if you want to do it. But when you have a dip note and you
15 want me to look at it, you've brought it, we've put it under
16 seal, and I've considered it. I don't have anything like that
17 for Costa Rica apart from what the petitioner attached to the
18 petition, which is the assurance from Costa Rica.

19 You're asking me to consider this declaration as somehow
20 counterevidence. That's a hard one. But given that that's
21 the -- you know, the -- the -- your position on it, I'm going
22 to allow this limited cross with open-ended questions as to
23 bias. And we'll see where we go.

24 **MR. GUYNN:** Fair enough, Your Honor. And that was
25 going to be my second point is he's here for the narrow purpose

1 of talking about Costa Rica --

2 **THE COURT:** No, the narrow purpose of doing what you
3 want this declaration to do.

4 **MR. GUYNN:** Fair enough.

5 **THE COURT:** I have asked -- I have ordered that
6 petitioner has an opportunity to cross. This is one engine of
7 cross is bias.

8 **MR. GUYNN:** Sure.

9 **THE COURT:** So I'm going to allow. Okay? So it's
10 overruled.

11 **MR. GUYNN:** Well --

12 **THE COURT:** So why don't we step back, get it done.
13 If you have another objection, you can --

14 **MR. GUYNN:** We're in agreement, actually, that the
15 Overton window with respect to his cross is the declaration.

16 **THE COURT:** No, it's the substance of the declaration
17 as well and whether it's reliable, whether there's any "there"
18 there, like meat in the hot dog. I mean, he's allowed to mine
19 that.

20 **MR. GUYNN:** I don't disagree.

21 **THE COURT:** Okay. Very good. So that's -- that's
22 the limited purpose of this inquiry.

23 **MR. RAND:** I'll just make one observation, which I'm
24 sure Your Honor is cognizant of, which is that you issued an
25 order --

1 **THE COURT:** Oh, yeah. We've blown by that order a
2 long time ago.

3 **MR. RAND:** It's astounding.

4 **THE COURT:** Yeah, that's his case. We'll talk about
5 it more at the oral argument. But yeah, I get it.

6 **MR. RAND:** All right. Thank you, Your Honor.

7 (The bench conference concluded and proceedings resumed as
8 follows:)

9 **MR. RAND:** With the Court's permission.

10 **THE COURT:** Yes.

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

12 **BY MR. RAND:**

13 **Q.** Mr. Cantú, do you have an understanding of why you were
14 asked to no longer be the head of the Phoenix field office?

15 **A.** One more time.

16 **Q.** Do you understand why you no longer -- why today you're
17 not in Phoenix as the head of the field office? Do you have an
18 understanding in your own mind?

19 **A.** I was asked to come on a TDY to assist; so I came on the
20 TDY to assist. And then I was notified that the position was
21 going to become a permanent position. So I don't know why.

22 **Q.** Are you aware of four other head -- are you aware if four
23 other heads of field offices, ERO field offices heads, changed
24 their positions in late October along with you?

25 **A.** I am.

1 Q. Do you know why that happened?

2 A. I don't.

3 Q. Do you have any information you can provide the Court as
4 to why you along with these other four heads of field offices
5 changed roles at the end of October?

6 A. I cannot.

7 Q. When were you advised that you would be the acting
8 assistant director for removal division at ERO, specifically
9 that position?

10 A. In the permanent position?

11 Q. Well, let me ask it -- I appreciate the clarification
12 you're seeking.

13 The acting moniker, are you -- is this a permanent
14 position now, or are you acting temporarily?

15 A. I'm acting temporarily.

16 Q. And how long do you understand that you'll be acting
17 temporarily?

18 A. For 120 days.

19 Q. And that clock started on November 3rd?

20 A. Correct, sir.

21 Q. And then where are you going to go, to your understanding,
22 sir?

23 A. The position will become permanent.

24 Q. This specific position you're in now will become
25 permanent?

1 **A.** Yes, sir.

2 **Q.** And I mean nothing negative by the word, but this is kind
3 of a probationary period for 120 days? Is that the concept?

4 **A.** No, sir, it's a temporary detail assignment.

5 **Q.** All right. And then it becomes permanent in 120 days?

6 **A.** Correct. That is my understanding.

7 **Q.** When was the idea of this declaration that's sitting in
8 front of you as Government Exhibit 1 first raised with you?

9 Do you understand my question?

10 **A.** I do not. I'm sorry.

11 **Q.** That's okay.

12 When did you first -- withdrawn.

13 When were you asked to do the declaration that is sitting
14 in front of you as Government Exhibit 1?

15 **A.** After the meeting with the State Department attorney.

16 **Q.** With Mr. Anderson?

17 **A.** With Mr. Anderson.

18 **Q.** Were you -- was the first time you heard about this
19 declaration the morning of November 7th?

20 **A.** No. It was in the -- it was in the afternoon.

21 **Q.** In the afternoon of November 7th?

22 **A.** (Nods head.)

23 **Q.** How much time passed between when you were advised --
24 withdrawn.

25 Who told you about this meeting with Mr. Anderson?

1 **A.** I believe it was our Office of Principal Legal Advisor.

2 **Q.** And who is that? Who is the person who contacted you?

3 **A.** It would have been Jorge Montesino.

4 **Q.** And who is Mr. Montesino?

5 **A.** I don't know his exact title, but he is -- I think he's a
6 chief over one of the divisions within OPLA.

7 **Q.** How did he contact you?

8 **A.** I believe he called me via Teams.

9 **Q.** In the afternoon of November 7th?

10 **A.** Yes, sir.

11 **Q.** What did he say?

12 **MR. GUYNN:** Objection. Attorney-client privilege.

13 **THE COURT:** Sustained.

14 **BY MR. RAND:**

15 **Q.** I want you to --

16 **THE COURT:** Sustained.

17 **MR. RAND:** Fair enough. Let me ask a different
18 question.

19 **BY MR. RAND:**

20 **Q.** How long did the conversation -- I just want to know the
21 amount of time. How long was the conversation with him? Just
22 the amount of time you spent talking to him over Teams.

23 **A.** To who again?

24 **Q.** Mr. -- I don't want to butcher the name. His last name,
25 sir, was Mr. Montesino?

1 **A.** Montesino.

2 **Q.** Montesino. Thank you.

3 **A.** That would have been about, I guess, two- to three-minute
4 call.

5 **Q.** And was Mr. Montesino providing you with what you
6 understood to be legal advice in those two to three minutes?

7 **MR. GYNN:** Objection. Calls for a legal conclusion.

8 **THE COURT:** Well, it's the foundation to your
9 attorney-client objection.

10 So overruled.

11 **BY MR. RAND:**

12 **Q.** Was he -- do you understand Mr. Montesino -- in your mind,
13 do you understand Mr. Montesino to be providing you with legal
14 advice in those two to three minutes?

15 **A.** I'm not sure.

16 **Q.** Was there anything involving law that he was discussing
17 with you?

18 **A.** No.

19 **Q.** He was discussing with you whether you'd do this
20 declaration, right?

21 **A.** No. He was discussing with me that there was going to be
22 a meeting with the State Department official.

23 **Q.** So he's directing you to be on this call with
24 Mr. Anderson?

25 **A.** He's asking me if I'm available for a call that's coming.

1 Q. How long after was the call with Mr. Anderson after the
2 call with Mr. Montesino?

3 A. If my memory serves, it was about an hour and a half
4 later-ish.

5 Q. Were there any other communications with Mr. Montesino
6 between the two- to three-minute Teams with him and the
7 approximately five-minute Teams with Mr. Anderson?

8 A. No, sir.

9 Q. Who else was on the call with -- the Teams call with
10 Mr. Anderson, if anybody?

11 A. I think it was him and -- I can't remember if there was
12 another attorney from OPLA or not.

13 Q. When you say OPLA, what is --

14 A. I'm sorry. Office of Principal Legal Advisor.

15 Q. And that's within DHS?

16 A. Correct.

17 Q. So it was you and Mr. Anderson and possibly somebody from
18 DHS you understood to be an attorney?

19 A. I'm sorry. Not DHS; Enforcement and Removal Operations.

20 Q. Let me ask the question again.

21 That call was just you, Mr. Anderson, and possibly another
22 lawyer from ERO?

23 A. Me, Mr. Anderson, Jorge, and another lawyer from ERO/OPLA.

24 Q. Did anyone other than Mr. Anderson say anything on this
25 call, this five-minute Teams call?

1 **A.** Other than hello, how are you, no.

2 **Q.** So it was a one-way conversation. Mr. Anderson just
3 talking, reading?

4 **A.** Correct.

5 **Q.** Are you -- you would -- on direct you had indicated that
6 you had looked at some diplomatic materials from Liberia,
7 correct?

8 **A.** Yes, sir.

9 **Q.** You looked at those materials in connection with your
10 testimony here today?

11 **A.** Yes, sir.

12 **Q.** All right. Have you looked at the August 21st assurances
13 from Costa Rica?

14 **A.** I recall seeing Costa Rica.

15 **Q.** You do recall seeing the Costa Rica assurance letter?

16 **A.** I think -- yeah, I'm pretty sure I did.

17 **Q.** Do you -- do you recall the Costa Rica assurance letter as
18 indicating that Costa Rica was prepared to give Mr. Abrego
19 Garcia refugee status or residency?

20 I can put it in front of you, if you need it.

21 **A.** I can't recall off the top of my head, sir. I'm sorry.

22 **Q.** All right.

23 **MR. RAND:** Let me mark as Petitioner's Exhibit 1 --
24 may I approach, Your Honor?

25 **THE COURT:** You may.

1 **MR. RAND:** Let me have the record reflect I'm placing
2 what is Petitioner's 1 in front of the witness. I have copies.

3 **BY MR. RAND:**

4 **Q.** Have you seen this document, what's been placed in front
5 of you --

6 **A.** Yes, sir.

7 **Q.** -- as Petitioner's Exhibit 1 before, sir?

8 **A.** Yes, sir.

9 **Q.** All right. Let's go down to the second paragraph.

10 "The government of Costa Rica intends to provide refugee
11 status or residency to Mr. Abrego Garcia upon his transfer to
12 Costa Rica."

13 Do you see that, sir?

14 **A.** I do, sir.

15 **Q.** All right. That -- sitting here today, do you recall
16 whether that language about providing refugee status or
17 residency exists in any of the communiques with Liberia -- to
18 or from Liberia?

19 **A.** I would have to review those documents again, but I don't,
20 off the top of my head, recall that.

21 **Q.** I'm trying to short-circuit this.

22 **MR. RAND:** It's going into seal, Your Honor.

23 **THE COURT:** Okay.

24 **MR. RAND:** It may be necessary; but let me continue,
25 and we'll figure that out.

1 **BY MR. RAND:**

2 **Q.** Sitting here today, you have no recollection one way or
3 the other? I don't want you to guess.

4 **A.** I don't. I'm sorry.

5 **MR. RAND:** One moment, Your Honor.

6 **BY MR. RAND:**

7 **Q.** Sir, in connection with your role as the -- the head of
8 the field office in Phoenix, have you dealt with immigrant
9 folks who were aliens who were from Latin America?

10 **A.** One more time.

11 **Q.** Have you dealt with individuals who are aliens under the
12 regulatory statutes of the United States who were from Latin
13 America originally?

14 **MR. GUYNN:** Objection.

15 **THE WITNESS:** Yes, sir.

16 **MR. GUYNN:** Relevance.

17 **THE COURT:** Yeah, I --

18 **MR. RAND:** I'm just going to ask one more question,
19 your Honor, and I think it will make it real clear.

20 **THE COURT:** Real quick. Okay.

21 **BY MR. RAND:**

22 **Q.** You've had experience with folks from Latin America,
23 correct, and removing them to other parts of the world?

24 **A.** Yes, sir.

25 **Q.** Are you aware of removing anyone who was from Latin

1 America to African countries in your experience?

2 **A.** We've done that before.

3 **Q.** When, sir?

4 **A.** I couldn't give you a -- I couldn't give you an exact
5 date, but I know we've done it maybe in the past six or seven
6 months.

7 **Q.** Prior to the past six or seven months, has that ever
8 happened, in your experience, in all of your decades of
9 experience you described to us on direct?

10 **A.** I cannot recall one.

11 **Q.** Okay.

12 **MR. RAND:** I pass the witness, Your Honor.

13 **THE COURT:** Okay. All right. Any redirect?

14 **MR. GUYNN:** No further -- we have no redirect, Your
15 Honor.

16 **THE COURT:** Okay. And no need to go under seal,
17 right?

18 **MR. GUYNN:** No.

19 **MR. RAND:** No. Thank you.

20 **THE COURT:** All right. Mr. Cantú, this concludes
21 your testimony. Thank you so much. You are free to step down
22 and either resume your seat or leave and enjoy your day, either
23 one. And not that they are mutually exclusive, but I think --

24 **THE WITNESS:** Thank you, Your Honor. Appreciate it.

25 (Witness exited the stand.)

1 **THE COURT:** Okay. Counsel, it's 1:00. I'm happy to
2 proceed with oral argument on the petition, but does anybody
3 need a short break?

4 Okay. The most important person in the room, Ms. Leeper,
5 our court reporter, does. So let's take 15.

6 **DEPUTY CLERK:** All rise. This Honorable Court now
7 stands in recess.

8 (Recess taken from 12:59 p.m. to 1:19 p.m.)

9 **DEPUTY CLERK:** All rise. This Honorable Court now
10 resumes in session.

11 **THE COURT:** All right, everyone. You can have a
12 seat.

13 I'm going to start with the petitioner's petition.

14 I'll hear from you first, Mr. Rossman.

15 **MR. ROSSMAN:** Good afternoon, Your Honor. Andrew
16 Rossman for petitioner Kilmar Armando Abrego Garcia.

17 Your Honor, it's been quite a journey. And I'm going to
18 try to make this a very short argument today, but bear with me,
19 if you would, because it's quite an important one.

20 March 12th of this year, when Mr. Abrego Garcia was pulled
21 off the streets of Maryland and separated from his young son
22 and taken into custody by ICE, as Your Honor well knows, he was
23 promptly removed to a country, El Salvador, where he was
24 protected by a court order from being removed to.

25 He was imprisoned in a terrorist prison. He was beaten.

1 He was subject to awful conditions. And it took five orders of
2 federal courts and three months to get him returned to this
3 country, including two orders from Your Honor and a 9-0 order
4 from the United States Supreme Court.

5 And what the government came in and offered to Your Honor
6 was that they were powerless to bring him back, powerless to
7 correct the mistake that they had made.

8 And since that time -- since that time that first came
9 into this court and asserted Mr. Abrego Garcia's rights, there
10 has been an unrelenting campaign on the part of the government
11 to deprive him of due process, an unrelenting campaign to
12 retaliate against him for asserting his constitutional rights
13 and to make him a poster child for the broader political agenda
14 that this administration has with respect to immigration
15 policy.

16 And, Your Honor, we submit that the history of this
17 case -- and I'm going to talk for a few minutes not just about
18 the treatment of Mr. Abrego Garcia, but I'm also going to talk
19 about the treatment of this Court by both the Department of
20 Justice and the Department of Homeland Security in this case.

21 The history shows that there was bad faith. The history
22 shows that there was malice on the part of the government's
23 part.

24 **THE COURT:** I'm going to tell you, for purposes of
25 this petition, I'm not even -- I mean, you have a pending

1 motion in what I call Abrego 1. I think this course of conduct
2 will be relevant to that pending motion.

3 But in terms of the sufficiency of the five counts, in
4 terms of what I would really like you to focus on is which of
5 those counts are your principal counts and why and whether this
6 Court has jurisdiction to decide the relief that -- to decide
7 the question. And then I think a companion of that is the
8 relief you're requesting.

9 **MR. ROSSMAN:** Of course, Your Honor. And that's
10 where I'm going.

11 **THE COURT:** Okay.

12 **MR. ROSSMAN:** So -- and I want to -- I think of the
13 due process arguments that underlie the habeas petition that
14 Your Honor has before you as having three components.

15 And the first one, which is the government's
16 retaliation -- retaliatory treatment, violates fundamental due
17 process. And, you know, that is our first argument.

18 Our second argument, seeing how as Your Honor has them all
19 on the table, is that even in the government's formulation of
20 what the minimal due process is that's required, they've got to
21 comply with their own immigration statute. Their failure to do
22 that, their violation of 1231, is a second violation of due
23 process.

24 The third is procedural due process and Mr. Abrego
25 Garcia's right to review by an immigration judge, an exhaustion

1 of appeals of his reasonable fear interview.

2 Those are the three substantive grounds that we offer as a
3 basis for --

4 **THE COURT:** Which count?

5 **MR. SANDOVAL-MOSHENBERG:** The due process claims.

6 **THE COURT:** The due process claims. Okay.

7 **MR. ROSSMAN:** And Your Honor has briefed and has --
8 and I won't touch on it today -- has fully briefed and
9 submitted the *Zadvydas* claim.

10 **THE COURT:** Although I think that the reason why I
11 sort of raised this is because I think the *Zadvydas* claim
12 really speaks to the relief for which I clearly have
13 jurisdiction.

14 **MR. ROSSMAN:** Yes.

15 **THE COURT:** And the thing that I'm really -- I'll
16 just be straight with you.

17 **MR. ROSSMAN:** Please.

18 **THE COURT:** The thing that I'm really focused on -- I
19 was very focused on in the first hearing of *Abrego* 1. I have
20 been -- because it was such an emergency situation and we were
21 focused on the validity of the withholding order, I was less
22 focused on the argument that there is an absence of an order of
23 removal.

24 And you have been -- you've steadfastly made that record
25 that there is an absence of the order of removal. There is no

1 order of removal in the docket -- in the record.

2 **MR. ROSSMAN:** We've not seen one, Your Honor. We've
3 seen an order of withholding. That, we've seen.

4 **THE COURT:** Correct.

5 **MR. ROSSMAN:** And we're all familiar with the 2019
6 order. And the 2019 order proceeds as if there had been an
7 order of removal in some respects.

8 **THE COURT:** And respondents now say that is the order
9 of removal.

10 **MR. RAND:** But --

11 **THE COURT:** I know. I know. We're going to talk
12 about it. But my point is that argument fundamentally
13 guides -- in my view, guides this case. It guides the
14 jurisdictional questions. It guides the power and the -- sort
15 of the legality of what the government did do or is asking to
16 do now.

17 In other words, you know, how do I say that third-country
18 removal is reasonably imminent or reasonably foreseeable if
19 there's an absence of a removal order because third-country
20 removal -- I know they're separate things, but you only get to
21 third-country removal if there's a removal order that says
22 shall not remove to this country and shall remove to other
23 countries.

24 I mean, that's what the order is supposed to say.

25 **MR. ROSSMAN:** That's right, Your Honor. And it's

1 critically important because the due process rights that are
2 accorded to all persons who are in this country, of which
3 Mr. Abrego Garcia is certainly one. Okay?

4 It includes the right to be heard with respect to removal
5 to a third country. That's plainly the law, as *JGG* provides
6 and lots of other cases we cite to Your Honor. And what that
7 requires is the identification of the specific country to which
8 you intend to remove that person.

9 So, you know, returning our attention to 2019, in 2019,
10 there was only one country that the government sought to remove
11 Mr. Abrego Garcia to, which was El Salvador. And the
12 withholding blocked that path. And since then, as we well
13 know, the government made no effort to try to identify and
14 remove him to a third country.

15 So he had no opportunity to raise his hand and say that is
16 not an appropriate third country. He had no opportunity back
17 in 2019 to designate a different country, for example. He has,
18 as Your Honor well knows, designated Costa Rica recently in
19 response to the government's efforts to try to concoct a new
20 third country to remove him to.

21 But that is his right to be heard on the question of
22 specifically where to be removed. And, foundationally, it's
23 got to start with an order of -- a final order of removal.

24 So I don't think that it is improper or overly fastidious
25 of us, Your Honor, to insist on the evidential basis of the

1 removal, to insist on seeing --

2 **THE COURT:** Well, the government has -- sort of
3 quietly, but they have said it's the withholding of removal
4 order. Every time they've said -- if they cite anything, when
5 they say there's a final order of removal, they cite that
6 opinion. And it's at 1-1 in the petition, I believe.

7 **MR. ROSSMAN:** Yes.

8 **THE COURT:** And 28 in the respondent's response.
9 That's the only citation I've ever been given. And in your
10 most recent papers, I think you screen capture the order which
11 says nothing about an order of removal to El Salvador --

12 **MR. ROSSMAN:** Exactly.

13 **THE COURT:** -- and it makes oblique reference in the
14 text to an order -- to removal to Guatemala, I think. I mean,
15 the text gets it wrong, actually. The opinion gets it wrong.

16 **MR. ROSSMAN:** Yes. There's obviously a glitch in the
17 opinion. But the point is that it's about withholding. It
18 does not establish the actual removal order itself.

19 **THE COURT:** And what do you say in response to what I
20 think has been said from day one, which is, well, you can't --
21 and I had -- see some sort of intellectual appeal to this. You
22 can't have a withholding order unless you have an order of
23 removal. Like, one goes with the other.

24 **MR. ROSSMAN:** I think that assumes too much, Your
25 Honor. And the -- the name of the case escapes me -- so I may

1 turn to phone a friend. But with respect to the Convention
2 Against Torture case that we cite, Your Honor, it wasn't
3 sufficient to --

4 **THE COURT:** Is it the *Bracic* case, the Eighth
5 Circuit --

6 **MR. ROSSMAN:** It is the *Riley* case. Thank you.

7 In the *Riley* case, it was sufficient, to reference the
8 Convention Against Torture, you actually had to reference the
9 final order of removal.

10 **THE COURT:** There has to be one, right?

11 **MR. ROSSMAN:** I'm sorry?

12 **THE COURT:** There has to be one.

13 **MR. ROSSMAN:** Correct. Correct.

14 **THE COURT:** So this is my struggle for both sides: I
15 think that it is clear in the Fourth Circuit and in the Supreme
16 Court that one cannot substitute the other.

17 **MR. ROSSMAN:** Yes.

18 **THE COURT:** That there's two separate orders. And
19 the petitioners have often tried to use it to their advantage
20 to say, well, a separate order of withholding is the order of
21 removal when it comes to timeliness and other sort of
22 challenges, and the Supreme Court shot that down.

23 But in those cases, I think what the government is going
24 to get up and say is, well, Judge, you can't make that call
25 because you don't have jurisdiction.

1 Those -- the jurisdictional -- the statutes that -- that
2 deprive you of jurisdiction to review final orders of removal
3 preclude you from making that call here.

4 What's your response to that?

5 **MR. ROSSMAN:** So I have a first level of response,
6 and then Your Honor -- so that you know how we sort of divide
7 our labors here. Mr. Cooper is available to Your Honor to
8 answer particular questions about the jurisdiction stripping
9 statute and *D.V.D.* and the --

10 **THE COURT:** Okay. That would be great because I
11 think this matters for that.

12 **MR. ROSSMAN:** I agree.

13 But, Your Honor, I think fundamentally you can't -- Your
14 Honor certainly has jurisdiction over the habeas petition to
15 the extent it asserts a due process violation. And it would be
16 an obvious due process violation to remove someone without a
17 final order of removal. That's in the statutes. So I think
18 that's a starting point for that.

19 Your Honor, if you want to pivot immediately to the
20 jurisdiction questions, Mr. Cooper can address them. If you
21 want to have me lay out the rest of the points on the petition,
22 we can do that. However Your Honor wants to proceed.

23 **THE COURT:** Well, I think so much of it does flow
24 from this question of is there an order of removal? So
25 because -- or at least it changes -- it changes the complexion.

1 It certainly is relevant to Count 5 of your petition
2 because that's where you say we don't have an order of -- there
3 is no order of removal --

4 **MR. ROSSMAN:** Correct.

5 **THE COURT:** -- and there is a parole which may or may
6 not have changed. So that's relevant to that count. It's
7 certainly relevant to *Zadvydas*.

8 **MR. ROSSMAN:** Yes.

9 **THE COURT:** And I -- I think it's most fundamentally,
10 though, a question of the difference between looking at a
11 record to decide if something exists to determine whether I
12 have jurisdiction in the first instance versus passing on the
13 validity of the order.

14 But I think I've got to answer that first because if I
15 find that I've got jurisdiction to say I take judicial notice
16 of the record and the record does not include an order of
17 removal, then, at a minimum, there's -- Mr. Abrego is entitled
18 to certain immediate relief.

19 **MR. ROSSMAN:** That's right, Your Honor.

20 **THE COURT:** And I'm not passing on the substance; I'm
21 just passing on the sort of *Zadvydas* and other relief you've
22 asked for.

23 **MR. ROSSMAN:** Right. So I think, Your Honor, the
24 entire structure the government had crumbles if there is no
25 final order of removal demonstrated in this case. Most of the

1 energy that's spent in our pages, that's spent in our briefing
2 and argument, it is even if they have one --

3 **THE COURT:** Right.

4 **MR. ROSSMAN:** Even if they have one, we've got, you
5 know, legions of reasons why it's been a violation of due
6 process, it continues to be a violation of due process, and the
7 habeas petition should be granted.

8 I'll take guidance from Your Honor as to whether you want
9 me to unpack that or you want to focus on jurisdiction first.

10 **THE COURT:** Well, let's unpack the rest of it because
11 my next question -- and then we'll turn to the jurisdictional
12 question.

13 **MR. ROSSMAN:** Right. So I don't bury the lede, Your
14 Honor, in terms of you asked about relief and I want to be
15 clear about where we're headed and then why I think we're
16 entitled to get there.

17 We think that the relief should be granted in the
18 petition. We think that Mr. Abrego Garcia should be released,
19 at a minimum -- at a minimum, we think Your Honor should grant
20 conditional release, giving the government a very short period
21 of time -- 24 hours, 72 hours -- you know, Your Honor can
22 decide what's an appropriate period of time -- to show that
23 they have a constitutionally valid basis to remove Mr. Abrego
24 Garcia.

25 And what we've said to the Court all along remains true.

1 If they want to remove him to Costa Rica, you will hear no
2 objection from us on that. They can put him on the next plane
3 to Costa Rica. We think the record on that is clear. It's
4 ECF 1, Exhibit 3, is the document, you know, showing assurances
5 from the government in Costa Rica. We think it's an utter
6 failure of proof on the government's part today --

7 **THE COURT:** Well, to be clear, the government is now
8 saying Costa Rica is saying no.

9 **MR. ROSSMAN:** Right.

10 **THE COURT:** That's where the -- we don't think that
11 there's reasonable assurance that Costa Rica would take Abrego
12 Garcia today. And I see that, in my very, like, tell it to me
13 like I'm a fifth grader, to quote Denzel Washington, means that
14 Costa Rica says no. I don't have any evidence of that,
15 frankly.

16 **MR. ROSSMAN:** Right. That's the problem, Your Honor.
17 So the way I think of it in terms of the context of the habeas
18 petition is if the government fails to prove that Costa Rica is
19 off the table -- and if you'll remember, that's the phrase the
20 government used in one of the last hearings -- you asked
21 specifically if Costa Rica is still on the table, and they said
22 yes, if whatever --

23 **THE COURT:** Eswatini.

24 **MR. ROSSMAN:** -- at that point fell away. I think it
25 was Eswatini pivoting into Ghana, now Liberia. If that falls

1 away, Costa Rica, at least at that point in time, the
2 government was saying, was still on the table.

3 And our perspective on this is you got a triple hearsay
4 affidavit that has zero evidentiary value that should be
5 disregarded.

6 Despite the government -- despite Your Honor giving the
7 government an order to produce a knowledgeable witness, they
8 produced a nice witness -- I don't want to fault Mr. Cantú --
9 but he was not someone who had the right knowledge to prove the
10 government's point -- which they had the burden of proving --
11 that Costa Rica is no longer -- after having given diplomatic
12 assurances, is no longer willing to take Mr. Abrego Garcia.

13 So the point --

14 **THE COURT:** The point on that, though, is I don't
15 quite understand -- I mean, maybe the government is doing it in
16 the alternative because I thought their first-level point was
17 your time, Mr. Abrego, to have chosen Costa Rica was six years
18 ago. And since you didn't do it under the INA, you're
19 time-barred.

20 **MR. ROSSMAN:** Right.

21 **THE COURT:** And so the judge -- Judge, you're getting
22 into discretionary land when you find otherwise -- or let's say
23 this -- there is not a fact that he asserted this selection
24 timely. And even if he did, the attorney general can disregard
25 it for reasons that they are now trying to put in the record.

1 **MR. ROSSMAN:** So what that would have to imagine,
2 Your Honor, is that it's consistent with due process to require
3 a client who have -- who have received an order of withholding
4 of removal to the one and only country the government sought to
5 remove that person to, in a context where you heard from the
6 witness today, prior this year, he had never -- he's not
7 familiar with a case where they were removing Latin American
8 nationals to Africa. Okay?

9 You would have to imagine that Mr. Abrego Garcia would
10 have a crystal ball and could predict that he would be asked
11 one day to go to Eswatini or Liberia or who knows where and, to
12 anticipate that, select some other country besides El Salvador
13 where he would go.

14 **THE COURT:** But part --

15 **MR. ROSSMAN:** The burden is extraordinary.

16 **THE COURT:** It is extraordinary. And this is part of
17 why I'm really pressing on this idea. If there is no order of
18 removal, that's the genesis of a lot of these problems.
19 Because there's regulations and there's a statute, and we can
20 go back and forth. This isn't immigration court, but we can
21 talk about what they say.

22 I mean, part of what a petitioner in the first instance
23 of -- a noncitizen is entitled to is to know the country to
24 which they are being removed. And in the event that that's not
25 feasible, alternate countries that the IJ chooses, right? And

1 hears from the noncitizen about alternative countries, and then
2 DHS can choose alternative countries.

3 **MR. ROSSMAN:** Yes.

4 **THE COURT:** If you don't have that conversation in
5 the first instance because there is no order of removal that
6 reflects it --

7 **MR. ROSSMAN:** Right.

8 **THE COURT:** -- then how can we, now what you're
9 saying as a matter of due process, hold Mr. Abrego responsible
10 for that?

11 **MR. RAND:** I wholeheartedly agree.

12 **THE COURT:** Is that it?

13 **MR. RAND:** I wholeheartedly agree, Your Honor. And I
14 would layer on top of that that, without -- not just a final
15 order of removal that we can all look at and read. Okay?
16 Without that piece of paper and without the conversation that
17 you are anticipating where, you know, the government asks the
18 alien, you know, whether they would have a reasonable fear of
19 being exported to X, Y, or Z, okay, you don't have the
20 effective functioning of the statute.

21 So Mr. Abrego Garcia is deprived of what even the
22 government, you know, basically concedes would be his minimal
23 due process right, which is the protections that Congress
24 afforded him in 1231(b)(2). And that would be to make a
25 designation. A country is named, Costa Rica. He made that

1 designation.

2 And the only override -- and the language is "shall." The
3 language is mandatory. It's not "may."

4 And the only overrides that are available to the
5 government is if, A, that country is unwilling to accept that
6 person. That is a failure of evidence in this record. They
7 have not established that in any evidence that Your Honor can
8 take as competent proof.

9 And/or, B, that there is prejudice to the United States
10 from sending that person to that country. And if you remember
11 back to Mr. Swartz's [sic] testimony on that subject, he said
12 there was no evidence of any prejudice to the government of
13 sending Mr. Abrego Garcia to Costa Rica. That would be strange
14 given that the government went to Costa Rica and got those
15 assurances, albeit in the context of, you know, they were
16 trying to get him to plead to a crime, as Your Honor knows.

17 So all of that, to us, suggests, you know, foundational
18 deprivation of due process not just based on the absence of the
19 final order of removal but the deprivation of his right to the
20 statutory protections in 1231(b)(2).

21 And, Your Honor, as well, you know, the position that the
22 government -- just to complete the menu, the position that the
23 government has taken that -- pursuant to their March 30 memo,
24 that they need only conclude by a USCIS, you know, officer
25 interview that there's no reasonable fear exhibited, that

1 that's sufficient to, you know, send my client away to Liberia,
2 I think plainly violates their own regulations.

3 We cite, you know, a series of recent cases on that for
4 Your Honor.

5 The -- you know, to us, the minimal procedural due process
6 that my client is due is the opportunity to have that -- that
7 issue heard before a neutral judge. The opportunity to hear
8 and to review the reasonable fear interview before an
9 immigration judge, exhaust appeals, that is the bare minimum on
10 a procedural level that my client is due.

11 So those are the prongs of the petition in terms of the
12 relief. Just to -- so Your Honor has all that we're seeking
13 here, our primary request is to release Mr. Abrego Garcia. We
14 think Your Honor could, if Your Honor thought it was
15 appropriate, condition it on the government providing a
16 constitutionally valid, statutorily valid, basis for removal.
17 That could be Costa Rica today.

18 **THE COURT:** You mean release him conditional -- I
19 don't understand that.

20 **MR. ROSSMAN:** The order -- so this is something we've
21 seen in a couple of recent cases. The order would basically
22 say if the government does not do X within -- sake of argument,
23 three days. Okay?

24 If the government does not provide a constitutionally
25 statutorily valid path for removal, then Mr. Abrego Garcia will

1 be released on the third day. That's the conditional order of
2 release. And we've seen it in a couple of recent New Jersey
3 cases, like *Maldonado* is one, your Honor, and *Azzouka* is the
4 other.

5 The point is the government can have one last clear chance
6 to do it the right way. And if there's some other country that
7 we're not thinking of, right, that they have, you know --

8 **THE COURT:** Well, if I find that there's no order of
9 removal in the docket --

10 **MR. ROSSMAN:** Then he should be released, period.

11 **THE COURT:** Then there's -- so your position is it
12 should be released three days, period, or conditional release
13 upon -- give three days to either produce the order or obtain
14 an order? Is that your position?

15 **MR. ROSSMAN:** Well, the latter is a new wrinkle that
16 I've got to think about for a minute, Your Honor, obtain an
17 order.

18 **THE COURT:** Right. And that's the part -- that's the
19 part of all these Supreme Court cases that say substantive
20 rights flow from the existence of an order. And you can't fake
21 it till you make it. You got to have it. And it's often gone
22 against the petitioner. But, you know, it goes both ways.

23 That's the part -- the part that I'm struggling with is
24 you have to have the order, whether it's -- it's got to be an
25 order memorialized somewhere. And I don't have it. And I

1 recall, you know, Mr. Reuveni telling me on the first day it's
2 not in the file.

3 You look to withholding, but it's not in the file. It's
4 not in the record. We don't have it. I don't have it. You're
5 not going to like it, Judge, but I don't have a document to
6 show you called an order of removal.

7 **MR. ROSSMAN:** Yes.

8 **THE COURT:** And that hasn't changed since April.

9 **MR. ROSSMAN:** It hasn't changed. We've not seen an
10 order. We've not seen a 2019 order. We've not seen any order
11 since then.

12 **THE COURT:** And your position is if -- if I believe I
13 have jurisdiction to find -- I have jurisdiction -- whether I
14 do have jurisdiction or not -- and there is no order of
15 removal, I should release immediately, full stop?

16 **MR. ROSSMAN:** That is our first position, Your Honor.

17 Our second position, if that's too dramatic a request,
18 the -- the more protective way, perhaps, to put it, is to give
19 the government one last chance to effectuate removal in a
20 permissible way. And that's why I would put it on a short
21 leash like three days.

22 In all events, relief that we would seek -- well, I should
23 say -- let me frame this properly.

24 The alternative minimum relief that we would seek is an
25 order requiring effectively an injunction prohibiting him from

1 being removed unless and until they give him the opportunity
2 for an immigration judge review and exhaustion of appeals.

3 So that would be comporting with their regulations and the
4 statute.

5 **THE COURT:** So you're saying even if I go -- if I
6 make this finding, I have jurisdiction. There is no order of
7 removal. Under *Zadvydas*, it's not reasonably foreseeable or
8 imminent release is warranted, I should go on to address in the
9 alternative?

10 **MR. ROSSMAN:** No. I think that -- I don't think you
11 need to, Your Honor. If -- and I'll want to take a moment and
12 confer with my cocounsel on this. But the way I'm thinking of
13 it, Your Honor, is that you don't need to reach the alternative
14 minimum grounds if he's released because he will be released.

15 But just -- if you would indulge me, Your Honor, on that
16 for one second.

17 **THE COURT:** Sure. And while you're at it, to -- the
18 other question I'm going to have is your position, then, on the
19 motion to dissolve. Because, frankly, I'm not sure, once I
20 grant the relief, that I have further power to say the
21 government -- that preliminary injunction, right, is done
22 because the case is done. I've granted final relief, and
23 there's really no basis to enjoin any further.

24 And to the extent -- you know, the government will either
25 take my decision up on appeal and seek to stay my order or

1 they'll act consistently with it and there will be some new
2 case at some point, is the way I'm thinking about it, either in
3 immigration court or -- anyway, I just don't see the ongoing
4 vitality to the injunction if I accord the kind of relief
5 you're talking about once that's done.

6 **MR. ROSSMAN:** I'm not sure that last part is right,
7 Your Honor. In the *Maldonado* case, for example, which is a
8 couple of weeks ago in the district of New Jersey, a different
9 issue -- and to be very plain with Your Honor, it was about
10 whether someone could be detained under 1225(b)(2).

11 **THE COURT:** Okay.

12 **MR. ROSSMAN:** But the question there, putting aside,
13 you know, a different issue, what the Court did was granted the
14 writ, released the petitioner from detention, and then still
15 enjoined the government from rearresting the person and
16 detaining them under -- under that -- under that portion of the
17 statute.

18 They basically were trying to treat the person as if they
19 had just arrived in the country as opposed to someone who had
20 been in the country for some period of time.

21 So, I mean, that was permanent ongoing injunctive relief.
22 And if you give me a moment, I want to make sure that we're on
23 the same page as Mr. Sandoval-Moshenberg on the scope.

24 **THE COURT:** Sure.

25 **MR. ROSSMAN:** Why don't I have

1 Mr. Sandoval-Moshenberg address the Court directly, if that's
2 permissible, Your Honor.

3 **THE COURT:** Sure. That's fine. And I just wanted to
4 ask you, is *Maldonado* in cases that you've cited, or do you
5 need to give me the citation?

6 **MR. ROSSMAN:** I will give you the citation. It's
7 2025 Westlaw 2968042. There are others. And
8 Mr. Sandoval-Moshenberg knows the cases intimately.

9 **MR. SANDOVAL-MOSHENBERG:** Your Honor, I just think
10 it's relatively common for a court hearing a *Zadvydas* petition
11 and determining that the -- that there's no significant
12 likelihood of removal in the reasonably foreseeable future to
13 order release and then no redetention unless blank, right?

14 And I think what we need to discuss is what fills in the
15 blank in this case. But I think that it's -- it's a relatively
16 common way for a court to structure its order granting a habeas
17 corpus under *Zadvydas*.

18 **THE COURT:** Okay. Well, I know that others have done
19 it, but the thing that I'm stuck on right now is I just don't
20 have such a fundamental absence in the record that -- I mean,
21 it's just a different -- it's different to say, as I think
22 Judge Abelson just did, give the petitioner his negative fear
23 review before an IJ or release him. And you have until Monday
24 to do it. And I'm intensely curious as to what happened.

25 But it's a different -- it's a different posture to be in

1 than there is no order of removal.

2 **MR. SANDOVAL-MOSHENBERG:** Yes.

3 **THE COURT:** So until the government fixes that, do
4 I -- do I continue to enjoin them? I mean, what if they come
5 up with an order of removal?

6 **MR. SANDOVAL-MOSHENBERG:** Well, Your Honor, if you're
7 referring to the *Cruz-Medina* case, the government chose to
8 release Mr. Cruz-Medina rather than scheduling the IJ review.

9 **THE COURT:** They did.

10 **MR. SANDOVAL-MOSHENBERG:** If Your Honor finds that
11 there's no removal order, then there's no present basis for
12 immigration detention whatsoever. And the writ of habeas
13 corpus should immediately issue and he should be immediately
14 ordered released.

15 I don't know that there's any need for them to go back to
16 the well after seven months of litigating this case to have yet
17 one more chance to produce the order of removal. That
18 certainly isn't what we're requesting here.

19 They could, the following morning, issue him a notice to
20 appear, right? Place him back into removal proceedings. You
21 know, as I mentioned before, he's got a valid grant of parole.
22 It hasn't been revoked yet. But those are probably issues for
23 the immigration judge on the new notice to appear.

24 **THE COURT:** And where would that live?

25 **MR. SANDOVAL-MOSHENBERG:** I don't understand.

1 **THE COURT:** So what I mean by that -- and this is
2 going to be a question for the government as well -- is in
3 Abrego 1, my order was to restore Abrego to the status quo
4 ante. And that was not only physically returning him to
5 Maryland, but so his case -- his immigration case continues in
6 Maryland and thereafter. And it -- then you move to reopen
7 that case and it gets transferred to another judge outside of
8 this jurisdiction.

9 And so I guess my -- the tricky question is going to be,
10 after immediately release, if I do nothing else and now a
11 notice to appear issues, where is that notice going to be?

12 If I release Abrego, it's going to be under the current --
13 you know, he's going to have to report under the stringent
14 conditions set by the Tennessee court.

15 **MR. SANDOVAL-MOSHENBERG:** Yes, Your Honor.

16 **THE COURT:** So he'll be in Maryland. And I just
17 wanted to know if you have any insight as to whether that
18 notice to appear on some new removal proceeding would be here
19 or elsewhere?

20 **MR. SANDOVAL-MOSHENBERG:** Yeah. Your Honor, I think
21 that as this Court -- as you've mentioned, essentially all of
22 the jurisdictional bars that the government has thrown up --
23 1252(g), 1252(b)(9) -- all assume the existence of an order of
24 removal. And so this Court can certainly enter a finding as to
25 the existence or nonexistence of an order of removal.

1 **THE COURT:** I'm not opining on the validity of it --

2 **MR. SANDOVAL-MOSHENBERG:** Exactly.

3 **THE COURT:** -- I'm just saying I don't know where it
4 lives. I just don't see it.

5 **MR. SANDOVAL-MOSHENBERG:** Right. The existence or
6 nonexistence would certainly be a finding that this Court would
7 have the jurisdiction to make. And then that would -- you
8 know, of course they can appeal it, but that would become the
9 law of the case, as it were.

10 And then, if, ultimately, that's the ruling of this Court,
11 then there's no removal order, and, you know, when his valid
12 parole expires or if they choose to revoke it before its
13 expiration date, they can issue him a new notice to appear.

14 **THE COURT:** And in immigration law, does that
15 parole -- that parole is not jurisdictionally based. It's not
16 issued from the District of Maryland, if you will; it's an --
17 it's an executive decision, right, and it doesn't -- that's
18 what I mean by live. Does it live in any particular district?

19 **MR. SANDOVAL-MOSHENBERG:** I understand Your Honor's
20 questions. I mean, Your Honor ordered them to bring him back
21 to the United States. The mechanism by which they chose to do
22 that, which Your Honor didn't really specify --

23 **THE COURT:** Right.

24 **MR. SANDOVAL-MOSHENBERG:** -- certainly didn't tell
25 them to parole him under Section 212(d)(5) of the INA. They

1 chose to use that particular mechanism to bring him back to the
2 country. And they chose to issue him a parole document that's
3 valid for 12 months.

4 The other option that the government would have, if they
5 are willing to sort of concede error in the underlying 2019
6 removal proceedings, is they can file a motion to reopen those
7 proceedings, right?

8 **THE COURT:** Sure.

9 **MR. SANDOVAL-MOSHENBERG:** If they are willing to
10 concede that the immigration judge really messed up by not
11 entering a removal order before determining and entering a
12 withholding order, the government, actually -- if I remember
13 correctly, the time bars to a motion to reopen don't apply when
14 the government is filing a motion to reopen.

15 So they could choose to file a motion to reopen in front
16 of the immigration judge to say to the immigration judge, hey,
17 you messed up; you didn't enter a removal order.

18 But then he would be back in active removal proceedings in
19 front of an immigration judge, and he would do all the things
20 we're saying that they should have given him the opportunity to
21 do in 2019.

22 **THE COURT:** So along those lines, just for my
23 education more than anything else, what's going on with the
24 immigration case that was the -- you know, the decision that
25 was issued?

1 **MR. SANDOVAL-MOSHENBERG:** Yes, Your Honor. The
2 motion to reopen that we filed, you know, seeking asylum since
3 he's now returned to the United States less than one year ago,
4 that was -- as Your Honor knows, was denied by the judge. We
5 did file an appeal to the Board of Immigration Appeals. And
6 the Board of Immigration Appeals has not yet issued a briefing
7 order on that.

8 **THE COURT:** And is that the only issue that was
9 appealed is the denial of asylum? If you don't know, that's
10 fine.

11 **MR. SANDOVAL-MOSHENBERG:** I don't want to
12 misrepresent.

13 **THE COURT:** You made other arguments for adjustment
14 of status.

15 **MR. SANDOVAL-MOSHENBERG:** I don't want to
16 misrepresent to the Court what -- the issues we raised on the
17 notice of appeal.

18 **THE COURT:** Okay.

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

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

21 **MR. ROSSMAN:** So, Your Honor, mindful of your time, I
22 would just say our primary -- putting aside the discussion --
23 the long discussion we had around the absence of the final
24 order of removal, our primary point on this is, you know, we
25 think we've won overwhelmingly on the 1231(b)(2) claim, which

1 is our first claim in the petition. And we think that alone
2 merits a grant of the petition.

3 And I -- we would not have any qualms with, you know,
4 giving the government three days to remove him to Costa Rica,
5 which would be consistent with the statute, if that's what the
6 government wished to do.

7 **THE COURT:** I suppose you'll have until my decision,
8 right?

9 **MR. SANDOVAL-MOSHENBERG:** Correct.

10 **THE COURT:** If I'm thinking -- the way I'm thinking,
11 it's not going to be a quick decision. These are very hard
12 issues. And if the government wants to moot it, it sounds like
13 Mr. Abrego is still open to going to Costa Rica.

14 Am I hearing that right?

15 **MR. ROSSMAN:** Correct, Your Honor.

16 **THE COURT:** Okay.

17 **MR. ROSSMAN:** With that, I would pass the lectern to
18 Mr. Cooper to answer Your Honor's -- any remaining questions on
19 jurisdiction.

20 **THE COURT:** On jurisdiction?

21 **MR. ROSSMAN:** Yeah.

22 **THE COURT:** Mr. Cooper, are you also going to address
23 the *D.V.D.* arguments?

24 **MR. COOPER:** I'd be happy to, Your Honor. Thank you.

25 Your Honor, the government asks the Court to read 8 U.S.C.

1 1252 as creating a jurisdictional black hole in which the
2 executive may devise haphazard procedures for removing
3 individuals to third countries without any judicial review to
4 ensure basic statutory and constitutional due process
5 commitments are honored.

6 That's not what 8 U.S.C. 1252 says. It's not what habeas
7 permits. And so the Court should reject the government's
8 jurisdictional arguments.

9 I think two bedrock principles should guide this Court's
10 analysis on the jurisdictional issues.

11 Number one is the strong presumption in favor of judicial
12 review of agency action and also the equally strong presumption
13 against eliminating habeas review absent a crystal-clear
14 statement from Congress. Neither supports the jurisdictional
15 void the government envisions here.

16 Now, the government's theory turned 1252(g), 1252(b)(9),
17 and the other provisions the government invokes into
18 essentially a free-floating bar on district court review of any
19 claim that touches on immigration. And that's precisely what
20 the Supreme Court rejected time and again in cases like *Reno*
21 *v --*

22 **THE COURT:** The government, though, is making, I
23 think, a slightly different argument, a more specific and
24 nuanced argument, which is a lot of what you seem to be asking
25 for is substantive review of a particular country or a

1 particular -- whether they -- whether the government has met
2 its particular burdens. And that is really not in this court.

3 And so the whole idea was to eliminate, if I get it right,
4 since *St. Cyr*, eliminate habeas litigation, and have a lot of
5 those questions reside with the court of appeals.

6 **MR. COOPER:** Understood, Your Honor, but in his
7 petition, Mr. Abrego Garcia is not asking this court to
8 second-guess any discretionary immigration judgments here, nor
9 is he asking for a review of the final order of removal.
10 Indeed, as I think we'll need to discuss, there is absolutely
11 no evidence of a final order of removal in this record.

12 His claims instead are collateral and procedural, right?
13 He challenges his detention, and he challenges the process that
14 the government seeks to use to effectuate a removal to a third
15 country.

16 And he challenges them because they violate due process.
17 And Congress has never withdrawn habeas review for those kinds
18 of claims.

19 And the 1252 narrow jurisdictional restrictions don't
20 foreclose them either. And I think that is what the Supreme
21 Court has said in *Reno v. AADC*, in *Jennings v. Rodriguez*, in
22 *Department of Homeland Security v. Regents of the University of*
23 *California*.

24 And it's what decisions in this court, just in the past
25 month, have explicitly held in nearly identical circumstances

1 in terms of the types of claims at issue. And that's in the
2 *Santamaria Orellana* case and the *Cruz-Medina* case.

3 So I'd like to walk through those. But let me start maybe
4 with *D.V.D.* And one thing that I think Your Honor asked
5 earlier to Mr. Rossman was, well, you know, is there
6 jurisdiction for you even to consider whether there is an order
7 of removal in the record?

8 And I think the *D.V.D.* argument -- which the government,
9 of course, is the one advancing -- puts that squarely at issue.
10 Because, of course, one of the fundamental components of being
11 a member of the *D.V.D.* class is is there, quote, a final order
12 of removal? That is an element of being part of the *D.V.D.*
13 class.

14 And so the government has put that squarely at issue. Is
15 he a member of the *D.V.D.* class, which requires them to have
16 proven that there's a final order of removal? And they have
17 not done that, Your Honor.

18 **THE COURT:** Are they going to say to me, though, that
19 the decision -- the memorandum, decision, and order withholding
20 assumes and subsumes, if you will -- subsumes within it there's
21 got to be an order of removal in there, and that's enough, at
22 least for purposes of -- for my purposes?

23 **MR. COOPER:** Right. I'm sure they'll argue that.
24 And I think it is telling, Your Honor, that now, seven months
25 after Mr. Reuveni told you there is no order of removal in the

1 record, they have not ever put one in the record. And the best
2 they can do in their most recent submission is the point Your
3 Honor made, they cite to the order granting withholding of
4 removal.

5 Notably, they don't cite to any aspect of the actual order
6 itself; they cite to the procedural history section of the
7 accompanying memorandum, which also doesn't say there's any
8 order. All it says in there is that there was a concession of
9 removability, and the Court --

10 **THE COURT:** Counsel.

11 **MR. COOPER:** -- and so the immigration judge found
12 that Mr. Abrego Garcia was removable. That is not, though, an
13 order.

14 And, you know, we cite in our papers, as an example, to
15 the *Bracic* -- I'm maybe mispronouncing this -- *Bracic v. Holder*
16 case, where -- it's an Eighth Circuit case where it noted -- in
17 that case, the immigrant in that case conceded removability,
18 and the immigration judge denied in that case any relief from
19 removal.

20 And it went up to the Board of Immigration Appeals. And
21 said, hey, you forgot to actually create any order of removal;
22 so we're remanding to the IJ because you need an actual order
23 of removal. A simple statement of finding of removability,
24 even a concession of removability, is not enough. You need to
25 have that actual order.

1 And that gets back to the discussion I believe you were
2 having with Mr. Rossman and Mr. Sandoval-Moshenberg about the
3 recent Supreme Court cases that have drawn a very bright-line
4 distinction between an order of removal and an order granting
5 withholding of removal.

6 And Your Honor noted, often that has been used one way by
7 the government or by the petitioners. And in this instance,
8 the government has failed to obtain, it appears, any order of
9 removal. And that goes against them in this case.

10 With respect to *D.V.D.*, I'm happy to address that pretty
11 briefly. It -- we submit that it does not foreclose Mr. Abrego
12 Garcia's claims here for at least four reasons.

13 One, there isn't the final order of removal in the record.

14 Number two, his claims that are being challenged in this
15 petition are very different than the ones at issue in *D.V.D.*
16 In particular, he raises challenges to his detention, which the
17 *Tanha* case in this court -- I'm happy to provide citations if
18 you need them to any of these. They're in our papers.

19 **THE COURT:** No, we've looked at them.

20 **MR. COOPER:** -- doesn't -- it explicitly says
21 challenges to detention not covered by *D.V.D.*

22 And then, in addition, he raises procedural challenges, as
23 I mentioned, to the government's third-country removal process
24 for him, including unique challenges such as the failure by the
25 government to comply with 1231(b)(2)(A) and his designation of

1 Costa Rica.

2 And the courts in *Santamaria Orellana* and in
3 *Cruz-Medina* -- excuse me -- not *Cruz-Medina*; I misspoke
4 there -- in the *Nguyen* case from the Western District of
5 Washington -- in both of those cases -- *Santamaria Orellana* and
6 *Nguyen* -- say that when you have unique procedural challenges
7 to third-country removal processes, that's not covered by
8 *D.V.D.* So the exact same thing would apply here.

9 And then even if you were to find him a member of the
10 *D.V.D.* class, even if his claims were identical, neither of
11 which is the case, the Fourth Circuit has expressly held that
12 class actions are an exception to the claim-splitting rule.

13 So there's no reason to find that he's improperly
14 splitting claims. As part of the mandatory class in *D.V.D.*,
15 class actions are an exception. That's what the Fourth Circuit
16 held in the *Gunnells* case that we cite.

17 And then last -- I'll just note it briefly -- even if,
18 after all that, they still thought *D.V.D.* might apply, we would
19 submit that Mr. Abrego Garcia would have the fundamental due
20 process right to opt out of a mandatory class. The Supreme
21 Court has never said that it comports with due process to have
22 mandatory classes when you have an individual in unique
23 circumstances who is otherwise going to be foreclosed from
24 raising claims to protect his -- himself from deprivations of
25 life and --

1 **THE COURT:** Just so I get it right, in a situation
2 where, here, the government is saying deprive Abrego Garcia of
3 any of his claims because he's part of the *D.V.D.* class, but
4 before the high court on the *D.V.D.* class, they're arguing it
5 shouldn't be a class and --

6 **MR. COOPER:** Correct. Before the First Circuit, I
7 believe.

8 **THE COURT:** Sorry. The First Circuit.

9 **MR. COOPER:** Indicated in the First Circuit. And I
10 believe in the district court, they are going to move to
11 dismiss that whole case, that it's an improper class. It's
12 basically the government saying nowhere should you get your
13 claims heard, Mr. Abrego Garcia. And then obviously --

14 **THE COURT:** It can't be.

15 **MR. COOPER:** -- can argue it would violate his due
16 process rights. And we cite to the *Phillips Petroleum* case,
17 where the Supreme Court held explicitly that members of a class
18 involving monetary claims have a due process right to opt out.

19 And we would submit that if monetary claims give you a due
20 process right to opt out, then claims where you're going to be
21 deprived of life and liberty potentially should do so as well.

22 Moving to the jurisdiction-stripping provisions the
23 government has invoked, I believe it begins with 1252(g), with
24 which Your Honor is obviously quite familiar. The government
25 has been incessantly invoking it since at least March of this

1 year.

2 Time and again, this Court has held that it does not bar
3 jurisdiction over the various claims Mr. Abrego Garcia has
4 brought. We submit the same should apply here. To begin, the
5 Supreme Court in the *Department of Homeland Security v. Regents*
6 *of the University of California* held that 1252(g) is narrow.
7 And that also followed from the *Reno v. AADC* case.

8 And as this Court held in its April 6th decision, 1252(g)
9 applies only to discretionary decisions by the government, by
10 the attorney general, in three limited categories; namely, one,
11 commencing proceedings; two, adjudicating cases; or, three,
12 executing removal orders. None of which are at issue here.

13 And there's, I don't believe, any argument. None of our
14 claims go to commencing proceedings or adjudicating cases. As
15 we already noted, there isn't any evidence of a final order of
16 removal. So that would take that off the table as well.

17 But even if, assuming for the purposes of this argument,
18 there is a removal order, Mr. Abrego Garcia's claims are not
19 challenging any purported removal order. Rather, as we said,
20 they're challenging detention. They're challenging the
21 processes for third-country removal.

22 And many cases in recent months have held none of those
23 claims are foreclosed by 1252(g). I'll point you to the
24 *Ibarra-Perez* case from the Ninth Circuit from just a few months
25 ago that explicitly held that. And of course this court in

1 both the *Santamaria Orellana* and the *Cruz-Medina* case held
2 1252(g) does not bar procedural challenges to third-country
3 removal processes.

4 And then many other courts have also held that 1252(g)
5 does not bar detention challenges. The Supreme Court held that
6 in *Zadvydas*. The Second Circuit held it in *Öztürk* and the
7 *Mahdawi* case. Petitioner maintains that 1252(g) is
8 inapplicable in this habeas petition.

9 The government next goes to 1252(a)(5) and (b)(9), both
10 which say -- and I'm summarizing -- paraphrasing here -- but
11 basically say you need to funnel review of challenges to final
12 orders of removal to courts of appeals.

13 But, again, Supreme Court has said this -- this provision
14 is narrow. So the Supreme Court said that. And, again, in the
15 *Department of Homeland Security v. Regents of the University of*
16 *California* case.

17 And here, Mr. Abrego Garcia is not challenging any final
18 purported order of removal. That's not what his petition is
19 about. Again, it's about detention. It's about processes for
20 third-country removals. And the cases I just cited all held
21 the exact same thing as with 1252(g).

22 They also hold 1252(a)(5) and (b)(9) don't bar those kinds
23 of claims. Again, the *Ibarra-Perez* case. That's the
24 *Cruz-Medina* case. That's the *Santamaria Orellana* case. All of
25 them say if you're challenging detention or if you're

1 challenging third-party removal processes, these provisions
2 don't apply because you're not challenging the underlying
3 purported removal order.

4 And I should also mention the Second Circuit *Öztürk* and
5 *Mahdawi* cases also say that for detention.

6 Next, the government talks about 1252(a)(4) and also the
7 FARRA statute, Section 2242(d). Those provisions are quite
8 similar. The 8 U.S.C. 1252 provision was designed to codify
9 what was passed in the FARRA Act. All of those talk about
10 challenges to an immigration judge's resolution of a Convention
11 Against Torture, or CAT, claim. Mr. Abrego Garcia, again, is
12 not challenging CAT -- a CAT adjudication in his petition.

13 **THE COURT:** He's -- he's challenging the lack of
14 process.

15 **MR. COOPER:** He's challenging the lack of process,
16 and he's challenging his detention, neither of which is a
17 challenge to a CAT determination.

18 **THE COURT:** Even to the extent there is subject
19 matter touching on CAT relief, it's because Mr. Abrego Garcia
20 says he's not getting enough process to even tee that question
21 up.

22 **MR. COOPER:** Exactly. And, again, Your Honor, the
23 *Santamaria* case and the *Cruz-Medina* case both explicitly
24 address these alleged jurisdictional bars. They say these are
25 not bars when you're challenging the process for third-country

1 removal. Both of those decisions came out last month in this
2 court. And we recommend Your Honor to follow those there as
3 well.

4 The last jurisdictional bar I believe the government cites
5 is 1252(a)(2)(B), which is about denials of discretionary
6 relief. And nothing that Mr. Abrego Garcia is seeking here is
7 discretionary.

8 He is, as we said, talking about his improper detention.
9 That's a mandatory claim under *Zadvydas*. He's talking about
10 the lack of process and due process. None of those are
11 discretionary. The government obviously is required to apply
12 due process under the Constitution and under the governing
13 statutes, including 1231(b)(2)(A).

14 So for all those reasons, Your Honor, we would submit that
15 none of the jurisdictional bars apply here. I'm happy to
16 answer any other questions Your Honor might have on any of the
17 jurisdictional fronts.

18 **THE COURT:** I don't think so yet; but since it's your
19 petition, I'll give you the last word after hearing from the
20 government.

21 **MR. COOPER:** Thank you very much, Your Honor.

22 **THE COURT:** Okay. Thank you.

23 Okay. Who's up? Mr. Ensign?

24 **MR. ENSIGN:** Yes, Your Honor.

25 **THE COURT:** Okay.

1 **MR. ENSIGN:** May it please the Court. I'd like to
2 talk about a couple of different issues. I think we've covered
3 a lot of ground --

4 **THE COURT:** Sure.

5 **MR. ENSIGN:** -- and so maybe I'll start with the
6 final order of removal issue since that was kind of a
7 centerpiece of the prior discussion.

8 So we do believe there is a final order of removal.
9 Actually, let me -- and it is what Your Honor cited at
10 Docket 28-1, I believe at page 35 of the PDF.

11 **THE COURT:** Okay. I have it up as 1-1. That's the
12 hard copy that I have. And so I would invite you to point
13 me -- the last page says "Order." And there's three aspects of
14 that order. And you would agree with me that no -- none of
15 those, does the order say order removed to a particular -- any
16 country. It just doesn't say order removed, right?

17 **MR. ENSIGN:** Not in so many words, Your Honor, but --

18 **THE COURT:** Not at all. Like, tell me where -- it's
19 one, two, three. Tell me right where it says "ordered removed
20 to" any country.

21 **MR. ENSIGN:** Not to any country specifically, Your
22 Honor, but as to, for example, Roman I, it says, "Respondent's
23 application for asylum pursuant to INA Section 2808 is denied."
24 The prior part of the order explains that Mr. Abrego Garcia
25 conceded removability and --

1 **THE COURT:** That doesn't have to do with asylum, does
2 it? I thought that it was denied in this case because he
3 hadn't brought it in sufficient time after entering the
4 country. Am I right?

5 **MR. ENSIGN:** Your Honor, it's been denied two times.
6 So this would be referring to the 2019 denial.

7 **THE COURT:** Right, but the ground for the denial --
8 listen, I want us to be clear.

9 **MR. ENSIGN:** Yes.

10 **THE COURT:** I am just interested in finding the order
11 of removal. I'm not here to fight about whether the IJ was
12 right or -- but if I'm looking to this document, and you say I
13 should read it as an order of removal, I want to be clear as to
14 what this document says.

15 The first thing it said is denying the asylum ground
16 because of the time that it took Mr. Abrego to bring it from
17 the date of entry into the country. Isn't that right?

18 **MR. ENSIGN:** That's correct, Your Honor. And so --

19 **THE COURT:** Okay.

20 **MR. ENSIGN:** But I think the context of the order is
21 very important. Mr. Abrego Garcia conceded removability. And
22 his only defense to having a final order of removal being
23 entered against him was his assertion of an asylum claim.

24 So by rejecting that asylum claim, it was necessarily
25 deciding that -- you know, that a final order of removal should

1 issue and that he was removable.

2 **THE COURT:** But that's not the judge -- listen, first
3 of all, point me to the language that you say is the order of
4 removal. One, two, and three is not the order of removal. The
5 Supreme Court has made that clear. You don't collapse, when
6 the petitioner tries to collapse the relief, the withholding,
7 the CAT relief. You don't do it. That's what the Supreme
8 Court has said most recently in *Bondi*, right?

9 **MR. ENSIGN:** As to a different issue, Your Honor --

10 **THE COURT:** Sure.

11 **MR. GUYNN:** -- not to this issue. As to the
12 timeliness of the petition for review, it had a separate
13 analysis of that.

14 **THE COURT:** Do you think the Supreme Court is going
15 to have a different view here that somehow the withholding
16 order is now the order of removal as well? Do you think
17 they're going to shift course from the last three cases they've
18 decided in this regard?

19 **MR. ENSIGN:** Not in that manner, Your Honor, but --

20 **THE COURT:** Okay.

21 **MR. ENSIGN:** -- the withholding order of removal, I
22 believe as Your Honor identified our argument earlier, is that
23 it necessarily would only exist because he had resolved the
24 final order of removability question. You would never reach
25 the withholding question unless you had already determined that

1 he was removable, that all of his defenses failed.

2 And his defense was asylum. I recognize it was denied on
3 procedural grounds. But that -- a final order of removal would
4 have issued and did, in fact, issue by operation of law, by
5 rejecting his one and only defense, which was the asylum point.

6 **THE COURT:** But there is no authority in the INS, in
7 the INA, in the statute or the regulations, for the proposition
8 you're giving me. And there's ample law to say that you can't
9 just consider a withholding by operation of law to be an order
10 of removal.

11 I mean, I think Judge Wilkinson said it really well. And
12 since we keep -- we keep going back to his wise words, let's --
13 let's talk about it because I want to hear your response to his
14 view on this.

15 Now, admittedly -- and that's why I thought we were going
16 to be talking about jurisdiction -- it comes up in a different
17 context. But he -- in opining on the -- on the importance of
18 this question, in -- and I'll give you the case, *Kouambo v.*
19 *Barr*, 943 F.3d 205.

20 It's a 2019 case. So it predates a number of the Supreme
21 Court cases on this. But he says, "Importantly, when an IJ
22 grants withholding of removal, quote, an explicit order of
23 removal must be included in the decision." And he cites an
24 immigration court decision that the Supreme Court uses
25 subsequently.

1 "This is so for two reasons. First is a -- as a -- as a
2 matter of simple logic, in order to withhold removal, there
3 must first be an order of removal that can be withheld."

4 That's your point.

5 "Second, because an alien protected by an order of
6 withholding may still be removed to a willing third country,
7 the IJ must issue a final order of removal to authorize DHS to
8 effect such a removal if a third country is identified."

9 And then he goes on to say and the problem here was that
10 flowing from an order of removal and then withholding his
11 rigorous background checks, and the person wasn't subjected to
12 it, and the real question was so when the BIA remanded for
13 those background checks, does it confer jurisdiction on the
14 Fourth Circuit?

15 And the Fourth Circuit, Judge Wilkinson, said no because
16 that jurisdiction starts with the order.

17 So in that situation, right, where it's adverse to the
18 petitioner, it -- we were all very careful to make sure we knew
19 what the order of removal was and what the withholding was or
20 what the relief from the order was.

21 Why should I do it differently here?

22 **MR. ENSIGN:** Well, Your Honor, I think that that is
23 presenting a different posture. You know, notably, we'll get
24 to the jurisdictional bars, and there's a reason the Fourth
25 Circuit is reviewing that. It's because it would have come up

1 on a petition for review. And, therefore, through the proper
2 channeling processes under (a) (5) and (b) (9).

3 **THE COURT:** Right.

4 **MR. ENSIGN:** But assuming this was before you, I
5 think this represents necessarily the final order of removal.
6 This is what the IJ did. He was adjudicating whether or not he
7 was removable. He adjudicated Mr. Abrego Garcia's one and only
8 defense that would prevent the issuance of a final order of
9 removal, and then proceeded to reach an issue that he would
10 only reach if the final order of removal had issued.

11 **THE COURT:** But he made a mistake. And there is no
12 order of removal. Why isn't that the correct status in the
13 record?

14 **MR. ENSIGN:** Because, Your Honor, I think that is
15 requiring more formality than the law requires. He has
16 adjudicated all issues. And by operation of law, by rejecting
17 Mr. Abrego's one and only defense that would keep him from
18 having a final order of removal, that this is, in fact -- by
19 resolving all such issues, this is, by operation of law, a
20 final order of removal.

21 **THE COURT:** So your argument is not that anywhere in
22 this document it says "order of removal" or "I order that
23 Mr. Abrego Garcia be removed to a designated country." It
24 doesn't say that. You're simply saying, by operation of law, I
25 am to construe the withholding as an order of removal?

1 **MR. ENSIGN:** Not just the withholding, but, yes, Your
2 Honor. By deciding the withholding issue, by deciding the
3 asylum issue, by providing his appeal rights that's further
4 down the page, these appeal rights would only run from the
5 entry of a final order of removal. So by starting the clock
6 for a final order of removal, the IJ was further acknowledging
7 that this was, in fact, the final order of removal. You
8 wouldn't provide for those appeal rights if the final order
9 of -- if this weren't the final order of removal.

10 **THE COURT:** So you're saying at the point at which --
11 just to sort of humor me so I understand it.

12 At the point at which -- say, in a case in which an order
13 of removal was separate, there was a prior order of removal,
14 right? And then there was a determination of denial of asylum,
15 denial -- a granting of withholding, denial of CAT, wouldn't
16 the judge give an advisement of appeal rights in that situation
17 on the second set of orders?

18 **MR. ENSIGN:** Your Honor, I'm not sure that I follow
19 your hypothetical exactly because it sounds like you're
20 describing this situation.

21 **THE COURT:** No, I'm actually saying --

22 **MR. ENSIGN:** Okay.

23 **THE COURT:** There's order on day one of removal. And
24 then on day ten, there's the relief that is accorded Mr. Abrego
25 Garcia or the denial of it in -- in this decision. Right?

1 If this decision is construed only as granting
2 withholding, denying CAT, denying asylum, wouldn't the decision
3 give Mr. Abrego notice of his right to appeal?

4 **MR. ENSIGN:** It would, Your Honor, but that's -- this
5 order is different. There are often withholding-only
6 proceedings. This was not one of them because Mr. Abrego
7 Garcia chose to raise asylum; that if his asylum claim had been
8 meritorious, that would have kept a final order of removal from
9 being entered. I don't think that's disputed in any way. That
10 was his one and only defense to a final order of removal
11 issuing. And by rejecting it, the IJ clearly meant for this to
12 be the final order of removal.

13 **THE COURT:** Okay. They may have meant it, but let's
14 talk about what orders of removal usually look like according
15 to the regs, right, according to the INA, and according to the
16 implementing regulations.

17 This doesn't look anything like -- I mean, it's not even
18 close -- an order of removal, right? I mean it doesn't
19 designate the country. Does it? Does it designate the country
20 as El Salvador?

21 **MR. ENSIGN:** It does not, Your Honor. And
22 necessarily, by granting withholding of removal from
23 El Salvador, it could not be.

24 **THE COURT:** Except they granted withholding of
25 removal to Guatemala.

1 **MR. ENSIGN:** Understood, Your Honor.

2 **THE COURT:** No, no, no. Let's not gloss over that.
3 That's important. Okay? Because that's why the order itself
4 is so important, so that there is no mistake. People make
5 mistakes. We're human. And -- and I'm not faulting this judge
6 because he's -- I'm sure he was very, very busy, right?

7 And he wrote a very recent decision. But, notably, in the
8 conclusion, said that DHS hasn't shown there are changed
9 circumstances in Guatemala, right, that would result in the
10 respondent's life not being threatened.

11 And the point of that is that was an important fact for
12 him in denying, if I'm getting it right, the Convention Against
13 Torture claim.

14 **MR. ENSIGN:** I believe so, Your Honor.

15 **THE COURT:** Okay. But he got the country wrong. So
16 how am I even to infer what country this is an order of removal
17 to?

18 **MR. ENSIGN:** Your Honor, the rest of the record
19 reflects -- strongly indicates that that is a typo. But you're
20 right. People -- people, including immigration judges, make
21 errors all the time.

22 **THE COURT:** Yeah.

23 **MR. ENSIGN:** And Congress created a process for that
24 to be reviewed. If you don't think that the IJ's order is
25 sufficient, then you can take it to the BIA. And, notably,

1 Mr. Abrego Garcia recently filed a motion to reopen before the
2 IJ. And it seems like if they thought that this was a good
3 immigration argument, that would have been a fantastic thing to
4 raise to an immigration judge, to say you have not, in fact,
5 had an order of removal; therefore, you need to fix this
6 because the prior IJ did not follow the requirements. But they
7 did not do so.

8 **THE COURT:** Well, maybe; maybe not. I don't know.
9 You know, I did note that, at almost every box that needed to
10 be checked where Mr. Abrego is asked if there was a final order
11 of removal, the answer was no.

12 So the petitioner was careful in that regard. There was
13 no concession of a final order of removal. And I'm not here to
14 figure out why things are going on in immigration one way or
15 another.

16 I'm just here to determine, first, whether I have
17 jurisdiction. And I have jurisdiction to determine whether I
18 have jurisdiction. And it's a fundamental question whether I
19 have jurisdiction. You've raised all of these provisions that
20 say I don't. They all depend on the existence of a removal
21 order. I can't opine on a -- on the validity of an order if it
22 doesn't exist.

23 **MR. ENSIGN:** Your Honor, actually, I don't think that
24 premise is correct for all of the jurisdictional bars. So it
25 may be helpful to pivot to those and say which ones would.

1 **THE COURT:** Sure. Okay.

2 **MR. ENSIGN:** I think if there weren't a final order
3 of removal, I don't think that 1252(g), that one would not
4 apply because that presupposes -- or execution of an order of
5 removal. And so the 1252(g) would not.

6 However, (a) (5) and (b) (9) are zipper clauses that funnel
7 everything that is in a IJ's decision through a court of
8 appeals to the extent that your objection is that there is
9 legal error or insufficient reasoning in an immigration judge's
10 decision. There's a process.

11 **THE COURT:** But doesn't it say that those bar me from
12 reviewing the validity of a final order, all facts and law
13 related to a final order? So, again, it presupposes -- because
14 in so many of these cases, everyone agrees there's a final
15 order. It's not in dispute.

16 **MR. ENSIGN:** Your Honor --

17 **THE COURT:** And also that's why I -- I'm pushing back
18 a little bit because I think I have to decide is there a final
19 order to decide if I'm -- have jurisdiction or not.

20 **MR. ENSIGN:** Your Honor, I don't believe so. And I
21 think in two different ways. So (b) (9) does refer to final
22 orders of removal; however, (a) (5) does not. (a) (5) just
23 refers to an order of removal. So it's not the term of art
24 within immigration law. It's anything that looks like an order
25 of removal would fall within its bar.

1 **THE COURT:** Wait, wait, wait. Anything that looks
2 like it? I mean, that vests all of the jurisdictional question
3 in the United States. Because, frankly, like, just to push
4 this to its, like, absurd -- to a point of absurdity to make my
5 point.

6 You could say in the record that there is -- you know, you
7 could say anything in the record is an order. And once you say
8 it, now I'm barred from reviewing it?

9 **MR. ENSIGN:** No, Your Honor. I think the case law
10 does recognize that the antecedent thing would have to be there
11 are IJ proceedings. And you are -- you are taking some
12 objection to those IJ proceedings. And if so, then the course
13 of appeal you recognize that the (a) (5) and (b) (9) zipper
14 clauses funnel everything, even if there is not yet a final
15 order of removal.

16 To the extent that you have injury that you're alleging
17 from a grievance that you have with an order issued by an IJ,
18 Congress added the (a) (5) and (b) (9) zipper clauses funnel
19 everything, including, because that could -- you know, that
20 will eventually lead to a final order of removal. You can't
21 bring premature questions to the court of appeals under (b) (5)
22 and (a) (9).

23 And, again, all of those are being funneled to courts of
24 appeals. There are explicit prohibitions on jurisdiction in
25 the district Courts, including the habeas statute is mentioned

1 by specific citation in either (a) (5) or (b) (9) or possibly
2 both.

3 So, you know, certainly that satisfies any clarity
4 requirement that will come up.

5 **THE COURT:** But again, I think those go to -- I'm not
6 opining on the validity of an order, the sufficiency of an
7 order, the -- the legal import of it. I'm saying, like -- like
8 courts often do, I've got a -- I've got a record. I've got the
9 court file, if you will. I take judicial notice of the court
10 file. And this thing is missing. There is no order of removal
11 that is -- that satisfies the INA or the implementing
12 regulations.

13 If I -- if I find that. If I find that. And then I say,
14 okay, if there is no order, on what authority can Mr. Abrego be
15 released -- or be detained for -- for imminent and reasonable
16 removal? Not much because the removal to a third country is
17 predicated on an order of removal.

18 So under *Zadvydas*, which I do have the authority to review
19 the constitutionality of prolonged detention, since it's not
20 reasonably foreseeable, I'm going to give him the relief of
21 release. Why don't I have jurisdiction to do that under these
22 other clauses that you mentioned?

23 **MR. ENSIGN:** Your Honor, as to prolonged -- prolonged
24 detention, we agree that (a) (5) and (b) (9) do not -- are not a
25 bar to bringing a prolonged detention claim. It is a bar to

1 challenging removal. But as to prolonged detention, the -- the
2 (a) (5) and (b) (9) bars do not apply.

3 We think there's a different thing -- a different rule
4 that attaches, not presented here, when someone is arrested at
5 the same time that removal proceedings are initiated. We think
6 it is then part and parcel of the same decision, but it falls
7 within the (g) clause. That's not presented here.

8 **THE COURT:** Right.

9 **MR. ENSIGN:** *Zadvydas*, as Your Honor recognized,
10 those claims are reviewable. As to prolonged detention, we
11 think that fails on the merits, but we're not saying that
12 (a) (5) and (b) (9) or 1252(g) prohibit Your Honor from reaching
13 the merits of that claim.

14 **THE COURT:** Yeah, because I'm really trying,
15 Mr. Ensign, to wrestle with this and be careful. I'm not
16 interested in going where district courts are not to go.

17 But it seems to me like there is a very strong argument
18 from Mr. Abrego that third-country removal is derivative of a
19 valid removal order. And from the beginning, your former
20 colleague agreed that there is no order of removal in the
21 record.

22 He pushed back on whether I could make that finding
23 because there was this withholding of removal. But that
24 concession was made in April that there is no order of
25 removal -- order of removal.

1 Okay. So now, many months later, Mr. Abrego is still
2 detained. And so tell me under *Zadvydas* why it's not relevant
3 in that regard. Like, it doesn't seem to be imminent or
4 reasonably foreseeable, not only because of these third-country
5 problems; but in the first instance because there's no valid
6 order of removal.

7 **MR. ENSIGN:** Well, Your Honor, in that circumstance,
8 it actually gets a little weird. So the issues that would be
9 presented are actually quite different.

10 If there is no final order of removal, then Mr. Abrego
11 Garcia's detention is not governed by Section 1231 and *Zadvydas*
12 doesn't apply at all.

13 **THE COURT:** Well, I don't know if it doesn't apply.
14 It's just applied in that case because it was 1231. But the
15 fundamental principle remains, which is that if a person --
16 see, we've got this weird situation where if it's not 1231,
17 then it's nothing right now. Okay?

18 So at some point, the government may elect that it's going
19 to proceed -- if you think that this argument is valid, you may
20 proceed with a new removal order with a new plan in mind. And
21 we'll see.

22 But as of today, I don't read *Zadvydas* to only apply to
23 third-country removals because it gets to that fundamental
24 principle. If you're being held by the government for -- for
25 removal purposes and removal is not reasonably foreseeable,

1 then you're entitled to release.

2 **MR. ENSIGN:** Your Honor, I don't believe that's the
3 state of the law. As *Zadvydas* resolves, the -- those claims as
4 to detention under Section 1231, which is post final order
5 removal.

6 **THE COURT:** Okay. Yeah.

7 **MR. ENSIGN:** As to pre final order of removal
8 detention, that is governed by Sections 1225 and 1226. The
9 Supreme Court in *Jennings* case refused to extend the *Zadvydas*
10 principle.

11 **THE COURT:** To people who clearly were in 1225 and
12 1226. I mean, here's the point: The only basis that you have
13 given me to hold Abrego is 1231. And without a valid order of
14 removal, the sanctity of that basis is really undercut. And
15 that's the only basis you give me.

16 So if I'm just looking at is the basis you're giving me
17 enough to hold him beyond today or whenever I decide, why --
18 why is that not squarely *Zadvydas*?

19 **MR. ENSIGN:** I guess several reactions, Your Honor.

20 The first is, again, 1231 and *Zadvydas* only applies to
21 1231, which is post final order of removal. So in that
22 scenario, it wouldn't apply; different statutory authorities
23 would apply.

24 The second is that, as they've recognized, we could simply
25 issue a new NTA, which would then allow detention under 1225

1 and 1226. And, candidly, I don't know the status of if there
2 is no final order of removal, I think the government could
3 potentially detain him under the original NTA, like that would
4 go back into effect as a matter of law.

5 **THE COURT:** You may be right, in which case a lot of
6 the questions that we're wrestling with are mooted out because
7 it goes back into that original status. And then, I mean, you
8 know, both sides proceed at their -- on their own merits with
9 whether Mr. Abrego is removable and, if so, whether he can
10 elect a third country or is subject to withholding of removal.

11 I mean, all those questions, I guess, I don't know if
12 they're back on the table. My point is we're not there. Where
13 we are right now is the only basis for holding him is 1231.
14 And in *Zadvydas*, the challenge was the government persists in
15 holding the individual because they looked for a third country
16 and they can't find one.

17 Here, the thing that I'm wrestling with, because the
18 petitioners never let this argument go, is the government
19 persists in holding him without any authority under the INA.
20 That's the upshot of the lack of the removal order.

21 **MR. ENSIGN:** Your Honor, in that scenario, I do think
22 that that would mean that there's different detention
23 authorities that would take us outside of *Zadvydas*. I'd --
24 just as a more global observation, I'll note that he has
25 conceded that he would go to Costa Rica tomorrow if we agreed

1 to do so. That is an odd thing to agree to if you didn't think
2 that you had a final order of removal.

3 **THE COURT:** No, not necessarily. It's a concession
4 because he's been to CECOT and back and that he has negotiated
5 an arrangement where Costa Rica will not put him in a detention
6 center where he could be harmed. It will not be thousands of
7 miles away, steps away from the ocean, in a country where he
8 doesn't know his language -- the language, he has no cultural
9 ties, no ties whatsoever. He will be completely removed from
10 everything and everyone he knows, and no ability that I can
11 foresee in a normal human to get back to that.

12 So -- so you make -- you make decisions. You are dealt a
13 hand, and you play it the best you can.

14 He has a country -- maybe he'll turn to that at some
15 point -- who said we will take him and we will give him
16 protected status. That's why he offers it today. That's what
17 I'm hearing from the petitioner. And the government still
18 doesn't have any appetite for that. Am I right?

19 **MR. ENSIGN:** Appetite? Your Honor, I believe the
20 testimony today was that that is not an open door.

21 **THE COURT:** Well, I don't have any factual basis for
22 that because the government elected not to give me any.

23 **MR. ENSIGN:** Your Honor --

24 **THE COURT:** Let's stop for a second because I want to
25 be fair to you, Mr. Ensign, and understand why I'm saying that.

1 We've had four African countries that have been open for
2 discussion. And every time, the government -- not for
3 everybody's eyes, but for mine -- has given me the factual
4 predicate of what's going on. And I appreciate it because then
5 I can review it and I can make determinations.

6 For Costa Rica, you haven't done that. And it's a real
7 curiosity. It was filed under seal. You fought keeping it
8 under seal. This affidavit that says nothing. This witness
9 said nothing today. And I just want the underlying
10 information.

11 So you're saying now the government's position is Costa
12 Rica is no longer on the table. Has Costa Rica conveyed that
13 to the United States?

14 **MR. ENSIGN:** Your Honor, I don't know the specifics
15 of the discussions. I know what has been conveyed to the Court
16 through the declaration, that it would require additional
17 negotiations that could not -- and, you know, it is not
18 something that can simply be done. And it's not something that
19 is clear that could be, you know, achievable.

20 **THE COURT:** So that means that the letter from August
21 authored by the government of Costa Rica saying we will take
22 Abrego, we will give him protected status, you're saying Costa
23 Rica now has rescinded that? Because they made the offer.
24 It's in -- it's in the record. It wasn't conditional. That's
25 what I don't understand.

1 And if you are saying that, I would love to see the
2 evidence so that I can -- I'm rest assured that this is not
3 just an empty word salad of an affidavit.

4 **MR. ENSIGN:** Your Honor, my understanding is that --
5 and I believe that it was conveyed in the declaration -- is
6 that even when made, it still had a degree of conditionality to
7 it. That was not simply an absolute. I guess I can say
8 something that bears more directly on this too.

9 To the extent that Costa Rica would like to take
10 Mr. Abrego Garcia, there's nothing that would stop Mr. Abrego
11 Garcia from, once being removed to Liberia, to apply to Costa
12 Rica to take him.

13 **THE COURT:** Why do that, though? Why? He's paroled
14 in this country. Costa Rica says we'll give you the papers.
15 Why is the government standing in the way of that? And now
16 taking the position he should go to Africa first? I mean, why
17 are you doing it other than what the petitioner is saying?

18 **MR. ENSIGN:** Your Honor, I think it's exactly what
19 the statutory language says --

20 **THE COURT:** Which is?

21 **MR. ENSIGN:** -- that the secretary of Homeland
22 Security, it's the romanette iv within 1231(b), that the
23 secretary has determined that it would be prejudicial to the
24 interests of the United States to do so. And that is not a
25 reviewable determination under 125 --

1 **THE COURT:** I agree with you. And when you have
2 given me reasonable assurances from the State Department, you
3 have shown me the work. You have not shown me the work here.
4 Okay?

5 The affidavit of Mr. -- poor Mr. Cantú knew nothing about
6 anything. He just took the word of a lawyer who was told by
7 someone -- we believe it's the Deputy Secretary of State -- I
8 don't see any underlying information in that regard -- that
9 these assurances are no longer on the table and they were
10 conditional in any event.

11 Can you just show me, just me, the underlying work on
12 that?

13 **MR. ENSIGN:** Your Honor, I would have to talk to the
14 clients about that. I don't -- I don't know the answer to
15 that.

16 **THE COURT:** It's so odd to me. It's so odd. And
17 that's really being polite. You know what today is. And you
18 want me to make a finding that Costa Rica is no longer on the
19 table, but yet, despite your ability to get it done at every
20 other hearing to show me the work between this country and
21 third countries, not for public consumption, you do not want to
22 do it here and you're going to go back and ask again.

23 Now, the record is going to be closed as of today.

24 But, you know, in terms of any future proceedings where I
25 issue an order, say this is what I -- this is what the witness

1 most opine on; it's not followed. I issue another one; not
2 followed. This time, I even said, attorneys, make a good-faith
3 effort to make sure this witness is prepared, right? And --
4 and he was the worst of all, the worst -- you've had three
5 witnesses do this. They are supposed to bind DHS. This
6 witness knew nothing. He didn't know the meaning of the words
7 in his own affidavit.

8 That's extremely troubling.

9 Now, is it -- I don't even know if it matters here,
10 frankly, because if I make a finding that a -- a final order
11 doesn't exist, it might be we're done. But it may matter for
12 proceedings in Abrego 1. I don't know.

13 But I still don't understand why I can't -- if there
14 was -- let me put it this way: If there was such evidence, you
15 all are reasonably competent and well-trained lawyers, I would
16 have gotten it. That's how I'm looking at it. There is no
17 evidence that Costa Rica is somehow conditional or withholding
18 their prior request. That's how I'm seeing it.

19 **MR. ENSIGN:** Your Honor, I guess some reactions. I
20 agree first that, if you think there's no final order of
21 removal, that that issue is presented and you wouldn't need to
22 raise it.

23 **THE COURT:** Right.

24 **MR. ENSIGN:** Second, as to why there's not a record,
25 part of it is the defendants believe that this is not

1 reviewable, that the 1231 allows the Secretary of Homeland
2 Security to, in her discretion, you know, disregard a
3 designation either as untimely or as prejudicial to the
4 interests of the United States. That's an explicitly
5 discretionary decision. And, therefore, under
6 Section 1252(a)(2)(B)(ii), then that -- that is explicitly,
7 there is no judicial review. And, you know, in particular, the
8 State Department feels strongly that that is not subject to
9 judicial probing.

10 **THE COURT:** Okay. All right. Well, when it's the
11 petitioner's turn to respond, I will be interested in learning
12 whether, you know, you've had any direct -- if there's any
13 additional evidence as to whether Costa Rica is still on the
14 table. But I hear you, Mr. Ensign.

15 Okay. So that's -- we pivoted to that. I think I got us
16 off the jurisdictional track. So I'm happy to hear from you to
17 pick back up wherever.

18 **MR. ENSIGN:** Certainly, Your Honor.

19 So as we're talking -- maybe let's turn back to 1252(g)
20 for a moment.

21 **THE COURT:** Okay.

22 **MR. ENSIGN:** So I agree that if there isn't a final
23 order of removal, that that would not apply because, by its
24 terms, it refers to that.

25 However, assuming that there is one, which we believe

1 there is, this is squarely within its core. The Supreme Court
2 has described 1252(g) as narrow. And that's correct because it
3 is three categories. But this is one. Execution of removal
4 orders is squarely within 1252(g). An argument that you cannot
5 execute my -- my removal order until you do X, Y, Z is a
6 literal challenge to an execution order and it falls squarely
7 within a 1252(g) bar.

8 **THE COURT:** Although *Zadvydas* -- if this were just a
9 garden-variety -- like, yes, there is a final order of removal,
10 but the petitioners are going back to their *Zadvydas* claim that
11 we talked about a couple of weeks ago, 1252(g) doesn't bar
12 that.

13 **MR. ENSIGN:** That's correct, Your Honor. And I
14 apologize. I had suggested otherwise. I am referring solely
15 to the challenges to removal. The challenges to detention
16 would not be barred under 1252(g) in any context. And we have
17 not made that argument.

18 **THE COURT:** And your argument that the challenges to
19 removal also include the procedural infirmities. So what
20 *Cruz-Medina* and a number of the other district judges have
21 done, you're saying is barred by 1252(g)?

22 **MR. ENSIGN:** That's correct, Your Honor. But I also
23 think that those cases would be distinguishable even if you
24 thought that their legal reasoning was correct.

25 So as an initial matter, 1252(g) bars those challenges in

1 execution of removal. To the extent that your argument is you
2 can't execute my removal order until you do certain procedures,
3 that is squarely within the bar.

4 I think they have also suggested that it doesn't apply
5 because it's discretionary. That's something that's been
6 squarely rejected by multiple courts of appeals. For example,
7 in the Fifth Circuit, in the *Townsley* case, they say that
8 although the Supreme Court and the AADC emphasized the
9 importance of preserving the attorney general's discretionary
10 functions, in the three enumerated categories, it did not
11 explicitly state that the provision applies only to review of
12 discretionary decisions, end quote. That's 243 F.3d at 214.

13 And it went on to reject an argument just like this. So
14 we don't think the discretionary one applies. But if you
15 thought this was the sort of -- the relief ordered in -- by one
16 of your colleagues on this court, for example, was --
17 additional review before an IJ.

18 But here, that wouldn't -- like, that would be an empty
19 formality that due process should not require. He would be
20 raising a challenge that -- either that Liberia itself would
21 torture or persecute him or that it would send him to
22 El Salvador where he would be tortured or persecuted.

23 Those are the only fears that he has raised in his briefs.
24 In fact, I don't think he's ever raised any fear that Liberia
25 itself would torture or persecute him. It relates solely to

1 him being sent to El Salvador.

2 The United States has received both general and specific
3 assurances that Mr. Abrego Garcia would not be tortured,
4 persecuted, or sent to El Salvador.

5 **THE COURT:** Does it turn, though -- I guess the
6 procedural right does not turn on the success of the outcome,
7 does it? I mean, I don't know if -- you may be right. This
8 may be -- if a neutral IJ were to look at this, just as it --
9 the INA and the regulations require in other situations, like,
10 you know, reinstated orders of removal, if a IJ were to look at
11 this, the IJ might agree with the asylum officer.

12 That doesn't mean Mr. Abrego doesn't get the process,
13 though, does it?

14 **MR. ENSIGN:** I think it would in this circumstance
15 for multiple reasons. I think due process is flexible and
16 applies to different circumstances, where a circumstance is
17 that the order -- the process being sought is as a foregone
18 conclusion and, as a matter of law, can have no other
19 conclusion.

20 **THE COURT:** Before I forget, speaking of foregone
21 conclusions -- I don't know why, when you say that, it made me
22 think of this question that I really need to understand.

23 How is it, after Abrego 1, when I ordered Mr. Abrego be
24 returned and restored to the status quo ante, which is he
25 should be placed back in the position that he should have been

1 had he not been wrongfully removed. I think that's the way the
2 Supreme Court said.

3 How is it, when he is restored and he is detained in
4 Baltimore and then the petitioners move to reopen, the case
5 gets reassigned to another IJ or assigned to another IJ that
6 has no -- no ties to this jurisdiction? Can you explain to me
7 how that happened and why?

8 **MR. ENSIGN:** I don't specifically know, Your Honor.
9 I know -- I believe the original IJ --

10 **THE COURT:** You don't know? You don't know why an IJ
11 from Atlanta got it?

12 **MR. ENSIGN:** I don't, Your Honor. I can ask and
13 report back.

14 **THE COURT:** Maybe Mr. Molina might know because he's
15 our subject matter expert on immigration. But, I mean, the
16 petitioner raises at least, you know, a very concerning
17 statistic that it happened to go to an IJ that had a very high
18 denial rate of all kinds of relief, including asylum.

19 So it just seems to me like why Atlanta? Why this judge?
20 How did this happen? Especially when my order was to restore
21 him to the status quo ante, which -- you know, again, not
22 opining on the substance, but you would think that would mean
23 his case would stay in Baltimore where it started. So I just
24 want to understand it.

25 **MR. ENSIGN:** Your Honor, I don't specifically know.

1 I know that the -- I believe that the original IJ was not
2 available, and so it had to be reassigned. The processes that
3 EOIR uses to assign those, I don't know why it ended up there.
4 That's a question we're happy to pose to them if you would
5 like, and happy to report.

6 **THE COURT:** That would be great.

7 **MR. ENSIGN:** I don't specifically know the answer to
8 that question.

9 **THE COURT:** So what would happen, if you decide to
10 issue a new order of removal, you'd start this process over
11 again? Where would it start?

12 **MR. ENSIGN:** Your Honor, I don't know the answer to
13 that question. And I think that there are -- some of that
14 depends on what -- how DHS would like to approach that.

15 And in many ways, I'm not aware of a parallel case that
16 raises a similar issue where, you know, something that was
17 previously understood to be a final order of removal is held
18 not to be and what that would trigger or what that would look
19 like.

20 **THE COURT:** Well, it looks like in the immigration
21 context, when it happens, it just gets remanded to the original
22 judge. And the original judge has to deal with it, all
23 depending on the scope of the remand.

24 That's not me. But that's why I'm just curious because my
25 order was restore him to the status quo ante. And then the

1 status quo ante, at least in my very basic understanding, would
2 be it starts in Baltimore, stays in Baltimore. And how is it
3 that -- you're saying that IJ wasn't -- is that IJ still on the
4 bench?

5 **MR. ENSIGN:** I don't believe so, Your Honor. I'm not
6 a hundred percent sure on that. I believe -- I'm pretty sure
7 that's correct. And then I think when the original IJ is not
8 available, there are different procedures that --

9 **THE COURT:** And there's no Baltimore IJ available; so
10 it has to go to Atlanta?

11 **MR. ENSIGN:** I don't know specifically how that was
12 assigned. I know there certainly are procedures that provide
13 for what happens when the original judge is not available.
14 And, you know, I think part of it depends on where the workload
15 is and where, you know, people have capacity.

16 I know there certainly is management of, like, you know,
17 docket -- like how crowded dockets are vis-a-vis each other.
18 But I don't know specifically that assignment. We can pose
19 that and get an answer, Your Honor.

20 **THE COURT:** Let's find out if Mr. Molina knows. He
21 may or may not.

22 **MR. MOLINA:** In this particular circumstance, Your
23 Honor, I do not know why EOIR does it. EOIR does, on occasion,
24 use remotely located immigration judges to help cover certain
25 dockets. I don't know whether Baltimore was low on immigration

1 judges so they needed to just outsource it for a little while,
2 et cetera. But it is a question that we can look into.

3 **THE COURT:** Well, I think because, on the one hand,
4 if it was done -- if it was done outside of the normal
5 procedure, that's a real problem because my order was restore
6 him to the status quo ante --

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

8 **THE COURT:** -- and according to the Supreme Court
9 where he would have been had he not been wrongfully removed.
10 And the next thing you know, he's got an IJ that's not familiar
11 with the original case who's deciding the motion to reopen.
12 That seems odd to me.

13 **MR. MOLINA:** Certainly, Your Honor. But I think you
14 can find some comfort in the fact that the new immigration
15 judge's decision actually does use the Baltimore immigration
16 court's heading. So that gives the feel that it's a judge
17 standing in remotely to participate in that court.

18 **THE COURT:** Got it. So that's the next question.
19 Rather than a feel is, does it work like when a judge is
20 appointed by designation so, when it goes through the appellate
21 process, it's still going to be a Fourth Circuit case?

22 **MR. MOLINA:** That is correct, Your Honor. That
23 remote judge would still -- working for that particular court,
24 would still get processed to the board, at least. You know,
25 there is some ongoing questions about the venue provision

1 located in 1252 at Subsection (b) (2), I think it is --

2 **THE COURT:** Okay.

3 **MR. MOLINA:** -- which says it's supposed to be where
4 the immigration judge's concluded proceedings. But the
5 government's perspective is -- and to the federal courts has
6 always been -- when the court is -- when a case is assigned to
7 a court like Baltimore, that's the location of the hearing even
8 if the immigration judge is located in Hawaii.

9 **THE COURT:** Fair enough. That's very helpful.

10 **MR. MOLINA:** So that's the perspective that the
11 government has put forward constantly.

12 **THE COURT:** And that's the government's
13 representation with regard to Mr. Abrego; so I need not worry
14 about this case suddenly ending up not in the status quo ante.

15 **MR. MOLINA:** That is correct. That I could detect,
16 there was no venue change in this court. So presumptively by
17 all the clues, it appears this is still a Baltimore immigration
18 court case.

19 **THE COURT:** Great. Thank you for that.

20 Okay. Thanks, Mr. Ensign, for letting me clarify that
21 with Mr. Molina.

22 **MR. ENSIGN:** Well, and thank you, Mr. Molina, for
23 knowing that.

24 So perhaps I should circle back.

25 **THE COURT:** Yes.

1 **MR. ENSIGN:** So we're talking about the due process.
2 And so why -- so why I think -- so, first of all, I don't think
3 there would be any injury where the proceeding can have only
4 one outcome under the substantive law. Then you're neither
5 injured by the lack of it nor would the due process clause
6 require additional proceedings to determine something that is
7 already as a matter of law 100 percent certain. And that is
8 how the Supreme Court's decision in *Munaf v. Geren* makes this
9 context.

10 **THE COURT:** Except it's such a different case, right?
11 Those are the folks who were in Iraq having committed an Iraqi
12 crime? Is that *Munaf*?

13 **MR. ENSIGN:** Certainly the context is different, but
14 the rule of law is controlling. It's quite simply that federal
15 courts may not second-guess the executive's determination that
16 diplomatic assurances are credible and sufficient. And so --

17 **THE COURT:** But that -- that principle would swallow
18 up all IJ review. Like, any time that the government says the
19 assurances are credible, now a person is deprived of
20 individualized review because the government said it and there
21 is no need for review.

22 In other words, all Mr. Abrego is asking for apart from
23 release is that a IJ review what the asylum officer came to.
24 When he's about to be removed to a country thousands of miles
25 away of which he has no connection and can't even speak the

1 language because he does not speak English, how is it not --
2 how is it a foregone conclusion? Maybe an IJ would see it
3 differently.

4 **MR. ENSIGN:** Your Honor, because the *Munaf v.* -- I
5 guess a couple things. One is that *Munaf*, as a matter of law,
6 precludes courts from second-guessing the executive's
7 determination, the diplomatic assurances regarding torture or
8 related matters are -- are credible.

9 And so, you know, as the DC circuit said in the *Kiyemba*
10 case, the Supreme Court's ruling in *Munaf* precludes the
11 district court from barring the transfer, dot dot dot, on the
12 ground that he is likely to be tortured or subject to further
13 prosecution or detention in the recipient country.

14 The government has declared its policy not to transfer a
15 detainee to a country that is likely to torture him, and the
16 district court may not second-guess the government's assessment
17 of that likelihood.

18 **THE COURT:** Okay. I'm not proposing that according
19 Mr. Abrego Garcia this relief would second-guess the
20 government's assurances. But what I am proposing is there's
21 some daylight between what you just said and Mr. Abrego's
22 relief being, as you put it, a foregone conclusion.

23 And what am I -- what do I mean by that? Well, one of
24 the -- you know, again, not getting into the merits of it,
25 who's going to win, but petitioners have raised over and over

1 again Liberia hasn't given -- as to him, they have said certain
2 things. But they haven't -- they haven't shown it.

3 And what I mean by that is they've said this is only going
4 to be temporary. I don't know what that means. Temporary,
5 what does -- what does that mean? I mean, does it mean
6 temporary they're going to kick him out at some point? They're
7 going to say he's not welcome anymore? He's not legal?
8 They're going to send him not to El Salvador but to some other
9 country? At whose direction? That's one.

10 And, two, unlike Costa Rica, which said very specifically
11 we'll give him a status that protects him, there hasn't been
12 any assurances in that regard, has there? Like, you haven't
13 gotten travel papers which say -- or papers which say Abrego
14 will be a legal resident of Liberia or have the equivalent of
15 refugee status, have you?

16 **MR. ENSIGN:** Not specifically, Your Honor, but --

17 **THE COURT:** Let's just stop for a second.

18 **MR. ENSIGN:** Okay.

19 **THE COURT:** So there you go. There's the argument
20 for why Mr. Abrego needs process. Because a reasonable
21 person -- I'm not opining on what the standard would be --
22 might say, okay, you have a fear -- you have a fear of
23 persecution or refoulement if you don't have any protection in
24 a country where you have no connection.

25 So, in other words, I don't think it's -- the passing on

1 the State Department's assurance, maybe you're right. But I
2 don't think that's the whole story. I guess that's my concern.

3 **MR. ENSIGN:** And I think we'd just disagree with that
4 premise, that -- you know, specifically, the only -- the only
5 objections that he could conceivably raise as a matter of
6 immigration law are withholding of removal, which is a fear of
7 persecution or torture under CAT. And we view those assurances
8 and the State Department's assessment that those assurances are
9 sufficient as being on all fours with *Munaf* and *Kiyemba* and the
10 other cases.

11 **THE COURT:** And you're saying, like, refoulement, as
12 a matter of law, is not a cognizable reason? It doesn't fit
13 into any of the persecutions or torture category?

14 **MR. ENSIGN:** Yes, Your Honor, that's correct. But in
15 addition to that, Liberia has specifically committed not to
16 send Mr. Abrego Garcia to El Salvador. So that even if that
17 could be a cognizable claim, it is one that fails on the merits
18 here because we have a specific assurance that, you know, no
19 such refoulement would occur.

20 **THE COURT:** What's the temporary piece? How does
21 that fit into it?

22 **MR. ENSIGN:** Your Honor, I think that's often common
23 in third-country removals. Often third-country removals are
24 the original country of nationality won't take them. And so
25 for third-country removals, it is often that they are taken,

1 but certainly if the original country of nationality changes
2 its mind and will accept them, it's often temporary that way.

3 It's also entirely possible that Mr. Abrego Garcia might
4 want to try to seek status in Costa Rica himself, for example.
5 And if he were to do so, then his stay in Liberia would
6 obviously be temporary.

7 **THE COURT:** They say they'll accept him on a
8 temporary basis, not that he can -- and they say he's free to
9 leave. And the free to leave part, I understand, in terms of
10 his going elsewhere. But it's the country's commitment that
11 they say is temporary.

12 And, you know, it doesn't turn on El Salvador in Mr. -- in
13 Mr. Abrego's case, going back to whether IJ review makes sense,
14 it doesn't turn on whether El Salvador will accept him; it
15 turns on Mr. Abrego rightfully not wanting to return there.

16 So I'm still having a hard time understanding what was
17 meant here by temporary because it's not really dealt with in
18 your papers.

19 **MR. ENSIGN:** It's not specifically dealt with. But
20 temporary is often because these third-country removals are, in
21 fact, temporary. That's something that's common in them
22 because, ultimately, people are able to find other countries,
23 including their -- sometimes the original country of origin,
24 sometimes other countries.

25 But whatever temporary means, we know what it doesn't

1 mean. What it doesn't mean is that he would be sent to
2 El Salvador because they made a specific commitment to the
3 United States that they would not do so. And all of this CAT
4 and the statutory withholding claims are fears of El Salvador.

5 So whatever temporary means, the fact that Liberia has
6 expressly committed not to sending him to El Salvador is
7 dispositive of both his CAT and statutory withholding claims.

8 **THE COURT:** Okay. I hear you.

9 Anything else on that?

10 **MR. ENSIGN:** Not specifically on that one. I think
11 we've covered most of the jurisdictional bars. I think it's
12 useful to focus on *D.V.D.* for just a moment because I do think
13 that is instructive.

14 Certainly, to the extent that you -- the suggestion is
15 that he needs IJ review of that USCIS's officer's fear
16 assessment. And let me just pause there for a second,
17 actually.

18 I don't think that's the only thing they're asking for. I
19 believe at the podium today they also suggested that they would
20 get BIA review of that IJ's determination and that the BIA's
21 determination could be reviewed to the court of appeals.

22 So you have -- basically, you are stacking an entire
23 second removal process that takes many, many years on top of
24 the first one. That is incredibly burdensome to the
25 government. And I think that is directly relevant to the

1 *Mathews v. Eldridge* analysis to the extent that it applies,
2 which we don't think it is.

3 Under *Thuraissigiam*, the fact that he is an unadmitted
4 alien means that he only has those due process rights that are
5 provided by statute. And you cannot rely on the due process
6 clause to create additional requirements that are not found in
7 the statute.

8 And that's specifically what he would be doing here.
9 There is a no statute that provides for IJ review of USCIS
10 negative fear determinations for third-country removals.
11 That's something they're trying to create whole cloth under the
12 due process clause.

13 And under *Thuraissigiam* and a long line of cases going all
14 the way back to a 19th century one called *Nishimura*, that is
15 precluded by any Supreme Court authority. And it has real
16 teeth too.

17 I believe various courts have suggested that Mr. Abrego
18 Garcia's connections to this country give him more due process
19 rights. That's -- that's not correct. The Supreme Court --

20 **THE COURT:** Well, I think -- I think the distinction
21 was there's a difference between the rights that are triggered
22 when your review begins at the border before you have had any
23 interaction with the country and rights that are triggered once
24 you have been here, you have been adjudicated, and that
25 adjudication now has downstream consequences.

1 I mean, I think they were just making a very -- to me, it
2 was just a very fundamental point that, like, rights at the
3 border are different than rights once you're in the system, if
4 you will.

5 **MR. ENSIGN:** And, Your Honor, we disagree with that
6 because that's not where the Supreme Court has drawn the line.

7 Where the Supreme Court has drawn the line is lawful
8 admission to the country. And that's when status changes to
9 where the due process clause can be invoked to potentially
10 create additional procedural rights.

11 **THE COURT:** So, like, an employment authorization is
12 not an action by the government that created rights for
13 Mr. Abrego?

14 **MR. ENSIGN:** It is not, Your Honor, just as -- and
15 let me give you an even more concrete example that shows very
16 starkly how this works.

17 **THE COURT:** Okay.

18 **MR. ENSIGN:** The Supreme Court's decision in *Kaplan*,
19 and that -- let me give you the citation. It's 267 US 228.
20 That involved an alien who had been lawfully paroled but not
21 admitted into the country. She had been living in the country
22 for more than five years in the interior of the country. She
23 was living with her father, who was a naturalized U.S. citizen.

24 So by the standard that the petitioners are proposing, you
25 would say that clearly creates new -- it could create new due

1 process rights. And the Supreme Court said no, that is not how
2 it works.

3 It said despite her more than five years in the country,
4 quote, she was still, in theory of law, at the boundary line
5 and had gained no foothold in the United States, end quote, and
6 thus had no ability to invoke the due process clause to create
7 additional procedures beyond those that are provided by
8 statute.

9 **THE COURT:** And just so I understand, she was here
10 pending what sort of next step in immigration court? Was she
11 pending an asylum review? Was she -- what was she --

12 **MR. ENSIGN:** She was paroled into the country and
13 remained as long as that parole wasn't revoked.

14 **THE COURT:** But she was paroled for a purpose. What
15 was the purpose?

16 **MR. ENSIGN:** Back then, I don't think there was a
17 specific purpose. I think she was just paroled. And that
18 parole potentially could have been perpetual.

19 **THE COURT:** Okay. Well, I'll take a look at that.

20 **MR. ENSIGN:** And that notably is cited by the Supreme
21 Court in its decision in *Thuraissigiam*, which is a very strong
22 indication, along with the other cases they cite, that that is
23 not limited to just the border.

24 The line the Supreme Court has drawn as to where due
25 process can create additional rights is unlawful admission.

1 The *Landon* case is really instructive on this as well.

2 What it says is "This country" -- sorry -- "This court has
3 long held that an alien seeking initial admission to the United
4 States requests a privilege and no constitutional rights
5 regarding its application," dot dot. "Once an alien gains
6 admission to our country and begins to develop ties that go
7 with permanent residence, his constitutional status changes
8 accordingly."

9 **THE COURT:** And this all goes to the point that
10 Mr. Abrego is not due, according to the government, any more
11 due process than what he's already been given?

12 **MR. ENSIGN:** That's correct, Your Honor. Because he
13 was never been lawfully admitted into the country, his status
14 has not changed. And as a matter of due process rights, he is
15 only entitled to what procedures are provided by statute and
16 not those -- he cannot rely on the due process clause to create
17 additional procedural rights.

18 **THE COURT:** Okay. Understood.

19 **MR. ENSIGN:** Your Honor, I think there was a
20 reference more generally to this being a judicial black hole at
21 some point. But I think that's an unfairly sinister
22 characterization of what Congress has done in Section 1252. In
23 particular, (a) (5) and (b) (9) are channeling provisions.

24 **THE COURT:** I think Mr. Cooper's point only is what
25 the Supreme Court and other circuits have said, which is I got

1 to construe it narrowly. You know, if you don't, you run the
2 risk that the jurisdictional bar just swallows up any potential
3 conceivable challenge ever.

4 I think that was it. I think that was the point that you
5 were saying, Judge, read it very broadly. And the petitioner
6 is, you know, understandably saying no, read it narrowly.

7 **MR. ENSIGN:** I think there's actually two different
8 ones. And there's an important distinction here.

9 1252(g) is an outright bar of review. And for that
10 reason, it is somewhat narrower. (a) (5) and (b) (9) under no
11 universe can be described as, like, narrow. It's one of the
12 broadest zipper clauses that exists anywhere. Congress has
13 specifically channeled these claims. But that's not a judicial
14 black hole; that's channeling them to the courts of appeal.

15 **THE COURT:** Let me make sure I understand what you're
16 saying. It hasn't -- the court has said a *Zadvydas* claim, I do
17 have jurisdiction.

18 **MR. ENSIGN:** Your Honor, you're absolutely correct.
19 And I -- and I should be throwing out that caveat. We're not
20 raising bars -- the jurisdictional bars as to prolonged
21 detention, only as to challenges to removal.

22 As to detention, the 1252 bars do not -- do not bar that
23 claim.

24 **THE COURT:** And you're saying that the zipper clause
25 covers their process claims as well.

1 **MR. ENSIGN:** Exactly, Your Honor.

2 **THE COURT:** That's what you're saying.

3 **MR. ENSIGN:** And, notably, they've already filed a
4 motion to reopen before the IJ after -- you know, in this very
5 context, to raising these arguments. They have an appeal
6 before the BIA. They absolutely could seek a stay of removal
7 before the BIA, which would very much seek the same relief
8 they're seeking before Your Honor at least as to challenge to
9 removal.

10 But they refuse to do so.

11 **THE COURT:** What do you mean they refuse to do so?
12 Seek a stay of the removal?

13 **MR. ENSIGN:** Yes.

14 **THE COURT:** Okay. Well, I don't -- I don't know.
15 Maybe they have. Maybe we can ask them about that, but --

16 **MR. ENSIGN:** I -- I asked this morning, and the
17 latest information we have is that, although they appealed to
18 the BIA, they have not sought a stay of removal.

19 **THE COURT:** Okay.

20 **MR. ENSIGN:** But that's the procedure that Congress
21 provided. And we also think that their availability to do that
22 order -- that motion to reopen, you know, satisfies any due
23 process concerns.

24 **THE COURT:** But they don't have that -- they don't
25 have that ability, right, because the IJ said, nope, only the

1 government can do it. So for you to argue here that they have
2 the ability when they clearly don't according to the IJ, what
3 am I supposed to do with that?

4 **MR. ENSIGN:** If they think that's wrong as a matter
5 of immigration law, then they can raise that to the BIA and
6 seek a stay of removal in the interim because they think that
7 that wrongfully states immigration law. And we disagree with
8 that. But that's certainly the provision that Congress has
9 created. If you think that what the IJ did was wrong as a
10 matter of law, you cannot --

11 **THE COURT:** Right. I understand that part. But what
12 I don't accept is that you then say they have a right that the
13 IJ said they don't, or they have an avenue of relief that they
14 don't. It seems to be in your papers and here you're
15 suggesting, well, you know, Mr. Abrego has that right. He can
16 go back and move to reopen. But the IJ plainly said no, you
17 can't; only the government can do it.

18 **MR. ENSIGN:** Your Honor, they rejected it on
19 timeliness grounds but also rejected it on substantive grounds
20 as well.

21 **THE COURT:** In any event, it doesn't sound like you
22 could say he's got a right when the IJ says he doesn't. That's
23 my only point. Like, you know, the argument just is a
24 nonstarter. If the IJ says no, he cannot, he cannot pursue
25 that relief. So why are you saying he can?

1 **MR. ENSIGN:** Your Honor, I think I would draw a
2 distinction between procedure and substance. He certainly has
3 the procedural right to file something before the IJ. And to
4 the extent that they think it's wrong as a matter of
5 immigration law that the immigration judge won't consider that
6 argument, that can be raised to the IJ.

7 And to the extent that they think that that's correct as a
8 matter of immigration law but wrong as a matter of
9 constitutional law because due process should give me that
10 additional right, then you have to raise that argument up the
11 chain to the BIA and then to a court of appeals.

12 You cannot go to the federal district court when Congress
13 has specifically channeled those to the courts of appeals
14 through the BIA and IJ; so --

15 **THE COURT:** They are making different arguments in
16 different places. I mean, we've heard Mr. Rossman say a number
17 of times today we're only asking for two discrete -- important
18 but discrete aspects of relief: release and additional
19 process. And you heard the additional process all the way up
20 through the Fourth Circuit.

21 Maybe that's where the intersection is that you're talking
22 about. Because I thought that they were saying follow
23 *Cruz-Medina* and others, which is, at a minimum, IJ review like
24 other noncitizens are afforded in similar context; so --

25 **MR. ENSIGN:** Your Honor, certainly to the extent that

1 they're arguing for anything that would permit an IJ to review
2 it, that would be -- that could be reviewed in the courts of
3 appeals. And that necessarily would be something that Congress
4 has intended to channel to the courts of appeals and not the
5 federal district courts.

6 **THE COURT:** Got it.

7 **MR. ENSIGN:** So to the extent they're arguing for
8 anything in an Article III court, that court has to be a court
9 of appeals and not a federal district court.

10 **THE COURT:** Okay. I understand the argument.

11 **MR. ENSIGN:** And then, finally, Your Honor, we read
12 *D.V.D.* more broadly than they do. Certainly to the extent that
13 they're trying to say that *D.V.D.* is just a 1252(f)(1), that
14 that's implicitly what was accepted, I don't think that matches
15 what the Supreme Court did.

16 **THE COURT:** The Supreme Court, on an emergency shadow
17 docket, stayed the injunction, right? That's what they did?

18 **MR. ENSIGN:** Stayed it in its entirety. And I think
19 that's important.

20 **THE COURT:** How? Because, frankly, you know, we
21 can -- we can have a long debate that would bore everybody else
22 but I think would be very interesting about the infirmities of
23 the -- of the -- of perhaps how the class was defined. And the
24 class is very broad.

25 Why isn't -- why isn't it not equally plausible that the

1 court stayed the injunction based on the overbreadth of the
2 class definition and nothing more, nothing more substantive?
3 You can't read any more into it than that, can you? You just
4 don't know.

5 **MR. ENSIGN:** I believe you can, Your Honor. And let
6 me walk through why.

7 So I don't think class definition was raised in the stay
8 application. What was raised is a very similar concept, which
9 is that the relief was overbroad because it violated
10 Section 1252(f)(1), which bars class-based relief of covered
11 provisions of which 1231 is one.

12 But if the Supreme Court only thought that the government
13 was likely to prevail on 1252(f)(1), then it would have entered
14 a more limited stay. It would have stayed only the class
15 aspect, but that would not have in any way invalidated the
16 relief that was given as to the named plaintiffs, which was
17 very much a live issue.

18 By giving the stay in its entirety and not merely as to
19 the class aspects, we think the Supreme Court necessarily
20 recognized that the government was likely to prevail on its
21 other arguments and not merely 1252(f)(1). Because if they
22 thought it was just 1252(f)(1), than only a more narrow stay
23 could have been justified. It --

24 **THE COURT:** Except the more narrow, the more -- I
25 thought that the individual plaintiffs are just on a different

1 footing certainly than Abrego. They were -- they were -- they
2 were removed for different reasons under different statutes.
3 Am I right about that? You had individuals with prior records
4 that were very serious, right?

5 **MR. ENSIGN:** Some of them. There's a gamut of
6 different factual contexts. But I think --

7 **THE COURT:** When did the court announce what you're
8 saying as the principle, I guess?

9 **MR. ENSIGN:** There's not a specific announcement.
10 There are two things that I think are governing.

11 One is that, by giving a complete stay and not staying
12 merely as to class members, that is necessarily recognizing a
13 likelihood of success on something beyond 1252(f)(1).

14 And, second, the Supreme Court in *Boyle* has made clear
15 that its stay decisions must control in like cases.

16 **THE COURT:** Sure, in the case itself. But I don't
17 know if it necessarily means that no petitioner ever can raise
18 now a habeas that gets anywhere near challenging -- I mean,
19 *Zadvydas*?

20 **MR. ENSIGN:** Not detention. We agree --

21 **THE COURT:** Okay. So you're saying gets anywhere
22 near challenging the individual lack of process in the
23 government persisting and sending folks like Abrego to Africa,
24 it's just off the table?

25 **MR. ENSIGN:** Not off the table entirely. The

1 July 4th decision of D.D.C., I think, is pretty instructive in
2 this. I can't recall the name of the case, unfortunately.
3 It's cited in our papers.

4 Specifically, class members who are nonnamed plaintiffs in
5 *D.V.D.*, but class members, brought a challenge raising a
6 constitutional challenge to their third-country removal. And
7 what DEC said is that that was impermissible claim-splitting,
8 but not that you couldn't raise the claim, but rather that that
9 claim had to be raised before the District of Massachusetts.

10 And so it didn't dismiss the case; it transferred it to
11 the District of Massachusetts where then Judge Murphy denied
12 relief later on July 4th, presumably on the merits. But he
13 didn't reject -- the District of Massachusetts didn't reject it
14 for impermissible claim-splitting. And notably, named
15 plaintiffs are still able to seek relief in the *D.V.D.* case.

16 But the class does bar people from going to different
17 ports as impermissible claim-splitting to bring those claims.

18 **THE COURT:** Okay. And I understand the argument, and
19 it's been well briefed. So is there anything else on that?

20 **MR. ENSIGN:** No, Your Honor, unless you have further
21 questions.

22 **THE COURT:** Not from -- not from the government. I
23 want to turn to petitioner and make sure that they get the last
24 word. And then it's -- your motion is up next, but we'll take
25 a brief break in between.

1 **MR. ENSIGN:** Certainly, Your Honor, although, unless
2 Your Honor has many questions about the motion to dissolve, at
3 least from the government's perspective, the two are pretty
4 much coterminous.

5 **THE COURT:** That's basically what I'm struggling
6 with. Say I were to grant -- so maybe you want to just address
7 it now and then we can conclude after the petitioner has
8 another round at this, is I do see it as there's a lot of
9 overlap.

10 One of the things I'm struggling with is if I grant relief
11 on the *Zadvydas* claim and I -- I adjudicate the petition, it's
12 done. What assurance does the government give that they're not
13 going to summarily remove him to a third country despite --
14 because all I'm doing is releasing him.

15 So until there's a presentment, I suppose, of a valid --
16 whether it be order of removal or a valid third country,
17 however this shakes out, does -- does it not seem relevant to
18 the case to keep the injunction in place?

19 Or is it, no, Judge, once you litigate the merits, once
20 the merits are concluded, unless it's an aspect of the final
21 relief, the PI goes away. And you have to dissolve it. Is
22 that where you -- which side -- can you -- explain where you
23 are.

24 **MR. ENSIGN:** My answer might be a little frustrating.
25 It's just that I think there's unfortunately too many

1 permutations to answer that question definitively. It would
2 really depend on what ground Your Honor decided and granted
3 relief.

4 So, for example, an order saying there was no final order
5 of removal, I think that would itself probably not require
6 any -- additional injunctive relief because that's -- you know,
7 that's a binding order that there is no final order of removal.
8 My understanding is that that would preclude removal. So I
9 don't think anything else would potentially be needed or wanted
10 or even appropriate there.

11 As to just granting it on prolonged detention, then -- I
12 mean, that doesn't get to the validity of removal at all; so I
13 think you would still have to reach those claims.

14 **THE COURT:** What if it's both? What if it's
15 prolonged detention because there is no final order of removal?

16 Like, in other words, detention -- you can't hold him
17 anymore because it's going to be a very, very, very steep climb
18 to an imminent or reasonably foreseeable removal because there
19 is no final order of removal? What if it's that?

20 **MR. ENSIGN:** Your Honor, in that scenario, I would
21 have to confirm, but I very strongly suspect the answer would
22 be if a federal district court holds that there is no final
23 order of removal, then the government would take the position
24 it could not remove him. And, therefore, additional injunctive
25 relief would not be needed -- you know, that would be an

1 adjudication by an Article III court.

2 We would disagree with the jurisdiction -- you know, that
3 jurisdiction exists for that. But, of course, appellate courts
4 exist to resolve such questions.

5 So if that were the decision, I suspect that no additional
6 injunctive relief would be needed because essentially the
7 Court, by resolving the issue, defeats -- it's almost like
8 self-executing, I guess.

9 **THE COURT:** Well, then maybe what we do is I
10 decide -- I decide first things first. And let me figure out
11 what I'm doing with the petition. And understanding your
12 position, which is it will depend, I might -- I might table the
13 motion to dissolve, not long, but get you all on the line once
14 I issue my first order.

15 Let me say this: If I deny habeas, I'm going to dissolve
16 the petition. If I grant habeas, all depending on how I grant
17 it, I may turn to you all as to, okay, what next? Because you
18 have at times said, well, we're not going to remove the
19 petitioner until this is sorted out, whatever the "this" may
20 be.

21 So maybe I -- maybe I'm going to just table -- do it -- do
22 it -- eat the elephant one bite at a time, as they say. Do the
23 petition, figure out where I am with that, and then we'll turn
24 to the motion to dissolve.

25 **MR. ENSIGN:** Your Honor, I think that certainly makes

1 sense procedurally. If you're inclined to decide the habeas
2 petition itself and then have the parties meet and confer, see
3 if they can agree and see if there's remaining disputes as to
4 what's left to be decided, you know, there's at least a fair
5 prospect that we can narrow or eliminate that. And so that
6 approach seems procedurally sound to us.

7 **THE COURT:** Okay. Great. Thank you, Mr. Ensign. I
8 appreciate that.

9 **MR. ENSIGN:** Thank you, Your Honor.

10 **THE COURT:** Thank you.

11 **MR. ROSSMAN:** Your Honor, I'll start with where we
12 agree. We agree with that proposal.

13 **THE COURT:** So you agree --

14 **MR. ROSSMAN:** You should table the injunction
15 question until after you resolve it.

16 **THE COURT:** And then it will be a quick status with
17 you all after I decide -- if I deny the petition, obviously
18 I'll dissolve it. We won't need to talk again.

19 If I grant the petition, all depending on how I grant the
20 petition, I'll get you all on the line really quickly to talk
21 about the motion to dissolve. Does that make sense?

22 **MR. ROSSMAN:** The latter makes sense. I'll
23 contemplate the former, Your Honor.

24 **THE COURT:** You're an optimist.

25 **MR. ROSSMAN:** I'm a relentless optimist, Your Honor.

1 **THE COURT:** And you're all very good lawyers.

2 **MR. ROSSMAN:** So a few things, and then I want to
3 make sure I answer all of Your Honor's questions so we're clear
4 on where to go from here.

5 First -- and not necessarily in -- maybe this is recency
6 bias that I have. I'll respond to what I just heard recently.

7 So the defense had cited the Clark -- I'm sorry -- he
8 cited the *Kaplan* case.

9 **THE COURT:** Yeah.

10 **MR. ROSSMAN:** So I looked it up. It's not in their
11 papers. It's a 1925 case. The opinion is from Oliver Wendell
12 Holmes. So vintage.

13 In that case, apparently the detainee had been stopped at
14 Ellis Island; so stopped before crossing the border. The
15 detainee was a minor. They looked at sending the minor back
16 to -- I think the country was Russia. It was in the middle of
17 the war. And didn't send the minor back to Russia during
18 wartime and held that minor in the constructive custody of a
19 home, essentially, like, an Ellis orphanage, I guess, under the
20 rubric of that person not being admitted into the country yet.

21 So the person had never crossed the threshold for
22 immigration purposes into the United States. Totally different
23 than this case.

24 Fast-forward 76 years to *Zadvydas*, and there, the court
25 said, well, once an alien enters the country, the legal

1 circumstances change for the due process clause applies to all
2 quote, persons -- according to the Constitution -- within the
3 United States, including aliens, whether their presence here is
4 lawful, unlawful, temporary, or permanent.

5 That same decision, three years later, in *Clark v.*
6 *Martinez*, in a 7-2 decision by the Supreme Court written by
7 Justice Scalia was affirmed. And, you know, the court held
8 specifically that *Zadvydas* applies to inadmissible immigrants.

9 So once someone is here, there is no question -- no
10 question at all that they have the entitlement to the full
11 measure of due process under the Constitution.

12 So what the government is trying to do is transport us
13 back a century to a time period that people are treated as --
14 as they had just presented themselves at a port of entry.

15 And those who have lived in the United States -- we have
16 an individual here who's worked, had a family, reported to the
17 immigration authorities on an annual basis with a work permit,
18 you know the history, Your Honor. There's no question that
19 that person is here for purposes of constitutional protection.

20 So I think we can dismiss that claim pretty quickly.

21 Your Honor, the -- on the issue -- and I'm glad Your Honor
22 raised it. On the issue of the status that my client would
23 have in Liberia, it's of critical importance that Liberia has
24 only said it would be temporary and have not agreed to give him
25 travel documents, any kind of status as a refugee or otherwise

1 that would allow him to stay permanently.

2 The assurance that we hear from the government is that he
3 will not -- Liberia would not send Mr. Abrego Garcia directly
4 to El Salvador.

5 What is the unanswered and distressing question is what
6 happens at the end of temporary? Will they send him without
7 travel documents, without refugee status, any other country
8 that you send him to --

9 **THE COURT:** He wouldn't have authority.

10 **MR. ROSSMAN:** He wouldn't have status, and he would
11 be sent to -- naturally, he would be sent to his country of
12 origin.

13 **THE COURT:** What do you make of this argument now of,
14 well, he can always go from Liberia to Costa Rica? Any insight
15 on that?

16 **MR. ROSSMAN:** I wrote it down because it was
17 astonishing when you asked the question, Your Honor, why would
18 you do that? Why would you send him to Liberia and then have
19 him try under his own auspices to get to Costa Rica when you
20 could send him directly to Costa Rica? The government doesn't
21 have an answer to that.

22 I don't have the foggiest notion how Mr. Abrego Garcia
23 would, left to his own devices in a country in which he has no
24 understanding and no connections, be able to engineer an exit
25 from that country to Costa Rica or anywhere else. I think he

1 would be, you know, very much at their mercy.

2 And, you know, the government's brief on this was, I
3 thought, pretty telling in terms of, you know, the -- how do I
4 put it? -- the callousness of their position. On page 19 of
5 their supplemental brief, "Petitioner's interest under the
6 statute is limited to the question of whether, while in
7 Liberia, he will experience persecution, not whether he might
8 eventually experience harm in El Salvador."

9 So the government's view is what happens to him beyond our
10 borders, not our problem, not our care, not our worry.

11 **THE COURT:** Well, it's a little more nuanced than
12 that because now they're saying, well, the reason why Abrego's
13 issue is off the table is because Liberia said we won't send
14 him back to El Salvador.

15 **MR. ROSSMAN:** Right, which only begs the question of
16 what happens at the end of temporary? Is temporary a month? a
17 year? We don't know. And then where does he go? Does Liberia
18 continue to house him forever? Does Liberia say we're going to
19 send him on to some other yet-unnamed country? And what will
20 that country do with someone who doesn't have papers, doesn't
21 have a right to stay in that country?

22 There's a reason why an extraordinarily small fraction,
23 you know, .001 percent fraction kind of cases, where people are
24 ever removed to third countries after withholding of removal
25 and why there was no effort taken with respect to Mr. Abrego

1 Garcia before this year.

2 And the reason is because of that natural concern, that
3 wherever you send someone, unless they have status there, they
4 are necessarily at risk, either directly or indirectly, of
5 refoulement.

6 So that's our concern with Liberia. I think it is well
7 founded. And I think if, you know, Mr. Abrego Garcia is given
8 the opportunity to have that issue heard before an immigration
9 judge -- and to be clear about the process beyond, you know,
10 the first level of review by an immigration judge, I'm just not
11 prejudging what the appellate rights would be from there.

12 All I'm saying is that what I believe Mr. Abrego Garcia is
13 entitled to at a minimum under the statute, under the regs, is
14 review by an immigration judge to a final conclusion. I mean,
15 whatever is the path for appellate review, whether it's there,
16 direct to the circuit, whether it's there, BIA approval --

17 **THE COURT:** Well, I think Mr. --

18 **MR. ROSSMAN:** -- it has its final order.

19 **THE COURT:** I think Mr. Ensign's point is if you're
20 asking for something more than the IJ review that has been
21 accorded in *Cruz-Medina* and other cases like it, now the
22 *Mathews v. Eldridge* test gets more complicated because the
23 burden is heavier.

24 **MR. ROSSMAN:** Well, let's talk about that. So it's
25 an astonishing proposition for the government that it is

1 somehow too burdensome for someone to have their constitutional
2 rights examined on appeal. Like, that's essentially what
3 they're saying. And that's not the structure of the INA and
4 the immigration regulations as I understand them, which --

5 **THE COURT:** But there are regulations which apply in
6 situations like expedited removal. These were the ones that
7 came up in *Cruz-Medina*.

8 **MR. ROSSMAN:** Correct.

9 **THE COURT:** Expedited removal and, I think,
10 individuals with prior criminal convictions, they do get
11 review, but it stops at the IJ. And there are regs that say
12 that. And it is odd to me. It seems irrational that
13 Mr. Abrego would not get at least the same review, but -- but
14 why is it unconstitutional to say if he doesn't get more given
15 that regulatory scheme?

16 **MR. ROSSMAN:** So I obviously agree with Your Honor on
17 the first part. I think it would be irrational for him not to
18 at least get IJ-level review.

19 The -- what you got in weighing the three *Mathews* factors,
20 right, you've got to consider the only interest tipping in the
21 government's favor is the burden of having to provide the
22 procedure, right?

23 **THE COURT:** Right.

24 **MR. ROSSMAN:** Right? So when weighed against the
25 fundamental liberty interests of Mr. Abrego Garcia not having

1 that review, it seems quite modest to think about giving the
2 person, you know, two briefs and an argument before a court of
3 appeals.

4 And I don't think that's going to halt the machinery of
5 government if we allow, you know, for someone who is not
6 stopped at the border, not someone who's been convicted of a
7 crime, not someone who -- you know, I think, to my
8 understanding, fits into any of the exigent categories, you
9 know, for immediate treatment -- so it's not like someone
10 who -- who hops the fence at the border, is immediately turned
11 back, right? It's not that circumstance.

12 Someone who has lived here and developed the full measure
13 of the process entitlements that the Supreme Court recognizes
14 for someone who is here. I don't see that the *Mathews* factors
15 remotely weigh in favor of -- I'm just looking at a note that
16 Mr. Sandoval-Moshenberg passed me.

17 I don't see how they remotely tip in favor of the
18 government here, given the weight of the interests and the
19 relatively light burden.

20 **THE COURT:** Yep.

21 **MR. ROSSMAN:** Okay. Let me put that to the side.

22 Anything else on that subject, Your Honor?

23 **THE COURT:** I don't think so.

24 **MR. ROSSMAN:** Okay. I think, you know, the only
25 other substantive point that I wanted to make before giving you

1 an opportunity to ask any questions on the
2 jurisdiction-stripping provisions, if you have them, of
3 Mr. Cooper, is on Costa Rica itself.

4 So we have now -- so Your Honor knows, you'll recall we've
5 had three hearings in this courtroom. Okay? Before we got to
6 this courtroom, we took three depositions. They were supposed
7 to provide us witnesses with knowledge. You will recall what
8 those transcripts looked like.

9 We went through, you know, quite a painful exercise of I
10 don't know. That resulted in a hearing. They brought first
11 Mr. Giles, then they brought Mr. Swartz [sic], and now they
12 brought Mr. Cantú. We're 0 for 6 in terms of witnesses who are
13 able to speak substantively about any of these subjects.

14 There's no evidence at all of any -- how do I put it?
15 There's no evidence at all that Costa Rica is unwilling to take
16 my client. The only evidence we have is the ones attached to
17 the habeas petition at Exhibit 3 that they are willing and have
18 given assurances. That's where we stand.

19 And it wasn't for lack of opportunity for the government
20 to make its case. If someone wants to learn what due process
21 looks like, they ought to come to Greenbelt, Maryland. And you
22 have given the government every chance -- every chance to fix
23 their homework. And they haven't done it.

24 **THE COURT:** But it's interesting, because on that
25 question -- you know, again, I'm trying to be extremely

1 careful. And if I do find that there is no order of removal,
2 I'm likely not to reach any of these downstream issues,
3 including the government's issue on timeliness.

4 Because if there's no order of removal, the government is
5 going to have a choice. And if -- you know, if -- if the
6 nonexistence of the order is affirmed, or they have a choice,
7 which is to issue a new order of removal. And that will allow
8 you to timely designate Costa Rica as your third country. So
9 I'm likely not to reach -- and I'm not disagreeing with you.
10 There's -- today was a -- a zero, in my view.

11 But I don't know if I have to reach the import of it.

12 **MR. ROSSMAN:** So optimistic that I am, Your Honor, even
13 though that I'm hopeful that Your Honor concludes that there's
14 no final order of removal, I also have to make the other
15 arguments.

16 **THE COURT:** In the alternative. Okay.

17 **MR. ROSSMAN:** So the point -- or, you know, in
18 addition. So, you know, in addition to the absence of that
19 final order, they have no showing that Costa Rica won't take my
20 client. And there's no showing of any prejudice to the
21 government.

22 We have -- the only testimony we have on that issue -- so
23 the argument has been made from -- from Mr. Ensign that the
24 Secretary of Homeland Security has -- has the right, right --
25 may -- choose a different third-country designation.

1 We don't think that's right because we think, you know,
2 the conditions have to be met. We think it is a "shall" when
3 it comes to my client's designation of Costa Rica.

4 But the only circumstances -- the statute uses the word
5 "if"; so it's a condition precedent. The only circumstances
6 where that could be overridden by the secretary is if the third
7 country won't take them. We've covered that already. We have
8 no evidence of that. Or if there's a determination by the
9 secretary that there's prejudice to the United States.

10 Zero evidence in this courtroom at all that any such
11 determination has been made. There's no substantive argument
12 for how it would prejudice the United States. And the
13 testimony that we have on the record from Mr. Swartz [sic] is
14 an admission that there is no -- that there is no prejudice.

15 So we think on both of those showings --

16 **THE COURT:** You mean Mr. Schultz. You mean the
17 second witness, Mr. Schultz.

18 **MR. ROSSMAN:** Schultz. Schultz. I apologize to
19 Mr. Schultz and to the Court.

20 **THE COURT:** That's okay.

21 **MR. ROSSMAN:** Yeah, I mean, it's been a parade of
22 less-than-memorable witnesses, Your Honor.

23 So, you know, the point of all that is, you know, they
24 fail both proof requirements.

25 And so we're left with, you know, a plain winner on the

1 statute from my client's perspective. And their violation of
2 the statute is, by definition, a violation of due process.
3 That's the first claim in the habeas petition.

4 So with that, Your Honor, unless you have more questions
5 for me on the substance, I offer you the opportunity if you
6 want to ask questions on the jurisdictional issues.

7 **THE COURT:** And if Mr. Cooper has any response to
8 Mr. Ensign's points. Thank you.

9 **MR. ROSSMAN:** Thank you, Your Honor.

10 **MR. COOPER:** Thank you, Your Honor. I'll try to keep
11 it pretty brief.

12 The, really, only one point I wanted to make in response
13 to Mr. Ensign's presentations on jurisdiction, and that's to
14 address, I believe he suggested at one point that this court
15 lacks jurisdiction to even decide whether there's a final order
16 of removal. And to that, I've got three cases we've pulled up.
17 These aren't in the briefs. So I'll give you the citations.

18 **THE COURT:** Okay.

19 **MR. COOPER:** But first there's an Eleventh Circuit,
20 *Madu v. U.S. Attorney General*. That's at 470 F.3d 1362, and
21 the pincite is 1366.

22 And there the court holds expressly that a challenge to
23 the sheer existence of an order of removal is not barred by
24 1252(a)(5), 1252(b)(9), or 1252(g).

25 And it draws on a Third Circuit case called *Kumarasamy v.*

1 *U.S. Attorney General*, 453 F.3d 16. And I'll also point --
2 Your Honor, there's a Ninth Circuit case, *Nadarajah v.*
3 *Gonzales*. That's 443 F.3d 1069 and at pages 1075 to 76.
4 That's a Ninth Circuit case from 2006.

5 It holds that federal courts have habeas jurisdiction when
6 there is no final order of removal. In that case -- none of
7 them are factually on all fours -- I don't know of any case
8 that's factually on all fours to this case.

9 In that instance, the individual there had obtained
10 asylum, and so there was never a final order of removal
11 entered. He was nonetheless held in detention. The Ninth
12 Circuit said in this context there is federal habeas
13 jurisdiction. None of the jurisdiction-stripping provisions
14 apply. We're entitled to look at whether there is actually an
15 order of removal or not.

16 **THE COURT:** And it was the nonexistence of the final
17 order of removal that really put to bed all the jurisdictional
18 questions?

19 **MR. COOPER:** In that particular case, yes, Your
20 Honor. In the other cases, sometimes it was a petitioner
21 saying there wasn't an order when maybe there was. They said,
22 well, in that instance, we can still decide the jurisdictional
23 factual question of is there an order of removal. And we don't
24 have to close our eyes to whether or not it exists because of
25 the jurisdiction-stripping provisions.

1 **THE COURT:** I appreciate that.

2 **MR. COOPER:** So that was the main point I wanted to
3 get across, Your Honor. I think that was one you may have had
4 as well. If you have any other questions, I'm happy to address
5 them. Otherwise, we stand on our arguments and our papers that
6 we don't believe any jurisdiction-stripping provisions bar this
7 Court's review.

8 **THE COURT:** Okay. Well, thank you. I don't have any
9 other questions. I appreciate your careful attention on both
10 sides to these issues. I consider this -- the record and the
11 argument to be closed. And so I'll reach the merits of the
12 petition as quickly as we can. We're not going to -- we'll do
13 our best. These are weighty issues.

14 And I will likely not raise -- not reach the -- in the
15 event I grant the petition, I'm not going to reach the motion
16 to dissolve.

17 Any questions or concerns from either side before we break
18 for the day?

19 **MR. ROSSMAN:** No. Just in the event this is the last
20 time we're here on this petition, I just want to thank Your
21 Honor and the court staff for all the attention and time you've
22 given us.

23 **THE COURT:** Thank you. I appreciate that.

24 All right. Thank you all. And thank you for those of you
25 in the community who have been stalwarts. I recognize some

1 faces now. You have been a wonderful -- wonderful members of
2 our community. I thank you. Because sometimes people come and
3 they -- they are loud and they're boisterous and they are
4 expressing their First Amendment opinion in the courtroom,
5 which can really get in the way of the orderly administration
6 of justice.

7 You all haven't done that. You've been really wonderful
8 guests, and I appreciate it. All right. Thank you all.

9 **DEPUTY CLERK:** All rise. This Honorable Court now
10 stands adjourned.

11 (Proceedings were concluded at 3:42 p.m.)

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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 21st day of November 2025.

/S/ Paula J. Leeper

Paula J. Leeper, RPR, CRR
Federal Official Reporter

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