No. 24A1007

In the Supreme Court of the United States

A.A.R.P., ET AL., APPLICANTS

v.

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.

RESPONDENTS' OPPOSITION TO EMERGENCY APPLICATION

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The Solicitor General, on behalf of respondents, respectfully submits this response in opposition to the application for an emergency injunction, writ of mandamus, and stay of removal.

Late yesterday, applicants sought an unprecedented injunction from this Court against the removal of any members of a putative class of aliens who are or will be detained in the Northern District of Texas pursuant to the Alien Enemies Act (AEA). Those aliens are Venezuelan nationals who are unlawfully present in the United States and subject to removal under other authorities, but who the government has determined are members of the foreign terrorist organization Tren de Aragua and thus subject to removal pursuant to the AEA. This Court should deny applicants' extraordinary request.

To start, this Court is "a court of review, not first view." *Cutter* v. *Wilkinson*, 544 U. S. 709, 718, n. 7 (2005). Yet the application insists on judicial review in reverse. It calls for this Court to be the first to resolve due-process challenges to the adequacy of notice that designated enemy aliens receive, on behalf of a putative class that no court below has certified, on a nonexistent record. As the Fifth Circuit ob-

served last night, appellate courts should not address those questions unless and until the district court is given a reasonable opportunity to rule. App., *infra*, 2a. Yet applicants gave the district court a mere 42 minutes' notice before divesting it of jurisdiction by filing a notice of appeal claiming constructive denial of relief. Under these highly irregular circumstances, applicants can hardly establish a clear and indisputable entitlement to the extraordinary relief they seek. The application should be denied on that basis alone.

In addition to the prematurity noted by the Fifth Circuit, fatal weaknesses in applicants' claims foreclose any relief. Their counsel filed an emergency application on behalf of clients whom they do not represent (putative members of an uncertified class), using a procedural vehicle that is unavailable and uniquely unsuitable (classwide adjudication of habeas claims involving the putative inadequacy of notice given to aliens detained under the Alien Enemies Act). And they do so by leveraging non-representative class members (those who deny being members of Tren de Aragua at all) and ignoring classwide differences. Given those many deficiencies, applicants cannot show a clear and indisputable entitlement to relief.

Applicants dismiss those problems by speculating that AEA detainees will be removed imminently, before their claims can be further tested. But applicants ignore that the government has provided advance notice to AEA detainees (including the named petitioners) prior to commencing AEA removals. Detainees receiving such notices have had adequate time to file habeas claims—indeed, the putative class representatives and others have filed such claims. And the government has agreed not to remove pursuant the AEA those AEA detainees who do file habeas claims (including the putative class representatives). This Court should dissolve its current administrative stay and allow the lower courts to address the relevant legal and factual

questions in the first instance—including the development of a proper factual record. At a minimum, this Court should limit the administrative stay to removals pursuant to the Alien Enemies Act and leave undisturbed the government's independent authority to remove putative class members under Title 8, which the application provides no basis to dispute.

STATEMENT

A. The President's Proclamation

Tren de Aragua (TdA) is a transnational criminal organization that originated in Venezuela and has "conducted kidnappings, extorted businesses, bribed public officials, authorized its members to attack and kill U.S. law enforcement, and assassinated a Venezuelan opposition figure." Office of the Spokesperson, Dep't of State, *Designation of International Cartels* (Feb. 20, 2025). TdA has been designated a "foreign terrorist organization" by the Secretary of State. 90 Fed. Reg. 10,030 (Feb. 20, 2025). That designation reflects the Secretary's finding that TdA engages in "terrorist activity" or "terrorism" or "retains the capability and intent" to do so, and thereby "threatens the security of United States nationals or the national security of the United States." 8 U.S.C. 1189(a)(1), (d)(4).

On March 14, 2025, the President signed a proclamation, which was published on March 15, invoking his authorities under the Alien Enemies Act (AEA), 50 U.S.C. 21 *et seq.*, against members of TdA. See Proclamation No. 10,903 § 1 (Mar. 14, 2025), 90 Fed. Reg. 13,033 (Mar. 20, 2025) (Proclamation). Section 21 of the AEA provides:

> Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies.

50 U.S.C. 21. The provision elaborates on related powers, including the power "to direct the conduct to be observed on the part of the United States, toward the aliens who become so liable"; the power to determine the "manner and degree of the restraint to which" the alien enemies "shall be subject and in what cases"; to "provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom"; and "to establish any other regulations which are found necessary in the premises and for the public safety." *Ibid.*

The President's March 14 Proclamation outlines his findings that TdA members meet the statutory criteria for removal under the Alien Enemies Act—findings which are undisputed here. The President found that TdA is "conducting irregular warfare and undertaking hostile actions against the United States." 90 Fed. Reg. at 13,033. The President additionally found that TdA and other criminal organizations have taken control over Venezuelan territory, resulting in a "hybrid criminal state." *Ibid.* Moreover, TdA is "closely aligned with" Maduro's regime in Venezuela, and indeed has "infiltrated" the regime's "military and law enforcement apparatus." *Ibid.* The resulting hybrid state, the President determined, "is perpetrating an invasion of and predatory incursion into the United States," posing "a substantial danger" to the Nation. *Ibid.*

Based on those findings, the President proclaimed that "all Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies" pursuant to 50 U.S.C. 21. 90 Fed. Reg. at 13,034. Further, "all such members of TdA are" "chargeable with actual hostility against the United States" and "are a danger to the public peace or safety of the United States." *Ibid.* The Proclamation adds that

all such TdA members "are subject to immediate apprehension, detention, and removal." *Ibid.* To that end, the President directed the Attorney General, in consultation with the Secretary of Homeland Security, to "issue any guidance necessary to effectuate the prompt apprehension, detention, and removal of all Alien Enemies described" above. Aliens apprehended under the Proclamation may be detained until their removal, then may be removed to "any such location as may be directed" by the enforcing officers. *Ibid.*

TdA members remain deportable under other authorities, including under Title 8 as members of a foreign terrorist organization or otherwise. 8 U.S.C. 1182(b)(3)(B), 1227(a)(4)(B). But the Proclamation lets the President use a particularly expeditious, statutorily authorized removal method for individuals found to present serious national-security threats under specified circumstances.

B. The *J.G.G.* Case

On March 15, five Venezuelan nationals detained at an immigration detention center in Texas sued in the United States District Court for the District of Columbia to block the government from removing them under the Proclamation. See *Trump* v. *J.G.G.*, No. 24A931 (Apr. 7, 2025), slip op. 1. The detainees moved to certify a class of "[a]ll noncitizens who were, are, or will be subject to the Alien Enemies Act Proclamation and/or its implementation." Compl. ¶ 57, *J.G.G.* v. *Trump*, No. 25-cv-766 (Mar. 15, 2025). The plaintiff detainees initially sought habeas relief as well as relief under the Administrative Procedure Act, but they dismissed their habeas claims almost immediately. See *J.G.G.*, slip op. 1. The same day, the district court issued two temporary restraining orders (TROs) preventing the removal of the named petitioners and any members of a provisionally certified class of all aliens in custody "who are subject to" the Proclamation. *Ibid.* The government immediately asked the court

of appeals to vacate the TROs, explaining that the district court lacked authority to issue them given that the plaintiffs' claims sounded in habeas and could be raised only in habeas proceedings in the district of their confinement. The D.C. Circuit denied the government's emergency motion to vacate the TROs. *J.G.G.* v. *Trump*, No. 25-5067, 2025 WL 914682 (Mar. 26, 2025).

On April 7, this Court vacated the district court's TROs. *J.G.G.*, slip op. 2. The Court recognized that the AEA "largely precludes judicial review." *Ibid.* (citation and brackets omitted). But the Court held that an alien detained under the AEA is guaranteed "limited" judicial review as to "questions of interpretation and constitutionality" of the Act, as well as "whether he or she is in fact an alien enemy" subject to detention and removal under the statute. *Ibid.* (citation omitted). The Court agreed with the government that such review "must be brought in habeas" in the "district of confinement." *Id.* at 2-3. Because the detainees had brought the wrong claims in the wrong court, the district court lacked the authority to issue the TROs. *Id.* at 3-4.

This Court further clarified that as a matter of "due process," "AEA detainees must receive notice after the date of this order that they are subject to removal under the Act." *J.G.G.*, slip op. 3. In keeping with the context-sensitive nature of due process, the Court did not mandate any specific notice procedure. Instead, the Court stated that 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." *Ibid.*

C. The Present Controversy

Following the Court's decision in *J.G.G.*, numerous detainees have brought habeas petitions in their districts of confinement challenging their detention under the AEA, and courts continue to adjudicate those claims. See, *e.g.*, *G.F.F. & J.G.O.* v.

Trump, No. 25-cv-2886 (S.D.N.Y. Apr. 8, 2025); *J.A.V.* v. *Trump*, No. 25-cv-72 (S.D. Tex. Apr. 8, 2025); *D.B.U.* v. *Trump*, No. 25-cv-1163 (D. Colo. Apr. 12, 2025); *A.S.R.* v. *Trump*, No. 25-cv-133 (W.D. Pa. Apr. 15, 2025); *Viloria-Aviles* v. *Trump*, No. 25-cv-611 (D. Nev. Apr. 3, 2025); *A.A.R.P.* v. *Trump*, No. 25-cv-59 (N.D. Tex. Apr. 16, 2025); *Gutierrez-Contreras* v. *Trump*, No. 25-cv-911 (C.D. Cal. Apr. 14, 2025); *Quintanilla Portillo* v. *Trump*, No. 25-cv-1240 (D. Md. Apr. 15, 2025). Applicants do not dispute that the government has agreed to forgo removal pursuant to the AEA for aliens who file such habeas petitions—indeed, the government has done so for the putative class representatives here—though removal pursuant to other authorities, such as Title 8, remains available.

On April 16, applicants A.A.R.P. and W.M.M. filed a petition for a writ of habeas corpus under 28 U.S.C. 2241 in the United States District Court for the Northern District of Texas. D. Ct. Doc. 1. They contended that the Proclamation is inconsistent with the statutory requirements of the AEA and that it provides insufficient notice and opportunity for judicial review. *Id.* at 3. Applicants simultaneously filed an emergency motion for a TRO seeking to block their removal under the AEA. D. Ct. Doc. 2. They also filed a motion to certify a putative class of "[a]ll noncitizens in custody in the Northern District of Texas who were, are, or will be subject to the [Proclamation] and/or its implementation." D. Ct. Doc. 3-1, at 2.

On April 17, the district court denied applicants' TRO motion. The court explained that the government had "unequivocally" represented that it "does not presently expect to remove A.A.R.P. or W.M.M. under the [AEA] until after the pending habeas petition is resolved." D. Ct. Doc. 27, at 1. The court thus found that applicants are not at "imminent risk of summary removal" and accordingly could not make a sufficient showing of irreparable harm. *Ibid.* The court reserved decision as to the

pending motion for class certification, *ibid.*, and ordered briefing on that issue due next week, D. Ct. Doc. 31.

Yesterday, applicants filed a second motion for an emergency TRO, claiming that members of the putative class were at risk of being imminently removed without sufficient notice. D. Ct. Doc. 30. As the district court has since explained, the court was "acting with utmost speed to resolve these motions in a timely manner," particularly under practical constraints including a religious holiday, but with appropriate care for the "importance and complexity" of the issues. Resp. App., *infra*, 8a, 10a. Indeed, the court was "prepared to issue an order resolving the second emergency motion" as soon as practicable after the government's response brief, and no later than 12 p.m. CT today (Saturday, April 19). *Id.* at 9a. Nonetheless, without waiting for the government to file its opposition brief and after giving the district court just 42 minutes to rule, applicants immediately sought emergency relief in the United States Court of Appeals for the Fifth Circuit and then in this Court. Applicants treated the district court's failure to grant their requested relief within 42 minutes as a constructive denial of relief. *Ibid.*

Early this morning, this Court entered an order inviting the Solicitor General to file a response to the application as soon as possible upon action by the Fifth Circuit. 4/19/25 Order. The Court further directed the government "not to remove any member of the putative class of detainees from the United States until further order of this Court." *Ibid.*

The Fifth Circuit has denied applicants' motion as premature in a per curiam opinion. Resp. App., *infra*, 1a-2a. The court explained that if respondents were concerned that the government's position on not removing applicants had changed, "they should have litigated these concerns before the district court in the first instance."

Id. at 2a. Instead, applicants "gave the [district] court only 42 minutes to act—and did not give [the government] an opportunity to respond" before proceeding to the court of appeals. *Ibid.* The court thus dismissed applicants' appeal for lack of subject-matter jurisdiction, "for substantially the reasons stated in Judge Ramirez's concurrence." *Ibid.*

In her concurrence, Judge Ramirez explained that applicants' premature appeal "divested the district court of jurisdiction" to address class-certification issues and other issues, and left the court of appeals "unable to complete its review of the filings, after affording the government an opportunity to respond, and issue rulings by noon on April 19" as "planned." Resp. App., *infra*, 4a. Judge Ramirez concluded: "we cannot find an effective denial of injunctive relief based on the district court's failure to issue the requested ruling within 42 minutes." *Ibid.*

ARGUMENT

Applicants must surmount a particularly high bar: they ask this Court for an injunction or alternatively for mandamus relief, both of which require establishing a clear and undisputed right to relief. The Court's injunctive power is to be used "sparingly and only in the most critical and existent circumstances." *South Bay United Pentecostal Church* v. *Newsom*, 140 S. Ct. 1613, 1613 (2020) (Roberts, C.J., concurring in denial of application for injunctive relief) (quoting Stephen M. Shapiro, *Supreme Court Practice* § 17.4, at 17-9 (11th Cir. 2019)). Critically, applicants' right to relief must be "indisputably clear." *Ibid.* (citation omitted). Likewise, mandamus relief is available only when a petitioner's "right to issuance of the writ is 'clear and indisput-

able.'" *Cheney* v. *United States Dist. Ct. for D.C.*, 542 U.S. 367, 381 (2004) (citation omitted).*

Here, applicants have not made an "indisputably clear" showing to secure the extraordinary relief they seek. As the Fifth Circuit held, applicants' request is fatally premature, because they improperly skipped over the lower courts before asking this one for relief. Moreover, because the government has committed to not removing the named petitioners pursuant to the AEA until their habeas proceedings have concluded, applicants are seeking relief only on behalf of non-parties—putative members of an uncertified class that cannot be certified in this context without flouting Rule 23 in multiple respects. This Court should deny the application.

A. Applicants' Request For Relief Is Premature

Applicants' request for relief is fatally premature, as both the lower courts in this case recognized. This is a "court of review, not of first view." *Nautilus, Inc.* v. *Biosig Instruments, Inc.*, 134 S. Ct. 2120, 2131 (2014) (quoting *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005)). Yet *no court* has yet passed on applicants' claims that the government's notice proceedings have been inadequate under the Due Process Clause. Applicants gave the district court only 42 minutes to rule on their motion before immediately proceeding to the court of appeals, thus divesting the district court of jurisdiction. Resp. App., *infra*, 2a; *id.* at 3a (Ramirez, J., concurring). That maneuvering left the district court "unable to complete its review of the filings" and

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* Although applicants also style their application as a request for a "stay of removal," they do not elaborate on that request in the body of their submission. That is with good reason: they are not seeking a stay to which the familiar stay factors apply. Unlike a request for a stay, the application does not ask this Court to suspend the effect of a legal directive below. See *Respect Maine PAC* v. *McKee*, 562 U.S. 996 (2010) (per curiam) (a stay "simply suspend[s] judicial alteration of the status quo"). Instead, they ask for affirmative "judicial intervention" to prevent specific conduct by the government. *Ibid.* That is injunctive relief that demands an indisputably clear showing of a legal right.

actually rule on applicants' claims. *Id.* at 4a (Ramirez, J., concurring). Applicants' premature filings also left the court of appeals without jurisdiction to act. As Judge Ramirez explained, the Fifth Circuit could not "find an effective denial of injunctive relief based on the district court's failure to issue the requested ruling within 42 minutes." *Ibid.* As a result, both lower courts correctly found that they lack jurisdiction over these claims. See *id.* at 3a. That procedural impropriety alone is fatal to applicants' attempt to show the "indisputably clear" right to relief that is required to secure an injunction from this Court. See *South Bay*, 140 S. Ct. 1613 (Roberts, C.J., concurring).

This Court should deny the application to allow the lower court to resolve applicants' claims in the first instance. The lower courts have not found critical facts in this case. There has been no fact-finding about the timing, nature, and manner of notice that the government has given AEA detainees. Nor has there been fact-finding in the lower courts concerning which detainees in the putative class have actually tried to seek habeas, and whether any detainees were deprived of that opportunity. Likewise, no court has passed on the legal adequacy of the government's notice procedures—nor has the government had a chance to defend them. This Court should not make those determinations in the first instance. See *Cutter*, 544 U.S. at 718 n.7. Instead, the Court should deny the petition and allow the case to proceed in district court.

That approach will not cause applicants any irreparable harm. Contra Appl. 15-16. The government has agreed to forgo removing the named petitioners pursuant to the AEA while their habeas proceedings are pending. The named petitioners thus will not be prejudiced by litigating their case in the normal course of federal litigation.

B. Applicants' Proposed Class Is Manifestly Improper

Applicants' request is also substantively defective. Because applicants cannot show irreparable harm to themselves, they focus their request on securing injunctive relief on behalf of a putative class of detainees in the Northern District of Texas. See Appl. 15-16. Under Article III, however, a plaintiff's remedy must be limited to providing relief to injured parties. See *Labrador* v. *Poe*, 144 S. Ct. 921 (2024). Because no class has been certified, the putative class members are non-parties to the dispute. *Smith* v. *Bayer Corp.*, 564 U.S. 299, 313 (2011). This Court thus lacks the authority to grant them relief.

Underscoring the impropriety of leveraging a proposed class to obtain broad relief, applicants' proposed class is manifestly improper. As a general matter, the limited habeas review available in an AEA case cannot be pursued in a class action. As the government explained in its *J.G.G.* application, the determination whether individual AEA detainees are entitled to habeas relief is inherently too individualized for classwide relief. See Gov't Appl. at 27-28, *J.G.G.* v. *Trump*, No. 24A931. The determination whether a particular detainee is a member of TdA or otherwise subject to the Proclamation is inherently individualized, precluding commonality. Moreover, it is effectively impossible to define a class for which a class member could be an adequate or typical representative—any class of individuals "subject to" the Proclamation inherently covers only TdA members, but lead petitioners in habeas disputes typically dispute their membership in TdA. See *ibid.*

The class-action mechanism is especially improper for applicants' claims concerning notice and due process. Applicants seek classwide relief on behalf of "[a]ll noncitizens in custody in the Northern District of Texas who were, are, or will be subject to the [Proclamation] and/or its implementation." The class as defined in-

cludes too much variation to satisfy the Rule 23(a) requirements of commonality, typicality and adequacy. See Fed. R. Civ. P. 23(a). To begin with, the Proclamation applies only to members of TdA, but applicants themselves dispute that they are TdA members. See Appl. 12-13. They cannot adequately represent a class of detainees "subject to" the Proclamation.

Moreover, to the extent the common allegation is that class members have all suffered a due-process violation, see Appl. 21, that is insufficient to satisfy commonality. *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 350 (2011). The allegation is particularly deficient because "due process is flexible and calls for such procedural protections as the particular situation demands." *Mathews* v. *Eldridge*, 424 U.S. 319, 321 (1976). Indeed, in *Jennings* v. *Rodriguez*, 583 U.S. 281 (2018), this Court recognized that a class action may not be the proper vehicle to resolve due-process claims because of the flexibility inherent in a due-process analysis. *Id.* at 314.

Here, although the government maintains that the notice provided was adequate, individualized factors including a detainee's language ability or his family's preexisting relationship with a lawyer may well be relevant to a court's determination of the adequacy of a particular notice. Applicants' proposed class definition also encompasses individuals who may have no claim to additional notice, because they do not plan to challenge their membership in TdA or even to file habeas claims at all. Indeed, the very fact that applicants filed habeas petitions but others did not illustrates these differences.

The problems do not end there: Rule 23(b)(2) states that an injunctive class may be certified if injunctive relief "is appropriate respecting the class as a whole." But whether an alien is a member of TdA; whether he has been given sufficient process; whether he is removable under a different provision of law; and other such ques-

tions necessarily are individualized determinations unsuitable for class treatment. Cf. *J.G.G.*, 2025 WL 914682, at *34 n.35 (Walker, J., dissenting) (explaining that this "type of challenge is unique to each plaintiff, so it would seem that a class action is a poor vehicle"). As this Court has explained, Rule 23(b)(2) "does not authorize class certification when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant." *Wal-Mart*, 564 U.S. at 360.

Applicants ignore those fundamental defects altogether. They do not address the disparities among the class, instead claiming that "class treatment is not only appropriate but preferred here in light of the vulnerabilities of the class." Appl. 21. This Court has never suggested, however, that there is an exception to Rule 23 for "vulnerable" class members, and has instead applied Rule 23 uniformly to all sorts of groups, including individuals alleging exposure to asbestos, see *Amchem Prods. Inc.* v. *Windsor*, 521 U.S. 591 (1997), and individuals alleging harassment in the criminal-justice system, see *O'Shea* v. *Littleton*, 414 U.S. 388 (1974).

C. At A Minimum, The Court Should Clarify That Its Administrative Stay Permits Removal Under Other Immigration Authorities

At a minimum, if the Court keeps its administrative stay in place, the government respectfully requests that the Court clarify that it is administratively staying removals only under the AEA, and that its order does not preclude removal pursuant to any other immigration authorities. Putative class members may be independently subject to removal under Title 8, including as members of a foreign terrorist organization or otherwise. See 8 U.S.C. 1182(b)(3)(B), 1227(a)(4)(B). Applicants do not purport to challenge removal under any other authority. See D. Ct. Doc. 1, at 3 ("Petitioners in this action do not seek release from detention or contest any aspect of their ongoing immigration proceedings."). Clarification is thus warranted to ensure that

the government can continue conducting lawful and unchallenged removals under Title 8.

CONCLUSION

This Court should deny the application. At a minimum, the Court should clarify that its administrative stay order does not preclude the government from removing detainees pursuant to authorities other than the Alien Enemies Act.

Respectfully submitted.

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