IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

W.J.C.C.,

Petitioner–Plaintiff,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,

Respondents–Defendants.

Case No: 3:25-cv-00153-SLH

PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Petitioner asks this Court to preserve and to extend the temporary restraining order. As this Court recently concluded in a similar case, Petitioner has standing, the Court has jurisdiction to review Petitioner's due process claim, and the government's notice procedures are legally inadequate. *See A.S.R. v Trump*, No. 25-cv-113, 2025 WL 1378784, *7-11, *19-20 (W.D. Pa. May 13, 2025). And absent intervention by this Court, Petitioner faces irreparable harm, *id.* at *22-23, a conclusion strongly bolstered by the Supreme Court's recent ruling in *A.A.R.P. v. Trump.* No. 24A1007, 2025 WL 1417281 (U.S. May 16, 2025) (per curiam) (issuing an injunction pending appeal).

ARGUMENT

I. THE COURT CAN REVIEW PETITIONER'S DUE PROCESS CLAIM.

The government claims that Petitioner lacks standing because he has not been formally designated under the Proclamation. Opp. 9-13. But this Court has previously rejected that precise argument—and Respondents fail to even acknowledge that ruling as to standing. *A.S.R.*, 2025 WL 1378784, at *7-10. In *A.S.R.*, this Court found that a petitioner who was detained, [redacted] and at risk of designation under the Proclamation had standing to sue. *Id.* There, as here, the government argued that the petitioner's fears of designation, transfer, or removal were too speculative to support standing. *Id.* at *7. The Court disagreed, finding that such circumstances constituted a concrete and particularized injury-in-fact. *Id.* at *8-10. The same is true here.

The predicate for designation under the Proclamation applies to Petitioner. In his I-213 form, ICE alleges (falsely) that he is associated with [redacted] *See* ECF No. 1-2 (Waxman Decl.) ¶ 8. As this Court held in *A.S.R.*, such an accusation—paired with continued detention and the looming

risk of designation—suffices to establish standing. 2025 WL 1378784, at *8 (finding standing based in part on imminent removal following [redacted]-related allegations). The fact that Petitioner has not yet been designated under the Proclamation does not defeat standing. He faces a "substantial risk" of classification as Proclamation-eligible and removable. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158, 164 (2014) (citing *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 414 n.5 (2013)). And consistent with this Court's holding, every other court to consider the issue of standing has rejected the government's position. *See, e,g., Y.A.P.A. v. Trump*, No. 25-cv-144, 2025 WL 1454014, at *2 (M.D. Ga. May 21, 2025) (finding standing because "[l]ike the Petitioners in *A.A.R.P.*, Petitioner here is a Venezuelan national who is detained in a U.S. detention center [and h]e believes he is at risk of being classified as an alien enemy in part because ICE represented to an immigration court that Petitioner is a known associate of [redacted]"); *W.M.M. v. Trump*, No. 25-cv-059, 2025 WL 1358476, at *8 (N.D. Tex. May 9, 2025) ("the Court concludes that A.R.P. and W.M.M. have met their burden to show that they are at imminent risk of being given notice of removal under the AEA"); *D.B.U. v. Trump*, No. 25-cv-01163, 2025 WL 1304288, at *2-3 (D. Colo. May 6, 2025) (finding standing where petitioners had been accused of TdA membership in I-213s).

Indeed, like in *A.S.R.*, the government here has declined to foreclose the possibility of designation pending this litigation. 2025 WL 1378784, at *7-10; *see also Driehaus*, 573 U.S. at 165 (finding standing for pre-enforcement review where government "[h]as not disavowed enforcement"); *Doe v. Schorn*, 711 F. Supp. 3d 375, 394 (E.D. Pa. 2024) (finding credible threat when defendant had "not disavowed an intent to prosecute Plaintiff"). Although the government asserts that Petitioner is not "currently subject to" the Proclamation, Opp. 13, its declarant tellingly avoids making that representation. *See* ECF No. 13-10 (Michael Blair Decl.). Nowhere in the government's submissions do Respondents state whether they have evaluated Petitioner for

designation under the Proclamation or whether they will refrain from doing so in the near future.[1] That silence is telling. As this Court explained in *A.S.R.*, "[e]ven if Respondents have voluntarily chosen to now make [the petitioner] subject to the INA rather than the AEA, there is nothing preventing them from . . . subjecting him to the Proclamation." 2025 WL 1378784, at *10. That possibility is sufficient to establish standing. *See id.* at *8-9; *see also, e.g.*, *D.B.U.*, 2025 WL 1163530, at *5–6 (finding standing for TRO where government "explicitly declined to foreclose" the possibility of future AEA designation); *Y.A.P.A.*, 2025 WL 1454014, at *2 (same).

Respondents' remaining threshold arguments disclaiming this Court's jurisdiction fare no better. Opp. 13-18.[2] *First*, as this Court has already held, it plainly retains authority to adjudicate Petitioner's due process claim, including "questions such as how much notice is due to an individual subject to the Proclamation." *A.S.R.*, 2025 WL 1378784, at *11 (citing *J.G.G. v. Trump*, 145 S. Ct. 1003, 1006 (2025)) ("More specifically, in this context, AEA detainees must receive notice after the date of this order that they are subject to removal under the Act. The notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs."). This Court therefore has jurisdiction to review whether the government's implementation of the Proclamation satisfies the minimum requirements of due process.

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[1] This stands in contrast to the government's position in other cases where it submitted declarations stating that the petitioners there were not designated as removable subject to the Proclamation at the time. *See, e.g., D.B.U. v. Trump*, No. 25-cv-1163 (D. Co. Apr. 17, 2025), ECF No. 26-1 (Valdez Decl.) ¶¶ 13, 22. Even then, courts correctly recognized that petitioners can show imminent risk of designation based on the government's allegations of [redacted] association or membership, even if they had not yet received a notice. *D.B.U. v. Trump*, No. 25-cv-01163, 2025 WL 1163530, at *6 (D. Colo. Apr. 22, 2025).

[2] Petitioner replies to the government's arguments only with respect to his due process claim here because the Court can resolve the TRO solely on that basis.

And *second*, Respondents (at Opp. 13-16) are wrong that the INA's jurisdictional provisions bar this Court from prohibiting transfers within the United States. *See D.B.U.*, 2025 WL 1163530, at *8-9 (rejecting the government's same jurisdictional arguments). Section 1252(a)(2)(B)(ii) applies only to those decisions where Congress has "set out the Attorney General's discretionary authority in the statute." *Kucana v. Holder*, 558 U.S. 233, 247 (2010). While the government points to § 1231(g), Opp. 14-15, that provision never even mentions "transfer," let alone commits transfer decisions to the agency's unreviewable discretion. *See Ozturk v. Hyde*, 136 F.4th 382, 395-96 (2d Cir. 2025); *Aguilar v. U.S. ICE*, 510 F.3d 1, 20 (1st Cir. 2007) (rejecting *Van Dinh v. Reno* as the "minority view" and noting that "section 1231(g) fails to 'specify' that individualized transfer decisions are in the Attorney General's discretion"); *Zhao v. Gonzales*, 404 F.3d 295, 303 n. 6 (5th Cir. 2005) (concluding that "*Van Dinh* . . . misstates the statutory text" and "analyze[s] statutory language that Congress did not adopt"). Respondents rely on *Gandarillas-Zambrana v. BIA*, 44 F.3d 1251 (4th Cir. 1995), but the Fourth Circuit rejected that reading of § 1231(g) and § 1252(a)(2)(B)(ii) in its later case, *Reyna ex rel. J.F.G. v. Hott*, 921 F.3d 204, 209-10 (4th Cir. 2019) ("of course, [*Gandarillas-Zambrana*] does not serve to advance the government's position in seeking to apply § 1252(a)(2)(B)(ii), which requires that discretionary authority be *specified*, *i.e.*, made explicit, in order to be unreviewable."). Transfer is not a discretionary action that § 1252(a)(2)(b)(ii) is meant to shield from review. *See Zadvydas v. Davis*, 533 U.S. 678, 688 (2001); *Gayle v. Meade*, 614 F. Supp. 3d 1175, 1203-04 (S.D. Fla. 2020).[3]

[3] Respondents' other cases are inapposite. Opp. 14-15. *Rios-Berrios v. INS*, 776 F.2d 859 (9th Cir. 1985), and *Sasso v. Milhollan*, 735 F. Supp. 1045 (S.D. Fla. 1990), predate § 1252(a)(2)(B)(ii), and Supreme Court's holdings on that provision. And *Calla-Collado v. U.S. Att'y Gen.*, 663 F.3d 680 (3d Cir. 2011), did not address jurisdiction and considered petitioner's claim on the merits. *Id.* at 685. Respondents' remaining cases overlook *Kucana* and/or rely on *Gandarillas-Zambrana* and/or *Van Dinh*, which, as explained above, do not properly interpret § 1231(g).

Moreover, the All Writs Act permits a court to "enjoin almost any conduct 'which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion.'" *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004); *see also ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359-60 (5th Cir. 1978). As a practical matter, if the government were permitted to transfer Petitioner outside the District to a distant detention center, counsel would face obstacles in gathering evidence and presenting facts relevant to the claims in this case, including whether he is properly designated under the Proclamation. *See A.A.R.P.*, 2025 WL 1417281, at *3 ("We had the power to issue injunctive relief to prevent irreparable harm" (citing 28 U.S.C. § 1651(a))); *G.F.F. v. Trump*, No. 25-cv-2886, 2025 WL 1301052, at *12 (S.D.N.Y. May 6, 2025) (enjoining transfers pursuant to All Writs Act); *Ozturk v. Trump*, No. 25-cv-374, 2025 WL 1145250, at *23 (D. Vt. Apr. 18, 2025) ("The Court also has the inherent authority and responsibility to protect the integrity of its proceedings which were undoubtedly impacted when Ms. Ozturk was transferred to Louisiana.").

II. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS DUE PROCESS CLAIM.

The Supreme Court has already twice made clear that AEA designees are entitled to "due process" and "notice and opportunity to be heard," which includes notice "afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief." *J.G.G.*, 145 S. Ct. at 1006; *A.A.R.P.*, 2025 WL 1417281, at *2. Respondents state that the 21-day process ordered by this Court in *A.S.R.* ensures adequate notice and claim that Petitioner would receive such 21-day notice. Opp 5, 19-20. But the government's alleged assurance of notice is neither reliable nor sufficient, even in other cases where the government made certain representations under oath, unlike here. *See, e.g.*, *W.M.M.*, 2025 WL 1358476, at *9 (discussing voluntary cessation doctrine).

Respondents further state—without citation to any sworn declaration—that "[t]he Notice will be read and explained to each alien in a language that alien understands." Opp. 5. But due process demands more than an oral reading; the notice should be provided in writing and in a language the recipient understands. And the absence of any sworn declaration from the government attesting to its notice practices underscores the inadequacy of these representations. Indeed, as this Court cautioned in *A.S.R.*, "[i]t is concerned that, if it does not address this issue via this Opinion and Order of Court, Respondents could designate [the petitioner] as subject to the Proclamation and the AEA tomorrow." 2025 WL 1378784, at *19. That risk remains equally real here.

Moreover, Respondents appear to defend the 24-hour expedited removal procedures as constitutionally sufficient. Opp. 19-20. The Supreme Court, however, has already rejected that position, concluding in *A.A.R.P.* that "notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster." 2025 WL 1417281, at *2.

III. EQUITABLE FACTORS WEIGH IN PETITIONER'S FAVOR.

Respondents dismiss Petitioner as complaining of the general "burden of removal." Opp. 24 (quoting *Nken v. Holder*, 556 U.S. 418, 436 (2019)). But the Supreme Court has already explained that individuals in Petitioner's position have "a high risk" of "severe, irreparable harm." *A.A.R.P.*, 2025 WL 1417281, at *2; *see also A.S.R.*, 2025 WL 1378784, at *22 (finding irreparable harm on similar facts). Conversely, the government can make no comparable claim to harm. *See A.A.R.P.*, 2025 WL 1417281, at *2 (granting stay pending appeal); *D.B.U. v. Trump*, 2025 WL 1233583, at *1 (10th Cir. Apr. 29, 2025) (no irreparable harm from order restraining AEA removals). Indeed, the government retains the ability to prosecute crimes, detain noncitizens, and remove noncitizens under existing immigration laws. *See, e.g., J.G.G.*, 2025 WL 914682, at *11

(Henderson, J., concurring) (explaining speculative nature of government's purported foreign policy harms).

CONCLUSION

The Court should extend the temporary restraining order based on the nominal bond already paid. ECF No. 11.

Dated: May 29, 2025

Respectfully submitted,

/s/ *Ian Austin Rose*
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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Reply in Support of Motion for Temporary Restraining Order using the CM/ECF system, which will notify and provide an electronic copy to counsel for Respondents.

Dated: May 29, 2025

Respectfully submitted,

s/ Ian Austin Rose

Counsel for Petitioner-Plaintiff