No. 24A931

In the Supreme Court of the United States

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES, ET AL., APPLICANTS

v.

J.G.G., ET AL.

REPLY IN SUPPORT OF APPLICATION TO VACATE THE ORDERS ISSUED BY THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

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A single district court has enjoined further national-security operations pursuant to the Alien Enemies Act to remove members of a designated foreign terrorist organization that is "conducting irregular warfare against the territory of the United States * * * at the direction * * * of the Maduro regime in Venezuela." App. 177a. A majority of the D.C. Circuit acknowledged that this injunction is appealable and risks compromising delicate foreign negotiations over the terms and conditions under which foreign countries will accept and detain these foreign terrorists. See App. 7a-8a (Henderson, J., concurring); *id.* at 73a-75a (Walker, J., dissenting). Yet a separate majority declined to stay the district court's de facto nationwide injunction, which rests on a blatantly unlawful drive-by class certification.

This case is not about whether TdA members subject to removal under the Alien Enemies Act get judicial review; they obviously do. Rather, as respondents acknowledge (Opp. 1), the pressing issues right now are "procedural issues" about where and how detainees should challenge their designations as enemy aliens. Those

issues call for this Court's resolution now. Otherwise, the wrong court (D.D.C.) is deciding the wrong issues (APA claims, not habeas) through the wrong device (a grossly improper class action), while the wrong remedy remains in place (a nationwide, classwide injunction). If allowed to stand, those basic defects will require vacating whatever merits determinations the district court ultimately makes about the Alien Enemies Act. In the meantime, by insisting on proceeding with APA claims in the District of Columbia—not individual habeas proceedings in the Southern District of Texas—respondents are depriving the proper forum of the chance to flesh out the scope of habeas review and to start resolving individual challenges in an orderly way. By persisting with an unlawful class action, respondents also inflict accumulating harms on absent class members, who risk being estopped from pressing habeas claims by virtue of being part of this class action.

Respondents instead overwhelmingly focus (Opp. 24-35) on the merits of the Alien Enemies Act (AEA)—issues that were unresolved below and that this Court need not reach. Despite respondents' sensationalized account, the government's reading of the statute is not one under which any "religious and ethnic group * * * associated with a criminal organization" could be summarily "whisk[ed] away" to "a brutal foreign prison." Opp. 5. This case involves a designated foreign terrorist organization—a designation respondents do not dispute—not a mere "criminal organization[]," Opp. 5, 29. The government's position, based on presidential findings, is that TdA is effectively an arm of the Maduro regime—not a run-of-the-mill "criminal gang," Opp. 2. The proclamation is not based on "a migration-equals-invasion theory," *ibid.*, but on the finding that TdA is "conducting irregular warfare and undertaking hostile actions against the United States" by illegally entering and committing brutal crimes as means of "destabilizing" the United States and terrorizing its citi-

zens, App. 176a. And the government acknowledges that the five named plaintiffs would have ample opportunity to challenge their designations under the AEA if they filed habeas petitions in Texas instead of pressing a misbegotten D.C. class action.

Finally, it should go without saying that the United States' position is to abhor torture, not to invite brutalization. See Opp. 4-5. The United States has ensured that removed aliens would not be tortured and would never remove any alien to El Salvador for detention in CECOT if it believed that doing so would violate the United States' obligations under the Convention Against Torture. Moreover, Congress expressly recognized that the Executive Branch could and would remove aliens to third countries—so such removals are hardly novel or presumptively suspect. See 8 U.S.C. 1231(b)(2)(D) and (E). Respondents' allegations on this score exemplify the broader problem here: the district court, in its haste to stop sensitive national-security removals of members of a foreign terrorist organization, rushed to judgment in advance of the evidence. The result is a pair of orders that destabilizes the President's exercise of fundamental foreign-relations powers and perversely hampers aliens from invoking the appropriate procedure—habeas—for challenging their designations. A single district court cannot broadly disable the President from discharging his most fundamental duties, regardless of the order's label, and irrespective of its duration. This Court should vacate this TRO, halt the tide of injunctions, and restore the constitutional balance.

A. The District Court's Orders Are Appealable

Even though a majority of the court of appeals considered the district court's orders to be appealable and all three judges delved at length into the merits, respondents insist that the orders are unappealable because they "merely preserve[] the status quo." Opp. 12; see App. 7a-8a (Henderson, J., concurring); *id.* at 73a-75a (Walker,

J., dissenting). That argument just shows how malleable the "status quo" moniker is and how unreliable a gauge it is for appealability. As Judges Henderson and Walker recognized, the challenged orders did not freeze the status quo; they "affirmatively interfered with an ongoing, partially overseas, national-security operation." App. 75a (Walker, J., dissenting). Respondents deny (Opp. 12-13) such interference because the government can still detain and remove alien enemies under other authorities and because individual detainees may obtain relief through habeas. But appealability cannot possibly turn on which party's view of operational consequences prevails.

Besides, the court's nationwide TRO irreparably harms the government not only by blocking removal of specific aliens, but also by halting the government's broader foreign-policy plan for responding to the attempted infiltration of the United States by a foreign terrorist organization entwined with a hostile foreign regime, and by frustrating international negotiations premised on that policy plan. See App. 77a (Walker, J., dissenting); *id.* at 157a (Kozak Decl.) (explaining the risk that "foreign interlocutors might change their minds regarding their willingness to accept certain" TdA members, "or might otherwise seek to leverage this as an ongoing issue"). Those irreparable harms reinforce the need for immediate appellate review. See Appl. 33. Conversely, respondents' arguments regarding countervailing harms to aliens subject to the Proclamation do not weigh against appealability; they favor immediate review of both sides' arguments. It is respondents, not the government, who want process to run only one way—to insulate from further judicial scrutiny a flawed ruling that threatens to scuttle urgent foreign-policy objectives.

The appealability of the challenged orders is even clearer now. On Friday, the district court granted respondents' motion to extend the orders by an additional two weeks. D. Ct. Doc. 66, at 3 (extending the putative TROs "until April 12, 2025, or

until further order of the Court"). Unless this Court intervenes, the orders will be in place for at least 28 days—an intolerably long time for a court to block the Executive's conduct of foreign-policy and national-security operations. See App. 77a (Walker, J., dissenting) (explaining that a 14- or 28-day TRO is "more than enough time to frustrate fast-moving international negotiations"). Respondents downplay the orders' 28-day duration as "short," and suggest that any TRO subject to a "finite" time limit—no matter how long—is unappealable. Opp. 12. But as the government has explained elsewhere, barring appellate reviews of TROs as long as they are subject to *some* time limit is "no real limiting principle at all." Reply in Support of Appl. at 4, *Department of Educ.* v. *California* (No. 24A910). Indeed, under respondent's theory, a district court's notorious injunction against the bombing of Cambodia during the Vietnam War would have been unreviewable for weeks had it simply been issued as a 14-day-long TRO and then extended. See *Holtzman* v. *Schlesinger*, 361 F. Supp. 553, 566 (E.D.N.Y.), rev'd, 484 F.2d 1307 (2d Cir. 1973); see *Holtzman* v. *Schlesinger*, 414 U.S. 1316 (1973) (Douglas, J., in chambers) (vacating the court of appeals' stay of the injunction); *Holtzman* v. *Schlesinger*, 414 U.S. 1321 (1973) (reinstating the stay).

B. The Government Is Likely To Succeed On The Merits

1. ***Respondents Must Proceed in Habeas.*** As the government has explained, there is a single, exclusive path to judicial review under the AEA: a habeas petition filed in the district where an individual is detained. See Appl. 21. Respondents do not meaningfully dispute that a habeas court *could* adjudicate their claims, or that courts have historically adjudicated claims under the AEA—as well as analogous claims involving transfer—in habeas. See Appl. 20, 23. Nor do respondents offer any reason why they could not have filed their complaint as a habeas petition in Texas; after all, they initially styled the complaint as a petition for habeas corpus.

Compl. 1, 21. And indeed, other AEA-detained aliens have sought habeas relief in Texas. See Appl. 39. Instead, respondents argue that habeas is not the *exclusive* cause of action for their claims, so they were free to bring a novel APA suit in the District of Columbia. Their arguments lack merit.

a. Respondents' primary argument is that their challenge does not lie exclusively in habeas because it is not a "core" habeas claim. Opp. 15-19. That is wrong. Respondents' claims fall squarely within the "core" of habeas because they challenge "unlawful executive detention." *Department of Homeland Security* v. *Thuraissigiam*, 591 U.S. 103, 127 (2020). Although respondents purport to formally challenge their removal rather than their detention, their claims attack the lawfulness of an authority—the Alien Enemies Act—as the basis for their detention as enemy aliens. Their claims thus intrinsically "call into question the lawfulness of their conviction or confinement." *Heck* v. *Humphrey*, 512 U.S. 477, 483 (1994). They are core habeas claims that must be brought exclusively in habeas.

Because respondents' suit inherently challenges the lawfulness of their detention under the AEA, it meaningfully differs from claims that fall outside of the historical core of habeas. In *Thuraissigiam*, for example, the government successfully argued that "a habeas petition challenging the denial of admission to the United States—or, more specifically, the alien's failure to pass a threshold screening for potential eligibility for relief notwithstanding his inadmissibility" falls outside of core habeas. Gov't Reply Br. at 10, *Thuraissigiam*, *supra* (No. 19-161). That position tracks the government's arguments here, contra Opp. 16 & n.5. A challenge to an alien's "failure to pass a threshold screening for potential eligibility for relief notwithstanding his inadmissibility" does not inherently impugn the lawfulness of detaining the alien under Title 8, whereas respondents' suit is premised on the notion that no

alien can be detained pursuant to the Proclamation or Alien Enemies Act.

Respondents insist (Opp. 17) that their claim is not "core" habeas because they "will remain in ICE custody" under other immigration authorities "[r]egardless of the outcome of this case." But respondents challenge *a* basis for their detention, and the one under which they are subject to imminent removal. And this argument just underscores the impropriety of class certification; other aliens in the class may be detained pursuant to only the AEA. See p. 12, *infra*.

b. Separately, respondents' APA suit fails because APA review is limited to challenging final agency actions "for which there is no other adequate remedy in a court." 5 U.S.C. 704; see Appl. 19. An alternative remedy "need not provide an identical review that the APA would provide, so long as it" offers the "'same genre' of relief." *Hinojosa* v. *Horn*, 896 F.3d 305, 310 (5th Cir. 2018). Habeas readily fits the bill, because all agree individuals "may bring habeas claims" to "test the legality of alien-enemy detention," including their designation as alien enemies. Appl. 19.

Respondents barely engage with this dispositive point beyond briefly contending (Opp. 21) that there is no alternative "adequate remedy" under Section 704 because "the government has completely failed to provide a process for review of designations under the AEA." But the government's whole point is that there *is* a process for reviewing AEA designations: habeas in Texas. See Appl. 19. Respondents also contend that even if habeas relief is theoretically adequate, they have "no practical ability to seek" such relief absent receiving the notice they would need to bring a habeas claim. *Ibid.*; see *id.* at 9. But this litigation undercuts that contention: respondents had adequate time to bring habeas claims in their initial complaint. Compl. 1, 21. They also had the "practical ability" to bring a habeas complaint in Texas; they just chose to pursue an APA suit in the District of Columbia instead.

More broadly, this Office has been informed that aliens detained pursuant to the AEA receive notice that they are detained pursuant to the AEA, and could thus bring habeas petitions to challenge that detention, even if they cannot challenge the notice itself or collaterally attack removal as in a Title 8 proceeding. Contra Opp. 4, 8.

Respondents also attempt (Opp. 20) to evade the APA's limitations by contending that their suit can proceed in equity regardless of the APA's strictures. They appear to be invoking the All Writs Act, 28 U.S.C. 1651(a), which authorizes courts to issue writs "necessary or appropriate in aid of their respective jurisdictions." See Opp. 20 (discussing "the district court's equity jurisdiction to issue a TRO to preserve the status quo and its ability to hear the parties in an orderly fashion"). But the All Writs Act does not itself "confer jurisdiction on the federal courts"; it lets a court protect jurisdiction already properly invoked. *Syngenta Crop Prot., Inc.* v. *Henson*, 537 U.S. 28, 32-33 (2002); *Clinton* v. *Goldsmith*, 526 U.S. 529, 534-535 (1999). Thus, if a "court does not and would not have jurisdiction to review the agency action sought by petitioners, it cannot bootstrap jurisdiction" through Section 1651(a), as respondents appear to propose doing. *In re Nat'l Nurses United*, 47 F.4th 746, 752 (D.C. Cir. 2022).

c. Respondents' other counterarguments about the exclusivity of the habeas remedy fall flat. Respondents try to distinguish *Kiyemba* v. *Obama*, 561 F.3d 509 (D.C. Cir. 2009), and *Munaf* v. *Geren*, 553 U.S. 674 (2008), cases brought in habeas challenging transfer between detention authorities. Respondents are correct (Opp. 18-19) that *Kiyemba* did not state that those types of transfer issues could be raised *only* in habeas. The government never said otherwise. *Kiyemba* just explains the historical basis for habeas courts' entertaining claims like respondents'. See Appl. 20. Respondents are also correct (Opp. 18) that *Munaf* held that a claim concerning certain overseas transfers could be brought in habeas, not that it needed to be. But

again, the government's application did not argue otherwise. The government merely responded to Judge Millett's contention that "*Munaf* establish[es] that habeas relief is not available in this context"—a reading that not even respondents adopt. App. 67a. As the government explained, *Munaf* had in fact "found that the lower courts had habeas jurisdiction" but concluded that habeas relief was unavailable for reasons inapplicable here. Appl. 24. Respondents do not contend otherwise.

Respondents note (Opp. 19) that one lower-court AEA decision, *Citizens Protective League* v. *Clark*, 155 F.2d 290 (D.C. Cir. 1946), "was itself not brought in habeas." But the D.C. Circuit in that case did not address the source of its jurisdiction or whether the claims should have been brought in habeas. See App. 86a n.58 (Walker, J., dissenting). There is nothing to glean from that sort of drive-by assertion of jurisdiction. See *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 91 (1998). The jurisdictional aspect of the D.C. Circuit's decision warrants especially little weight given that it predated *Ludecke* v. *Watkins*, 335 U.S. 160 (1948), many of this Court's modern guardrails on jurisdiction, and the enactment of the APA. Instead, *Citizens Protective League* is relevant for its substantive analysis: the Court correctly recognized the breadth of the President's authority under the AEA and the limits on judicial review of that authority. 155 F.2d at 294; see *Ludecke*, 335 U.S. at 171.

Respondents also attempt (Opp. 20) to distinguish *LoBue* v. *Christopher*, 82 F.3d 1081 (D.C. Cir. 1996), a decision that found the habeas remedy to be exclusive in the context of extradition. Respondents suggest that *LoBue* is distinguishable because APA review is categorically unavailable for extradition orders. But the exclusivity of the habeas remedy in *LoBue* did not turn on that fact, as the plaintiffs in that case were not trying to bring APA suits; they were trying to bring declaratory-judgment actions. 82 F.3d at 1082. Respondents also contend (Opp. 20) that declar-

atory relief was not available in *LoBue* because the plaintiffs there already had a habeas petition pending, unlike respondents in this case. But the court was clear that "the key to plaintiffs' inability to pursue a suit here is jurisdictional, and it rests merely on the availability—not the actual seeking—of habeas relief elsewhere." 82 F.3d at 1082. The same is true here: respondents' ability to raise their challenges to their designation as alien enemies can be brought in habeas in Texas, leaving the district court in Washington, D.C., without jurisdiction to review the claims.

2. ***No Nationwide Relief Based on Class Certification.*** At a minimum, the Court should vacate the district court's entry of universal relief.

The district court's vastly overbroad injunction offers a straightforward path to at least narrow the TRO to the named plaintiffs. Black-letter law requires district courts to engage in the "rigorous analysis" that Federal Rule of Civil Procedure 23 demands before certifying any class, let alone a class of individuals subject to imminent removal as foreign terrorists associated with a hostile government. *Wal-Mart Stores, Inc.* v. *Dukes*, 564 U.S. 338, 351 (2011); see Appl. 25-31. Had the district court applied Rule 23 as this Court's precedents require, the class never would have passed muster. Again, the government has no objection to litigating individual habeas claims in the proper forum. But district courts cannot bypass Rule 23 and certify a class so broad as to effectively consist of anyone in custody who is subject to a Presidential Proclamation just to evade equitable limits on nationwide relief. Otherwise, district courts could certify spurious classes in virtually any suit challenging executive actions, thereby creating de facto nationwide injunctions without minding the Rule 23 guardrails. Respondents offer no response to that systemic problem.

Quite the contrary, respondents endorse (Opp. 36) the bypassing of ordinary Rule 23 procedures, deeming the prescribed inquiry unnecessary because "it was

plainly evident" that they satisfied the Rule 23 requirements and "the government did not argue to the contrary." But it was respondents' burden to "affirmatively demonstrate [their] compliance with the Rule," and "certification is proper only if '*the trial court* is satisfied, after a rigorous analysis,'" that the class meets Rule 23's requirements. *Wal-Mart*, 564 U.S. at 350-351 (emphasis added). The district court did not engage in *any* analysis, much less a rigorous one, going so far as to certify the class before even defining it. App. 163a ("So I will certify a class, and the class will be—let's talk about the definition."). That shoot-first-aim-later approach defies Rule 23 no matter how "evident" respondents consider the class-certification inquiry. Of course courts need not "recite any magic words" to certify a class, Opp. 37 (citation omitted)—but the court recited no words at all, magic or mundane, before certifying a broad class with broad potential consequences.

Respondents next claim (Opp. 37) an "exigent circumstances" exception to Rule 23, but none exists. Respondents invoke (Opp. 35-36) *University of Texas* v. *Camenisch*, 451 U.S. 390 (1981), but that case merely says that preliminary-injunction proceedings are less formal than a trial on the merits—which nobody disputes. *Camenisch* was not a class action. That nobody can identify "a single case" where an appellate court reversed class certification "for purposes of emergency preliminary relief on the basis that [the lower court] failed expressly to define the class," Opp. 38, exposes how far the class-certification-based relief here deviates from traditional legal practice. If an "exigency" shortcut is available here, it will become universal any time plaintiffs seek a TRO to enjoin executive-branch actions.

Respondents object (Opp. 35) that the government did not seek interlocutory appeal of the class certification under Rule 23(f). But this application does not seek decertification; it seeks a (partial) stay of the classwide injunctive relief, which *is*

properly appealable, see pp. 3-5, *supra*. It would be perverse to require the government to bifurcate a challenge to an injunction by filing a Rule 23(f) petition and then seeking a stay of the rest of the orders—not least because Rule 23(f) follows different timelines. See Fed. R. Civ. P. 23(f) (45-day deadline for appeal if the federal government is a party). Respondents also try to have it both ways, insisting (Opp. 35) on the formality of Rule 23(f) while simultaneously excusing (*ibid.*) laxer standards because certification here was "*provisional*." No rule or precedent authorizes treating provisional class certification so cavalierly. And respondents' apparent distinction between a "provisional" and an actual class only underscores the untenability of the ensuing relief. If the class is tentative, then the injunction predicated on classwide relief is equally tentative—and the government should not be subject to a court order that subjects it to potential sanctions if it seeks to remove individuals beyond the named plaintiffs pursuant to the Proclamation. Appl. 29-30.

Beyond dispositive process defects, class certification here plainly flunks Rule 23's other criteria. The variances within the class are too great. Appl. 27-29. The class includes aliens who claim not to be TdA members (even though the Proclamation applies only to TdA members). And the class consists of both aliens detained *exclusively* pursuant to the Proclamation, as well as those who may be detained under different authorities, even though respondents' own theory appears to be that habeas is the proper route for the former class members but not the latter. See Opp. 17.

Respondents claim (Opp. 38) that the government has "misunderst[ood]" their claims, which "system[atically] challenge * * * the government's authority to invoke the AEA and remove" aliens. But commonality under Rule 23 "does not mean merely that [class members] have all suffered a violation of the same provision of law." *Wal-Mart*, 564 U.S. at 350. Respondents cannot solve that problem by asserting (Opp. 38

n.23) that they "have just as much of an interest in challenging the Proclamation as other members of the class." The putative class members in *Amchem Products, Inc.* v. *Windsor*, 521 U.S. 591, 622-623 (1997), also had an "interest in challenging" the defendant's asbestos-containing products, but that alone was insufficient to support class certification given *other* variances across the class. So too here.

Respondents also incorrectly contend (Opp. 39) that all class members "seek the same relief." Classwide injunctive relief is obviously "broader than or different from" individualized relief. *Town of Chester* v. *Laroe Estates, Inc.*, 581 U.S. 433, 440 (2017) (citation omitted). That is presumably why respondents seek class treatment in the first place. Respondents emphasize (Opp. 37) that preliminary injunctive relief "is typically appropriate where, as here, failing to act would extinguish the parties' rights before full adjudication is possible." But the key word there is *parties*: relief should extend only to proper parties to a case, not to absent class members for an improperly certified class. Cf. *Smith* v. *Bayer Corp.*, 564 U.S. 299, 313 (2011).

In sum, if nothing else, this Court should vacate the TRO as to the improper class. Not only does such relief risk inviting courts to impose universal injunctions by another name, without any of the Rule 23 protections that properly limit classwide relief. The district court's class certification, if left undisturbed, also harms absent class members by extinguishing their claims, such as the habeas claims that respondents abandoned here. See Appl. 30. Respondents assert (Opp. 39) that the abandoned habeas claims would not "merge into a class judgment," but that misses the point: a class judgment might be *preclusive* of those habeas claims. At a minimum, the *risk* of such preclusion should have cautioned against hasty certification without the requisite rigorous analysis. Respondents cannot credibly insist that everyone subject to the Proclamation requires adequate procedural protections when their rush to certify

a class risks eliminating the most basic mechanism that other class members can and do invoke: habeas petitions in the place of their detention.

3. ***Alien Enemy Act Merits.*** Even were APA review available, the lower courts erred in granting relief without deciding whether respondents would likely succeed on their argument that the Proclamation misinterprets the TdA. See Appl. 31-33. Tellingly, respondents do not argue that the lower courts actually engaged in that statutory inquiry. See Opp. 24. Instead, respondents advance (Opp. 24-35) their own theory why the Proclamation violates the AEA—one the district court did not adopt. See App. 115a. Respondents' statutory arguments do not address the process failure in this case. They also fail on their own terms, not least because respondents dismiss TdA as a gang engaged in illegal migration while ignoring the President's determinations that TdA is an arm of the Maduro regime and a foreign terrorist organization engaged in "irregular warfare" and "hostile acts" aimed at destabilizing the Nation. App. 177a.

Respondents contend that the Proclamation is unlawful because "there is no 'invasion' or 'predatory incursion' upon the United States." Opp. 24; see *id.* at 24-29. They insist that those terms refer only to "military" actions that "imminently lead to or constitute acts of war." *Ibid.* But dictionaries contemporary with the AEA's enactment refute that contention. As the government has explained, "invasion" was defined as a "hostile entrance" at the time of enactment. See Appl. 32 n.3. And dictionaries defined an "incursion" as the "act of running in, an inroad, a ravage." 1 John Ash, *The New and Complete Dictionary of the English Language* (2d ed. 1795). Alternatively, an "incursion" could be an "[a]ttack," a "mischievous occurrence," or an "[i]nvasion without conquest." Samuel Johnson, *A Dictionary of the English Language* (4th ed. 1773). That militaries and their branches were commonly the perpe-

trators of such incursions or invasions, see Opp. 25-26, does not mean that incursions were inherently or necessarily militaristic operations.

Even were respondents' definitions correct, respondents ignore the President's determinations that TdA's actions amount to "irregular warfare." App. 177a. Respondents ask this Court (Opp. 28) to find that TdA's activities do not "constitute war." But whether activities constitute war is precisely the kind of second-guessing of presidential determinations that the Court refused to undertake in *Ludecke*. Here, as in *Ludecke*, the Court "would be assuming the functions of the political agencies of the Government" if it judged for itself whether the President was right to find that TdA was conducting "irregular warfare." 335 U.S. at 170.

Respondents also argue (Opp. 29-32) that the Proclamation violates the AEA because TdA is not a foreign government. That argument ignores the President's findings that TdA is so intertwined with the Maduro regime as to form a "hybrid criminal state." App. 176a. The President further found that TdA has infiltrated the Maduro regime's institutions and gained ever-greater control over Venezuelan territory, leading him to conclude that TdA is an entity to which the AEA applies. *Id.* at 176a-177a. Those findings are owed extraordinary deference. See *Ludecke*, 335 U.S. at 171-172. Instead, respondents attack the President's judgment by citing (Opp. 31-32) news reports that the "President's own intelligence agencies" found that TdA was not controlled by the Maduro regime. But respondents' own source reports internal disagreement among the intelligence agencies, Resp. App. 434a, and it is the President's prerogative to weigh information from those agencies.

Finally, respondents' assertion (Opp. 34-35) that the Proclamation would transform the AEA into "a limitless source of power" to designate and deport any criminal gangs anytime is baseless. To be very clear: that is not how the government

interprets the AEA. Instead, it has invoked the statute under extraordinary circumstances in which a "hybrid criminal state" is engaging in "irregular warfare" against the United States. App. 176a-177a; see 90 Fed. Reg. 10,030 (Feb. 20, 2025) (designating TdA a foreign terrorist organization).

C. The Equities Support Relief

The remaining stay factors also support vacatur.

1. The government's application raises numerous certworthy questions. See Appl. 34-35. Respondents do not argue otherwise; to the contrary, they characterize (Opp. 5) the stakes of the case as "staggering."

2. The district court's orders cause the government ongoing, irreparable harm in multiple ways: (1) they threaten the government's ability to conduct foreign policy; and (2) they block the removal of dangerous TdA members. See Appl. 35-38. On the first point, respondents argue (Opp. 14) that the harm to the United States' foreign-policy interests is "too vague and speculative." But foreign-policy judgments inherently "involve large elements of prophecy." *Chicago & Southern Air Lines, Inc.* v. *Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948). "They are decisions of a kind for which the Judiciary has neither aptitude, facilities nor responsibility and which have long been held to belong in the domain of political power not subject to judicial intrusion or inquiry." *Ibid.* Courts cannot second-guess the Executive Branch's representation that "[t]he foreign policy of the United States would suffer harm if the removal of individuals associated with TdA were prevented." App. 157a.

Respondents answer (Opp. 14) that the removal of TdA members could be "prevented" even in the absence of the TROs, through the habeas process that the government agrees is available. But habeas proceedings on this issue would be too individualized to proceed as a class action. See App. 80a n.34 (Walker, J., dissenting)

("[I]t would seem that a class action is a poor vehicle for" challenges to membership in TdA); *id.* at 91a n.75 (casting general doubt on the availability of habeas class actions in the Southern District of Texas). So while habeas proceedings could theoretically delay or prevent the removal of certain *individuals*, they would not result in a nationwide, programmatic halt on all removals under the Proclamation. The orders thus uniquely thwart the government's foreign-policy goals.

These are not mere "technical venue disputes," as respondents contend (Opp. 2). Proceeding in an APA suit threatens greater harm to the government's foreign-relations interest than individualized habeas review would. Narrow habeas review of the AEA's application is far less likely to subject the government to invasive inquiries into its sensitive negotiations with third countries like El Salvador. An individualized habeas process may move more quickly than sweeping APA review on behalf of an entire class. And less expeditious review would mean prolonged detention of dangerous TdA members. See App. 160a-161a (explaining associated harms).

Respondents also deny that the orders separately harm the government by preventing the removal of dangerous individuals. Respondents note (Opp. 14) that they are "already in secure custody." But the government has explained the dangers of holding TdA members in detention facilities in the United States. Because TdA has authorized its members to attack and kill U.S. law-enforcement agents, see Appl. 37, keeping TdA members in ICE custody would pose "a grave risk to ICE personnel" and to "other, nonviolent detainees." App. 160a. Keeping TdA members in ICE custody would also enable them to "recruit new TdA members." *Ibid.* "Within Venezuela, TdA was able to grow its numbers from the steady prison population and build its criminal enterprise through the extortion of inmates." *Ibid.* Respondents disagree (Opp. 14), and would prefer this Court to credit testimony from one of their witnesses

instead. But courts lack the constitutional authority and institutional competence to second-guess the Executive Branch's assessment of risks to national security, see *Trump* v. *Hawaii*, 585 U.S. 667, 704 (2018), and of risks associated with detention facilities, see *Turner* v. *Safley*, 482 U.S. 78, 85 (1987).

3. On the other side of the balance, vacating the orders would not cause respondents irreparable harm. Respondents echo Judge Millett's concerns that removal under the AEA will be to a "notorious Salvadoran prison." Opp. 1; see App. 70a. As a matter of foreign policy, however, the government would not remove any alien to El Salvador for detention if it believed that doing so would violate the Convention Against Torture. See *Kiyemba*, 561 F.3d at 514 ("Under *Munaf* * * * the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee."). Moreover, the district court's orders prevent removal to *any* country, not only El Salvador. Congress has authorized the Executive to remove aliens to third countries, and the Executive Branch must be able to facilitate that process. See 8 U.S.C. 1231(b)(2)(D) and (E). The United States is currently engaged in sensitive negotiations with multiple foreign countries over immigration-related agreements and arrangements, which are delicate and time-sensitive both to negotiate and execute. Respondents do not suggest that removal to other countries besides El Salvador would cause them irreparable harm. Yet under the district court's orders, respondents and the class cannot be removed *anywhere*, even though the President has deemed them to be members of a foreign terrorist organization.

Respondents contend (Opp. 1) that they suffer particularly egregious harm because they may be wrongly designated as TdA members and deported "without having had *any* opportunity to contest their designation." But as the government has

explained, respondents *have* an opportunity to contest their designation—in habeas, as indeed they tried to do at the outset of this very suit. See Appl. 39-40.

CONCLUSION

For the foregoing reasons and those stated in the government's application, the Court should vacate the district court's March 15, 2025 injunctive orders, as extended by that court on March 28.

Respectfully submitted.

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