No. 24A1007

IN THE

Supreme Court of the United States

A.A.R.P. AND W.M.M,

Applicants,

—— V.——

DONALD J. TRUMP, ET AL.,

Respondents.

APPLICANTS' RESPONSE TO SUPPLEMENTAL MEMORANDUM

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After Applicants filed a short update on district court proceedings below, *see* Notice of District Court Decision (May 11, 2025), the government filed a brief arguing that class certification is unnecessary and that the stay should be vacated so it can remove putative class members under the Alien Enemies Act (AEA). *See* Supp. Mem. Regarding Emergency App. (May 12, 2025). In light of the government's filing of a supplemental brief, Applicants submit this limited response.

1. Applicants have now filed in the district court a motion to reconsider the denial of class certification, or in the alternative, to certify the common classwide issues under Rule 23(c)(4). *See* Memorandum in Support of Motion to Reconsider, *W.M.M. v. Trump*, No. 1:25-cv-59 (N.D. Tex. May 13, 2025), ECF No. 68-1.

2. The government claims that the unnamed class members have had three weeks to bring individual habeas petitions, and that a class is therefore unnecessary, and the stay of removals under the AEA should accordingly be lifted. Supp. Mem. at 2. That assertion rests on two faulty premises.

First, most putative class members face obstacles of the government's making. According to the government, currently "there are some 176 putative class members" in the Northern District of Texas, 149 of whom have not been ordered removed under Title 8. Supp. Mem. at 2, 11. But most putative class members do not have lawyers to file a habeas petition. The government has declined to provide Applicants' counsel with the names or "A numbers" (identification numbers) of this group, and counsel has otherwise been unable to learn most of their names or A numbers. Yet under the detention facilities' policies for legal visits, counsel can only meet with a detainee if they provide a name and A number in advance. *See* Motion to Reconsider, Ex. B ¶ 3 (Sarabia Decl.). Consequently, Applicants' counsel cannot meet with the majority of the putative class members, and to counsel's knowledge, not a single putative class member has managed to file a habeas petition on their own since the Proclamation was issued. That is unsurprising given that the government's AEA notice does not explain that individuals may contest their removal or how to do so, and given the barriers of language, legal knowledge, and limited access to computers and other resources while in detention. Motion to Reconsider, Ex. A ¶¶ 7-9 (Smulian Decl.), Ex. B ¶¶ 4-6 (Sarabia Decl.). As a result, if this Court lifts its injunction, most of the putative class members will be removed with little chance to seek judicial review. And under the government's position, courts will lack authority to remedy unlawful removals to the CECOT Salvadoran prison, where individuals could be held incommunicado for the remainder of their lives.

Moreover, the government does not say how many of the putative class members have received notices designating them for removal under the AEA. Insofar as *pro se* individuals have not yet received an AEA notice, they would have had no reason during these three weeks to know that they are at risk of removal pursuant to the AEA, let alone that they would have to quickly file a habeas petition.

Second, the government's assertion applies only to those individuals who were given notice three weeks ago. Absent class relief, there will be nothing preventing

the government from giving AEA notices to dozens or hundreds *more* people going forward and then removing them to El Salvador if they do not manage to state their intention to file a habeas petition within 12 hours of notice, or file a *pro se* petition within 24 hours after that. *See* Motion for Leave to File Supp. App'x Under Seal (Apr. 23, 2025); Cisneros Decl. ¶ 11, *W.M.M. v. Trump*, No. 1:25-cv-59 (N.D. Tex.), ECF No. 55-1 (explaining government's notice protocol). That would include both people who are already detained in the Northern District of Texas, and people whom the government subsequently transfers into the District. Indeed, in recent weeks, the government has transferred large numbers of Venezuelans into the Northern District of Texas from all over the country. *See id.*, ECF No. 2-1 at 3; Application at 4; Reply at 7.

3. Applicants also notify the Court of a preliminary injunction decision issued May 13, 2025, in which the district court found that the Proclamation at issue here is consistent with the AEA, but held that the government must provide 21 days' notice before seeking to remove an individual under the Act. *A.S.R. v. Trump*, No. 3:25-cv-113 (W.D. Pa.), ECF No. 72. The court also de-certified the class it had previously certified on the ground that Rule 23's numerosity requirement was not satisfied. *Id.*, ECF No. 74 at 5 (noting government's representation that "there are currently zero individuals" in the class).

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