APPENDIX

RESPONDENTS' APPENDIX

J.G.G. et al v. TRUMP et al

District of Columbia District Court

Case no. 1:25-cv-00766-JEB (D.D.C.)
Filed date: March 15, 2025
Docket entry no.: N/A

Docket text:

MINUTE ORDER: The Court has reviewed Plaintiffs' Complaint and Motion for Temporary Restraining Order. Given the exigent circumstances that it has been made aware of this morning, it has determined that an immediate Order is warranted to maintain the status quo until a hearing can be set. As Plaintiffs have satisfied the four factors governing the issuance of preliminary relief, the Court accordingly ORDERS that: 1) Plaintiffs' 3 Motion for TRO is GRANTED; 2) Defendants shall not remove any of the individual Plaintiffs from the United States for 14 days absent further Order of the Court; and 3) The parties shall appear for a Zoom hearing on March 17, 2025, at 4:00 p.m. The hearing will proceed by videoconference for the parties and by telephone for members of the public. Toll free number: 833-990-9400. Meeting ID: 049550816. So ORDERED by Chief Judge James E. Boasberg on 3/15/2025. (lcjeb1) Modified to add public access line on 3/15/2025 (znbn). (Entered: 03/15/2025)

J.G.G. et al v. TRUMP et al

District of Columbia District Court

Case no. 1:25-cv-00766-JEB (D.D.C.)
Filed date: March 15, 2025
Docket entry no.: N/A

Docket text:

MINUTE ORDER: As discussed in today's hearing, the Court ORDERS that: 1) Plaintiffs' 4 Motion for Class Certification is GRANTED insofar as a class consisting of "All noncitizens in U.S. custody who are subject to the March 15, 2025, Presidential Proclamation entitled 'Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua' and its implementation" is provisionally certified; 2) The Government is ENJOINED from removing members of such class (not otherwise subject to removal) pursuant to the Proclamation for 14 days or until further Order of the Court; 3) The Government shall file any Motion to Vacate this TRO by March 17, 2025, with Plaintiffs' Opposition due by March 19, 2025; and 4) The hearing set for March 17, 2025, is VACATED and RESET for March 21, 2025, at 2:30 p.m. via Zoom. So ORDERED by Chief Judge James E. Boasberg on 3/15/2025. (lcjeb1) (Entered: 03/15/2025)

J.G.G. et al v. TRUMP et al

District of Columbia District Court

Case no. 1:25-cv-00766-JEB (D.D.C.)
Filed date: March 26, 2025
Docket entry no.: N/A

Docket text:

MINUTE ORDER: Given Plaintiffs' 61 Notice, the Court ORDERS that: 1) Plaintiffs shall file a Motion to Extend the TRO by 5:00 p.m. on March 27, 2025, and Defendants shall file any Opposition by 12:00 p.m. on March 28, 2025; 2) Plaintiffs shall file their PI Motion by March 28, 2025; Defendants' Opposition shall be due by April 1, 2025; and Plaintiffs' Reply shall be due by April 4, 2025; and 3) The parties shall appear for a hearing on the Motion on April 8, 2025, at 3:00 p.m. So ORDERED by Chief Judge James E. Boasberg on 3/26/2025. (lcjeb1) (Entered: 03/26/2025)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*, **Plaintiffs,** **v.** **DONALD J. TRUMP, *et al.*,** **Defendants.**	**Civil Action No. 25-766 (JEB)**

ORDER

On March 15, 2025, this Court issued two Temporary Restraining Orders that will expire on March 29, 2025, unless extended. See Fed. R. Civ. P. 65(b)(2). Those TROs enjoin Defendants from removing from the United States the named Plaintiffs — and a provisionally certified class of all noncitizens in U.S. custody — solely on the basis of the Presidential Proclamation entitled, "Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua." 90 Fed. Reg. 13033, 13034 (Mar. 14, 2025); see Minute Orders of Mar. 15, 2025. Plaintiffs have now filed a Motion to Extend the TROs for another 14 days for "good cause." ECF No. 64 (Mot.) at 1; see also Fed. R. Civ. P. 65(b)(2) (court may extend TRO for "like period" if there is "good cause" to do so). Defendants oppose such extension, resting primarily on their earlier submissions. See ECF No. 65 (Opp.) at 1.

"Good cause" to extend a TRO exists whenever there has been "a showing that the grounds for originally granting the [TRO] continue to exist." Costa v. Bazron, 2020 WL 2410502, at *2 (D.D.C. May 11, 2020) (alteration in original) (quoting Wright & Miller, 11A

Federal Practice and Procedure § 2953 (3d ed. Apr. 2020 Update)). "[C]ourts have also found 'good cause' where more time is needed fully to consider the parties' arguments and motions or 'where the moving party need[s] additional time to prepare and present its preliminary injunction.'" Id. (quoting SEC v. Arisebank, 2018 WL 10419828 at *1 (N.D. Tex. Mar. 9, 2018)).

Both grounds are present here. As this Court recently explained, Plaintiffs are entitled to a TRO enjoining their removal at least until they have had a chance to challenge that they are covered by the Proclamation. See ECF No. 53 (Mem. Op.) at 3. That is so because they are likely to succeed on the merits of their claim that they are entitled to such an opportunity, see id. at 23–30; see also id. at 13–18 (claim appropriately brought under Administrative Procedure Act); that they will suffer irreparable harm in the absence of emergency relief, see id. at 33–35; and that the balance of equities and the public interest tilt in their favor. See id. at 36–37. No developments have taken place since the entry of the TROs that call these judgments into question. Cf. Order, J.G.G. v. Trump, No. 25-5067 (D.C. Cir. Mar. 26, 2025) (denying Government's application for emergency stay of TROs). Indeed, Defendants have thus far not committed to granting putative class members any opportunity to challenge their classification before summary removal. See id. at 70 (Millett, J., concurring) ("The government's position at oral argument was that, the moment the district court TROs are lifted, it can immediately resume removal flights without affording Plaintiffs notice of the grounds for their removal or any opportunity to call a lawyer, let alone to file a writ of habeas corpus or obtain any review of their legal challenges to removal."). That only underscores the continuing need for injunctive relief.

This Court has, moreover, set a schedule for briefing and arguing Plaintiffs' forthcoming Motion for a Preliminary Injunction. See Third Minute Order of Mar. 26, 2025. It is therefore

appropriate to extend the current TROs to permit the parties ample opportunity to address the legal and factual bases for continuing injunctive relief. See Bazron, 2020 WL 2410502, at *2. The Court, accordingly, ORDERS that the TROs entered on March 15, 2025, are extended and shall remain in effect until April 12, 2025, or until further order of the Court.

/s/ *James E. Boasberg*
JAMES E. BOASBERG
United States District Judge

Date: March 28, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G.,*
El Valle Detention Facility
1800 Industrial Drive
Raymondville, TX 78580;

G.F.F.,*
Orange County Jail
110 Wells Farm Road
Goshen, NY 10924;

J.G.O.,*
El Valle Detention Facility
1800 Industrial Drive
Raymondville, TX 78580;

W.G.H.,*
El Valle Detention Facility
1800 Industrial Drive
Raymondville, TX 78580;

J.A.V.,*
El Valle Detention Facility
1800 Industrial Drive
Raymondville, TX 78580;

Plaintiffs–Petitioners,

v.

DONALD J. TRUMP, in his official capacity as President of the United States, The White House, 1600 Pennsylvania Avenue, NW, Washington, D.C. 20500;

PAMELA BONDI, Attorney General of the United States, in her official capacity, 950 Pennsylvania Ave., NW, Washington, DC, 20530;

KRISTI NOEM, Secretary of the U.S. Department of Homeland Security, in her official capacity, 245 Murray Lane SW, Washington, DC 20528;

Case No. _____

CLASS ACTION COMPLAINT AND PETITION FOR WRIT OF HABEAS CORPUS

U.S. DEPARTMENT OF HOMELAND SECURITY, 245 Murray Lane SW, Washington, DC 20528;

MADISON SHEAHAN, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, in her official capacity, 500 12th Street, SW, Washington, DC 20536;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, 500 12th St. SW, Washington, DC 20536;

MARCO RUBIO, Secretary of State, in his official capacity, 2201 C Street, NW, Washington, DC 20520;

U.S. STATE DEPARTMENT, 2201 C Street, NW, Washington, DC 20520;

Defendants–Respondents.

* Motion for these Plaintiffs to proceed under pseudonym has been concurrently filed with this complaint.

INTRODUCTION

1. Plaintiffs-Petitioners ("Plaintiffs") are Venezuelan men in immigration custody threatened with imminent removal under the President's expected Proclamation invoking the Alien Enemies Act ("AEA"), a wartime measure that has been used only three times in our Nation's history: the War of 1812, World War 1 and World War II.

2. The Proclamation is expected to authorize "immediate" removal of noncitizens that the Proclamation deems to be alien enemies, without any opportunity for judicial review. It also contorts the plain language of the AEA: arrivals of noncitizens from Venezuela are deemed an "invasion" or "predatory incursion" by a "foreign nation or government," where Tren de Aragua, a Venezuelan gang, is deemed to be sufficiently akin to a foreign nation or government.

3. But the AEA has only ever been a power invoked in time of war, and plainly only applies to warlike actions: it cannot be used here against nationals of a country—Venezuela—with whom the United States is not at war, which is not invading the United States, and which has not launched a predatory incursion into the United States.

4. The government's Proclamation would allow agents to immediately put noncitizens on planes without any review of any aspect of the determination that they are Alien Enemies. Upon information and belief, the government has transferred Venezuelans who are in ongoing immigration proceedings in other states, bringing them to Texas to prepare to summarily remove them and to do so before any judicial review—including by this Court. For that reason, Plaintiffs-Petitioners and the putative class that they represent seek this Court's intervention to temporarily restrain these summary removals, and to determine that this use of the AEA is unlawful and must be stopped.

JURISDICTION AND VENUE

5. This case arises under the Alien Enemies Act ("AEA"), 50 U.S.C. §§ 21-24; the Administrative Procedure Act ("APA"), 5 U.S.C. § 701, *et seq.*; the Immigration and Nationality Act ("INA"), 8 U.S.C. § 1101, *et seq.* and its implementing regulations; the Convention Against Torture ("CAT"), *see* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998) (codified as Note to 8 U.S.C. § 1231); the All Writs Act, 28 U.S.C. § 1651, and the Fifth Amendment to the U.S. Constitution.

6. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 et seq. (habeas corpus), art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause), 28 U.S.C. § 1331 (federal question), 28 U.S.C. § 1346 (United States as defendant), 28 U.S.C. § 1361 (mandamus), and 28 U.S.C. § 1651 (All Writs Act). Defendants have waived sovereign immunity for purposes of this suit. 5 U.S.C. §§ 702, 706.

7. The Court may grant relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 2243; the Declaratory Judgment Act, 28 U.S.C. § 2201 et seq.; 28 U.S.C. § 1331; the All Writs Act, 28 U.S.C. § 1651; and the Court's inherent equitable powers.

8. Venue is proper in this District under 28 § 1391(e)(1) because Defendants are agencies of the United States or officers of the United States acting in their official capacity, Defendants reside in this District, and a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

A. Plaintiffs

9. Plaintiff-Petitioner J.G.G., a Venezuelan national who is detained at El Valle Detention Center in Texas and who, upon information and belief, is at imminent risk of removal under the expected Proclamation. J.G.G. is seeking asylum, withholding of removal, and CAT protection because he fears being killed, arbitrarily imprisoned, beaten and tortured by Venezuelan police since they have done so previously to him. During an interview with ICE, he was detained because the officer erroneously suspected that J.G.G. was a Tren de Aragua member on account of his tattoos. J.G.G. is a professional tattoo artist, and his two tattoos a rose and skull on his leg, which cover a monkey tattoo that he no longer liked, and an eye with a clock inside it, which a fellow tattoo artist applied as practice—neither are associated with Tren de Aragua. While he was awaiting a hearing on the merits of his applications for protection in Adelanto, California, J.G.G. was awakened at 2:00 am on March 6, 2025, and he was told that he was being released and that he had to sign documents that were available only in English to receive his property. J.G.G. then signed documents under false pretense. Instead of being released, J.G.G. was abruptly and without explanation transferred to El Valle Detention Center in Texas. While in El Valle, he was awakened at 3:00am on March 14, 2025, and told without explanation that he was going to be transferred elsewhere. He was not transferred because the plane had malfunctioned. J.G.G. fears that he will be removed under the Proclamation because he has tattoos, despite not being involved whatsoever with Tren de Aragua and despite his ongoing asylum proceedings.

10. Plaintiff-Petitioner J.A.V. is a Venezuelan national who is detained at El Valle Detention Center in Texas, and who, upon information and belief, is at imminent risk of removal

under the expected Proclamation. J.A.V. is seeking asylum because of his political views and fear of harm and mistreatment from multiple criminal groups, including the Tren de Aragua. At his asylum interview on February 27, 2025, he was arrested and interrogated by ICE, during which time ICE questioned him about Tren de Aragua. J.A.V. is not and has never been a member of Tren de Aragua—he was in fact victimized by that group and the group is the reason he cannot return to Venezuela. Still, ICE proceeded to detain J.A.V. at Moshannon Valley Processing Center in Pennsylvania. On March 9, 20205, J.A.V was transferred with a group of other Venezuelans to El Valle Detention Center in Texas. Notwithstanding the fact that J.A.V. has a master calendar hearing scheduled for March 19, 2025, he was told on March 14, 2025, that that he was being moved in preparation for a later flight with a group of other Venezuelans. J.A.V has since been informed that he will be put on a plane on Saturday March 15, 2025, or Sunday March 16, 2025. J.A.V fears being deported, being unable to speak with his attorney, and being denied adequate medical care.

11. Plaintiff-Petitioner G.F.F. is a 21-year-old Venezuelan national who is detained at El Valle Detention Center in Texas, and who, upon information and belief, is at imminent risk of removal under the expected Proclamation. G.F.F. entered the United States in May 2024. He was released on his own recognizance after a credible fear interview. G.F.F. was arrested and detained in New York. Upon his detention, DHS filed an I-213 identifying him as an "associate/affiliate of Tren de Aragua." On March 9, 2025, he was moved to Moshannon and then quickly to El Valle. Only Venezuelans were transferred with him. G.F.F.'s final individual immigration hearing is scheduled for March 17, 2025. On March 14, 2025, ICE officers told G.F.F. that he was going to be deported in the middle of the night on March 14, 2025.

12. Plaintiff-Petitioner W.G.H. is a 29-year-old Venezuelan national who is detained at El Valle Detention Center in Texas, and who, upon information and belief, is at imminent risk of removal under the expected Proclamation. W.G.H. lives in Brooklyn, New York, with his wife and his stepdaughter. W.G.H. requested asylum because he was extorted and threatened by multiple criminal groups in Venezuela, including Tren de Aragua. On February 20, 2025, ICE arrested W.G.H. and detained him at Moshannon. He was assigned an attorney from Brooklyn Defender Services. On March 7, 2025, ICE filed a Form I-213 stating that W.G.H. "has been identified as a Tren de Aragua gang associate." He is not a member of Tren de Aragua. On March 9, 2025, he was abruptly transferred to El Valle, where many other Venezuelans were also present. W.G.H. was scheduled to have a court hearing on March 12, 2025, but W.G.H. was not produced. W.G.H.'s next immigration court hearing is scheduled for March 26, 2025. He has been told that he will be taken to a plane on March 15 or 16. He is extremely afraid of returning to Venezuela.

13. Plaintiff-Petitioner J.G.O. is a 32- year- old Venezuelan national who is detained at El Valle Detention Center in Texas, and who, upon information and belief, is at imminent risk of removal under the expected Proclamation. On January 30, 2025, ICE officers arrested and detained J.G.O. He was later transported to Moshannon. On March 8, 2025, he was abruptly transferred to El Valle in the middle of the night. On March 12, J.G.O. was told to sign papers in English, which is not his native language. He refused to sign. ICE officer told J.G.O. that he will be deported on the night of March 14, 15, or 16.

B. Defendants

14. Defendant Donald Trump is the President of the United States. He is sued in his official capacity. In that capacity, he issued the Proclamation under the Alien Enemies Act.

15. Defendant Pamela J. Bondi is the U.S. Attorney General at the U.S. Department of Justice, which is a cabinet-level department of the United States government. She is sued in her official capacity.

16. Defendant Kristi Noem is the Secretary of the U.S. Department of Homeland Security, which is a cabinet-level department of the United States government. She is sued in her official capacity. In that capacity, Defendant Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

17. Defendant U.S. Department of Homeland Security ("DHS") is a cabinet-level department of the United States federal government. Its components include Immigration and Customs Enforcement ("ICE"). Defendant DHS is a legal custodian of Plaintiffs.

18. Defendant Madison Sheahan is the Acting Director and Senior Performing the Duties of the Director of ICE. Defendant Sheahan is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants during their removal procedures. Defendant Sheahan is a legal custodian of Plaintiffs. Defendant Sheahan is sued in her official capacity.

19. Defendant ICE is the subagency of DHS that is responsible for carrying out removal orders and overseeing immigration detention. Defendant ICE is a legal custodian of Plaintiffs.

20. Defendant Marico Rubio is the Secreaty of State at the U.S. Department of State. He is sued in his official capacity.

21. Defendant U.S. Department of State, which is a cabinet-level department of the United States government.

BACKGROUND

The Alien Enemies Act

22. The AEA is a wartime authority enacted in 1798 that grants the President specific powers with respect to the regulation, detention, and deportation of enemy aliens.

23. The AEA, as codified today, provides that "[w]henever 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.

24. The AEA can thus be triggered in only two situations. The first is when a formal declared war exists with a foreign nation or government. The second is when a foreign nation or government perpetrates, attempts, or threatens an invasion or predatory incursion against the territory of the United States.

25. To trigger the AEA, the President must make a public proclamation of the declared war, or of the attempted or threatened invasion or predatory incursion. *Id.*

26. The AEA also provides that noncitizens must be permitted the full time to depart as stipulated by any treaty between the United States and the enemy nation, unless the noncitizen has engaged in "actual hostility" against the United States. If no such treaty exists, the President may declare a "reasonable time" for departure, "according to the dictates of humanity and national hospitality." *Id.* § 22.

27. Under the AEA, noncitizens who "refuse or neglect to depart" are subject to removal. *Id.* § 21.

28. The Act has been used only three times in American history, all during actual or imminent wartime.

29. The AEA was first invoked several months into the War of 1812, but President Madison did not use the AEA to remove anyone from the United States during the war.

30. The AEA was invoked a second time during World War I by President Wilson. Upon information and belief, there were no removals effectuated pursuant to the AEA during World War I.

31. The AEA was used again during World War II, though it was never used as a widespread method of removal.

32. On December 7, 1941, after the Japanese invaded Hawaii in the attack on Pearl Harbor, President Roosevelt proclaimed that Japan had perpetrated an invasion upon the territory of the United States. The president issued regulations applicable to Japanese nationals living in the United States. The next day Congress declared war on Japan.

33. On the same day, President Roosevelt issued two separate proclamations stating that an invasion or predatory incursion was threatened upon the territory of the United States by Germany and Italy. The president incorporated the same regulations that were already in effect as to Japanese people for German and Italian people. Three days later Congress voted unanimously to declare war against Germany and Italy.

34. Congress declared war against Hungary, Romania, and Bulgaria on June 5, 1942. Just over a month later, President Roosevelt issued a proclamation recognizing that declaration of war and invoking the AEA against citizens of those countries.

35. Under these proclamations, the United States infamously interned noncitizens from Japan, Germany, Italy, Hungary Romania, and Bulgaria (with U.S. citizens of Japanese descent subject to a separate order that did not rely on the AEA).

36. It was not until the end of hostilities that the President provided for the removal of alien enemies from the United States under the AEA. On July 14, 1945, President Truman issued a proclamation providing that alien enemies detained as a danger to public peace and safety "shall be subject upon the order of the Attorney General to removal from the United States." The Department of Justice subsequently issued regulations laying out the removal process. *See* 10 Fed. Reg. 12189 (Sept. 28, 1945). It was never used as a widespread method of removal.

Systemic Overhaul of Immigration Law in 1952

37. Following the end of World War II, Congress consolidated U.S. immigration laws into a single text under the Immigration and Nationality Act of 1952 ("INA").

38. The INA, and its subsequent amendments, provide for a comprehensive system of procedures that the government must follow before removing a noncitizen from the United States. The INA provides the exclusive procedure by which the government may determine whether to remove an individual. 8 U.S.C. § 1229a(a)(3).

39. In addition to laying out the process by which the government determines whether to remove an individual, the INA also enshrines certain forms of humanitarian protection.

40. First, the INA provides that "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival . . .), irrespective of such alien's status," may apply for asylum. 8 U.S.C. § 1158(a)(1). To qualify for

asylum, a noncitizen must show a "well-founded fear of persecution" on account of a protected ground, such as race, nationality, political opinion, or religion. 8 U.S.C. § 1101(a)(42)(A).

41. Second, Congress has barred the removal of an individual to a country where it is more likely than not that he would face persecution on one of these protected grounds. 8 U.S.C. § 1231(b)(3). That protection implements this country's obligations under the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees. The relevant form of relief, known as "withholding of removal," requires the applicant to satisfy a higher standard with respect to the likelihood of harm than asylum; granting that relief is mandatory if the standard is met absent limited exceptions.

42. Third, the Convention Against Torture ("CAT") prohibits the government from returning a noncitizen to a country where it is more likely than not that he would face torture. *See* 8 U.S.C. § 1231 note. That protection implements the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242. As with withholding of removal, CAT relief also requires the applicant to satisfy a higher standard with respect to the likelihood of harm than asylum and relief is mandatory if that standard is met. There is no exception to CAT relief.

President Trump's Proclamation Invoking the AEA

43. Upon information and belief, President Trump will imminently sign a Proclamation invoking the Alien Enemies Act and promulgate accompanying regulation to implement it ("AEA Process").

44. Upon information and belief, the Proclamation characterizes Tren de Aragua as a *hybrid criminal state* engaged in an invasion and predatory incursion into the United States as a basis to invoke the AEA.

45. Upon information and belief, it seeks to characterize Tren de Aragua, a criminal organization, as a foreign nation or government, and will not name Venezuela itself as the "foreign government" as the target of the AEA invocation.

46. Upon information and belief, the Proclamation is expected to allege that Tren de Aragua is perpetrating, attempting, and threatening predatory incursions, hostile actions, and irregular warfare.

47. Upon information and belief, the Proclamation is expected to state that all Venezuelan citizens ages fourteen or older alleged to be members of Tren de Aragua—and who are not U.S. citizens or lawful permanent residents—are alien enemies.

48. Upon information and belief, the Proclamation will further assert that such noncitizens are chargeable with acts of actual hostility and declare them to be a danger to public safety and peace, making them subject to immediate apprehension, restraint, and removal.

49. Upon information and belief, to determine who is an "alien enemy" subject to the Proclamation, an ICE officer will complete and sign a standardized checklist, which is then attested to by a supervising officer. The checklist, which utilizes a points-based methodology adapted from Bureau of Prisons forms, documents whether the noncitizen satisfies all applicable criteria. Though the noncitizen must then sign the checklist, it will not be translated into Spanish or into any other language.

50. Upon information and belief, after signing the checklist document, the noncitizen is subject to removal to any location as may be directed but consistent with applicable laws.

51. Upon information and belief, noncitizens subject to the Proclamation will not be afforded credible fear interviews for asylum, nor will claims for protection under the Convention Against Torture ("CAT") be recognized.

52. Tren de Agua, a criminal organization, is not a nation or foreign government and is not part of the Venezuelan government, no does it receive support from the government.

53. The United States is not in a declared war with Venezuela. The United States cannot declare war against Tren de Aragua because it is not a nation. And neither Venezuela nor Tren de Aragua have invaded or threatened to invade the United States.

54. There is a significant risk that even individuals who do not fall under the terms of the Proclamation will be subject to it.

55. As a result, countless Venezuelans are at imminent risk of deportation without any hearing or meaningful review, regardless of their ties to the United States or the availability of claims for relief from and defenses to removal.

CLASS ALLEGATIONS

56. Plaintiffs bring this action under Federal Rules of Civil Procedure 23(a) and 23(b)(2) on behalf of themselves and a class of all other persons similarly situated.

57. Plaintiffs seek to represent the following Proposed Class: All noncitizens who were, are, or will be subject to the Alien Enemies Act Proclamation and/or its implementation.

58. The proposed class satisfies the requirements of Rule 23(a)(1) because the class is so numerous that joinder of all members is impracticable. Thousands of nationals from Venezuela will potentially be subjected to summary removal under the Proclamation and its implementation by Defendants. The proposed class also includes numerous future noncitizens who will enter the United States and will be subjected to the Proclamation.

59. The class satisfies the commonality requirements of Rule 23(a)(2). The members of the class are subject to a common practice: summary removal under the Proclamation contrary to the AEA, INA, and the statutory protections Congress has enacted. The suit also raises

questions of law common to members of the proposed class, including whether the Proclamation and its implementation violate the AEA, the INA, and the statutory protections for asylum seekers.

60. The proposed class satisfies the typicality requirements of Rule 23(a)(3), because the claims of the representative Plaintiffs are typical of the claims of the class. Each proposed class member, including the proposed class representatives, has experienced or faces the same principal injury (unlawful removal), based on the same government practice (the Proclamation and its implementation), which is unlawful as to the entire class because it violates the AEA, the INA, the APA, and due process.

61. The proposed class satisfies the adequacy requirements of Rule 23(a)(4). The representative Plaintiffs seek the same relief as the other members of the class—among other things, an order declaring the Proclamation unlawful and an injunction preventing enforcement of the Proclamation. In defending their rights, Plaintiffs will defend the rights of all proposed class members fairly and adequately.

62. The proposed class is represented by experienced attorneys from the American Civil Liberties Union and the Democracy Forward Foundation. Proposed Class Counsel have extensive experience litigating class action lawsuits and other complex systemic cases in federal court on behalf of noncitizens.

63. The proposed class also satisfies Rule 23(b)(2). Defendants have acted (or will act) on grounds generally applicable to the class by subjecting them to summary removal under the Proclamation rather than affording them the protection of immigration laws. Injunctive and declaratory relief is therefore appropriate with respect to the class as a whole.

HARM TO PLAINTIFFS

64. J.G.G. fears that he is at immediate risk of removal under the expected Proclamation because of his Venezuelan nationality and his tattoos, despite his tattoos having no connection to Tren de Aragua. He has ongoing immigration proceedings for asylum, withholding of removal, and CAT protection that ICE is preventing him from continuing. Mr. Hernandez has no involvement whatsoever with Tren de Aragua, but he is at risk of summary removal under the Proclamation.

65. J.A.V. fears that he is at immediate risk of removal under the expected Proclamation because of his Venezuelan nationality, despite not being a member of Tren de Aragua. He has a master calendar hearing scheduled for his asylum application for March 19, 2025. J.A.V. has no involvement whatsoever with Tren de Aragua, but he is at risk of summary removal under the Proclamation.

66. G.F.F. fears that he is at immediate risk of removal under the expected Proclamation because DHS filed an I-213 identifying him as an "associate/affiliate of Tren de Aragua." G.F.F. entered the United in May 2024 and was released on his own recognizance after a credible fear interview. After he was initially arrested and detained in New York, G.F.F. was transferred to El Valle Detention Center in Texas. G.F.F. is at risk of summary removal under the Proclamation. Indeed, on March 14, 2025, ICE officers told G.F.F. that he was going to be deported in the middle of the night on March 14, 2025.

67. W.G.H. fears that he is at immediate risk of removal under the expected Proclamation because DHS filed an I-213 identifying him as a "Tren de Aragua gang associate." He is not a member of Tren de Aragua. W.G.H. requested asylum because he was extorted and threatened by multiple criminal groups in Venezuela, including Tren de Aragua. W.G.H.'s next

immigration court hearing is scheduled for March 26, 2025, but is currently detained at El Valle Detention Center in Texas. W.G.H. is at risk of summary removal under the Proclamation and told that he will be taken on a plane March 15 or 16. He is extremely afraid of returning to Venezuela.

68. J.G.O. fears that he is at immediate risk of removal under the expected Proclamation because of his Venezuelan nationality. He is currently detained at El Valle Detention Center. On March 12, J.G.O. was told to sign papers in English, which is not his native language. He refused to sign. ICE officer told J.G.O. that he will be deported on the night of March 14, 15, or 16. J.G.O. is at risk of summary removal under the Proclamation.

69. Each of the foregoing paragraphs is incorporated by reference in each of the following claims.

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

Ultra Vires, Violation of 50 U.S.C. § 21 (All Defendants)

70. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

71. The AEA does not authorize the removal of noncitizens from the United States absent a "declared war" or a "perpetrated, attempted, or threatened" "invasion or predatory incursion" into the United States by a "foreign nation or government." *See* 50 U.S.C. § 21. The expected Proclamation on its face mandates Plaintiffs' removal under the AEA where those preconditions have not been met.

72. The AEA Process, which was purportedly established pursuant to the authority of 50 U.S.C. § 21, was not authorized by that law.

73. The application of the AEA Process to Plaintiffs is therefore ultra vires. *See* 5 U.S.C. § 706(2)(A).

SECOND CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1101, *et seq.*
(All Defendants)

74. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

75. The INA, 8 U.S.C. § 1101, *et seq.*, sets out the sole mechanisms established by Congress for the removal of noncitizens.

76. The INA provides that a removal proceeding before an immigration judge under 8 U.S.C. § 1229a is "the sole and exclusive procedure" by which the government may determine whether to remove an individual, "[u]nless otherwise specified" in the INA. 8 U.S.C. § 1229a(a)(3).

77. The AEA Process creates an alternative removal mechanism outside of the immigration laws set forth by Congress in Title 8.

78. The INA's "exclusive procedure" and statutory protections apply to any removal of a noncitizen from the United States, including removals authorized by the AEA. Because the AEA Process provides for the removal of Plaintiffs without the procedures specified in the INA, it violates 8 U.S.C. § 1229a and the INA.

79. As a result, the application of the AEA to Plaintiffs, which will result in their removal from the United States, is contrary to law. *See* 5 U.S.C. § 706(2)(A).

80. In addition, by refusing to grant Plaintiffs access to the procedures specified in the INA, Defendants have withheld and unreasonably delayed actions mandated by the statute. 5 U.S.C. § 706(1).

THIRD CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1158, Asylum
(All Defendants)

81. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

82. The INA provides, with certain exceptions, that "[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title." 8 U.S.C. § 1158(a)(1).

83. Defendants' application of the AEA Process to Plaintiffs prevents them from applying for asylum in accordance with 8 U.S.C. § 1158(a)(1), and is therefore contrary to law. *See* 5 U.S.C. § 706(2)(A).

FOURTH CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1231(b)(3), Withholding of Removal
(All Defendants)

84. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

85. The "withholding of removal" statute, INA § 241(b)(3), *codified at* 8 U.S.C. § 1231(b)(3), bars the removal of noncitizens to a country where it is more likely than not that they would face persecution.

86. Defendants' AEA Process and regulations violate the withholding of removal statute because it does not provide adequate safeguards to ensure that Plaintiffs are not returned

to a country where it is more likely than not that they would face persecution. As a result, Defendants' actions against Plaintiffs are contrary to law. *See* 5 U.S.C. § 706(2)(A).

87. In addition, by refusing to grant Plaintiffs the procedural protections to which they are entitled, Defendants have withheld and unreasonably delayed actions mandated by the statute. 5 U.S.C. § 706(1).

FIFTH CLAIM FOR RELIEF

Violation of the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"), codified at 8 U.S.C. § 1231 note
(All Defendants)

88. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

89. FARRA prohibits the government from returning a noncitizen to a country where it is more likely than not that he would face torture.

90. Defendants' AEA Process and regulations violate FARRA because it does not provide adequate safeguards to ensure that Plaintiffs are not returned to a country where it is more likely than not that they would face torture. As a result, Defendants' actions against Plaintiffs are contrary to law. *See* 5 U.S.C. § 702(2)(A).

91. In addition, by refusing to grant Plaintiffs the procedures to which they are entitled, Defendants have withheld and unreasonably delayed actions mandated by the statute. 5 U.S.C. § 706(1).

SIXTH CLAIM FOR RELIEF

Violation of the Administrative Procedure Act, 5 U.S.C. § 706(2)(A)
(All Defendants except Defendant Trump)

92. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

93. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion." 5 U.S.C. § 706(2)(A).

94. Defendants' actions are arbitrary and capricious. Defendants have failed to consider relevant factors in applying the AEA Process to Venezuelans, including their fear of persecution and torture in their home country; relied on factors Congress did not intend to be considered; and offered no sufficient explanation for their decision to remove them from this country.

95. Plaintiffs' subjection to the AEA Process is arbitrary and capricious because it also departs from the agency's existing policies prohibiting the return of individuals who fear persecution or torture, without providing a reasoned explanation for departing from these policies.

SEVENTH CLAIM FOR RELIEF

***Ultra Vires*, Violation of 50 U.S.C. § 22**
(All Defendants)

96. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

97. The APA provides that courts "shall . . . hold unlawful and set aside agency action" that is "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." 5 U.S.C. § 706(2)(A).

98. The AEA requires that noncitizens whose removal is authorized by the AEA, unless "chargeable with actual hostility, or other crime against the public safety," be allowed the full time stipulated by treaty to depart or a reasonable time in which to settle their affairs before departing. *See* 50 U.S.C. § 22. The Proclamation on its face denies Plaintiffs any time under

Section 22 to settle their affairs, because it declares everyone subject to the Proclamation to be "chargeable with actual hostility" and to be a "danger to public safety."

99. The AEA Process thus contravenes 50 U.S.C. § 22 and is *ultra vires*.

100. The application of the AEA Process to Plaintiffs is contrary to law. **EIGHTH CLAIM FOR RELIEF**

Violation of Due Process Under the Fifth Amendment
(All Defendants)

101. All of the foregoing allegations are repeated and realleged as if fully set forth herein.

102. The Due Process Clause of the Fifth Amendment provides in relevant part that: "No person shall be deprived of life, liberty, or property, without due process of law." U.S. Const. amend. V.

103. In denying Plaintiffs meaningful procedural protections to challenge their removal, the Proclamation violates due process.

104. The Proclamation on its face also denies Plaintiffs any time to settle their affairs before departing and thus violates the due process.

NINTH CLAIM FOR RELIEF

Violation of Habeas Corpus
(All Defendants)

105. Detainees have the right to file petitions for habeas corpus to challenge the legality of their detention or raise other claims related to their detention or to the basis for their removal.

106. The detention of Plaintiffs under the Alien Enemies Act has violated and continues to violate their right to habeas corpus. See U.S. Const. art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 2241.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray this Court to:

a. Issue permanent injunctive relief prohibiting Defendants from removing Plaintiffs pursuant to the Alien Enemies Act Proclamation;

b. Grant a temporary restraining order to preserve the status quo pending further proceedings;

c. Declare unlawful the AEA Process;

d. Enter an order enjoining Defendants from applying the AEA Process;

e. Enter an order providing relief by ordering that Defendants to stay their removals under the Proclamation and remove anyone subject to the Proclamation from the AEA Process;

f. Grant a writ of habeas corpus to Plaintiffs that enjoins Defendants from removing them under the AEA,

g. Award Plaintiffs' counsel reasonable attorneys' fees under the Equal Access to Justice Act, and any other applicable statute or regulation; and

h. Grant such further relief as the Court deems just, equitable, and appropriate.

Dated: March 15, 2025

Respectfully submitted,

/s/ *Lee Gelernt*

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**Pro bono representation certificates or Pro hac vice motions forthcoming*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*, *Plaintiffs–Petitioners*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Defendants–Respondents*.	Case No: 1-25-00766

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR TEMPORARY RESTRAINING ORDER

INTRODUCTION

Plaintiffs respectfully request immediate action by this Court to avoid irreparable harm to Plaintiffs and the proposed class – and to ensure that this Court is not permanently deprived of jurisdiction.

The President has invoked—or will imminently invoke—a war power, the Alien Enemies Act of 1798 ("AEA"), in an attempt to summarily remove noncitizens from the United States and bypass the immigration laws Congress has enacted.[1] In either circumstance, a Temporary Restraining Order is needed because there may not be sufficient time for this Court to intervene between the time when the Act is invoked and when the planes removing Plaintiffs-Petitioners depart the United States.[2]

But the United States is not at war, and the prerequisites for invocation of the AEA have not been met. *See* 50 U.S.C. § 21. The President can invoke the AEA only in a state of "declared war," or when an "invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government." *Id.* Not surprisingly, therefore, the Act has been invoked only three times in our country's history, all in declared wars: The War of 1812, World War I, and World War II.

The President's imminent Proclamation targets Venezuelan noncitizens whom the government accuses of being part of Tren de Aragua, a criminal gang. But the President's Proclamation is invalid under the AEA for two plain reasons. First, Tren de Aragua is not a "foreign nation or government." Second, Tren de Aragua is not engaged in an "invasion" or "predatory incursions" within the meaning of the AEA, because criminal activity does not meet the longstanding definitions of those statutory requirements—and has never been a sufficient basis for the executive to cast foreign nationals as "alien

[1] *See* Remarks of President Trump, March 14, 2025 (addressing the Department of Justice) ("You will read in the papers tomorrow the bad thing we will do to Tren de Aragua.").

[2] *See also* Priscilla Alvarez, et al., *Trump expected to invoke wartime authority to speed up mass deportation effort in coming days*, CNN (Mar. 14, 2025), https://www.cnn.com/2025/03/13/politics/alien-enemies-act-deportation-consideration/index.html ("The Trump administration is expected to invoke [the AEA] to speed up the president's mass deportation pledge in the coming days, according to four sources familiar with the discussions. . . . The primary target remains Tren de Aragua[.]").

enemies" subject to arrest, internment, and removal. As a result, the President's attempt to summarily remove Venezuelan noncitizens exceeds the wartime authority that Congress delegated in the AEA, violates the process and protections that Congress has prescribed elsewhere in the country's immigration laws for the removal of noncitizens, and violates due process.

Based on reports from Plaintiffs and legal service providers, the government has begun moving Venezuelan men who the government claims are part of Tren de Aragua to facilities in Texas. Upon information and belief, these Texas facilities are being used as staging facilities to remove Venezuelan men under the AEA. Plaintiffs-Petitioners J.G.G., J.A.V., G.F.F., W.G.H., and J.G.O. ("Plaintiffs") are noncitizen Venezuelan men in immigration custody who face a substantial risk of imminent removal under the President's AEA Proclamation and have been moved to Texas or are under threat of being transferred to Texas. They have compelling asylum claims—for instance, one fled Venezuela after he was beaten by police because his stepfather was a political dissident. J.G.G. Decl. ¶ 2. All deeply fear removal to a country where they risk persecution.

Accordingly, Plaintiffs move the Court for a Temporary Restraining Order ("TRO") barring their summary removal under the AEA before the planes can take off and this Court is divested of jurisdiction.

LEGAL AND FACTUAL BACKGROUND

I. The Alien Enemies Act

The AEA is a wartime authority that grants the President specific powers with respect to the regulation, detention, and deportation of enemy aliens. Passed in 1798 in anticipation of a war with France, the AEA, as codified today, provides that "[w]henever 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.

During the War of 1812, President Madison required British subjects to register with federal officials and relocate away from the eastern seaboard. *See Lockington v. Smith*, 15 F. Cas. 758 (D. Ct. Penn. 1817). President Wilson invoked the Act against Germany and Austria-Hungary during World War I to regulate and detain Germans and Austro-Hungarians living in the United States. During World War II, President Roosevelt invoked the AEA against Japan, Germany, Italy, Hungary, Romania, and Bulgaria.

II. Congress's Comprehensive Reform of Immigration Law

Following World War II, Congress consolidated U.S. immigration laws into a single text under the Immigration and Nationality Act of 1952 ("INA"). The INA, and its subsequent amendments, provide for a comprehensive system of procedures that the government must follow before removing a noncitizen from the United States. *See* 8 U.S.C. § 1229a(a)(3) (the INA provides the "sole and exclusive procedure" for determining whether a noncitizen may be removed from the United States).

As part of that reform and other subsequent amendments, Congress prescribed safeguards for noncitizens seeking protection from persecution and torture. These protections codify the humanitarian framework adopted by the United Nations in response to the humanitarian failures of World War II. *See INS v. Cardoza-Fonseca*, 480 U.S, 421, 439-40 (1987) (describing the United States' adoption of the United Nations' post-war refugee protections). One of Congress's "primary purposes" was "to bring United States refugee law into conformance" with international refugee treaties and the bedrock principle that individuals may not be returned to countries where they face persecution or torture. *Id.* at 436. As the Second Circuit has recognized, "[i]t is no accident that many of our asylum laws sprang forth as a result of events in 1930s Europe." *Aliyev v. Mukasey*, 549 F.3d 111, 118 n.8 (2d Cir. 2008).

First, the asylum statute, 8 U.S.C. § 1158, provides that any noncitizen in the United States has a right to apply for asylum. *See* 8 U.S.C. § 1158(a)(1) (providing that "[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum").

Second, the withholding of removal statute, 8 U.S.C. § 1231(b)(3), provides that noncitizens

"may not" be removed to a country where their "life or freedom" would be threatened based on a protected ground. A grant of withholding is mandatory if the individual meets the statutory criteria. *INS v. Aguirre-Aguirre*, 526 U.S. 415, 420 (1999). Congress enacted this statute to "conform[] it to the language of Article 33 [of the 1951 U.N. Convention on Refugees]," *INS v. Stevia*, 467 U.S. 407, 421 (1984), which was passed in the wake of the failure of humanitarian protections during World War II. This conforming language makes withholding "mandatory" where the eligibility criteria are satisfied, *INS v. Cardoza-Fonseca*, 480 U.S. 421, 440 n.25 (1987), and gives the statute broad application where the government seeks to return a noncitizen to a country where he fears persecution, *see Innovation Law Lab v. Wolf*, 951 F.3d 1073, 1089 (9th Cir. 2020), *vacated as moot sub nom. Innovation Law Lab v. Mayorkas*, 5 F.4th 1099 (9th Cir. 2021).

Third, protections under the Convention Against Torture ("CAT") prohibit returning noncitizens to a country where it is more likely than not that they would face torture. *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") § 2242(a), Pub. L. No. 105-207, Div. G. Title XXI, 112 Stat. 2681 (codified at 8 U.S.C. § 1231 note); 8 C.F.R. § 1208.16-.18 (implementing regulations).

III. The AEA Proclamation and the Impending Unlawful Removals

President Trump is expected to issue a proclamation invoking the AEA with respect to individuals from Venezuela whom the government accuses of belonging to Tren de Aragua, a criminal organization. The Proclamation is expected to characterize Tren de Aragua as a "hybrid criminal state" engaged in perpetrating, attempting, and threatening an invasion, predatory incursions, hostile actions, and irregular warfare against the United States. Although the U.S. government has never previously recognized Tren de Aragua as a foreign nation or government (nor, factually, could it), the Proclamation is expected to identify Tren de Aragua. The Proclamation is expected to further justify Tren de Aragua's designation by stating that the organization has infiltrated, and receives support from, the Venezuelan government—specifically, the Maduro regime. But the Proclamation cannot plausibly assert that the Venezuelan government or the Maduro regime is itself perpetrating, attempting, or threatening an invasion or predatory incursions. Indeed, the Maduro regime disavows Tren de Aragua and is actively

engaged in suppressing it. *See* teleSur, *Venezuela Dismantles Criminal Gang "Tren de Aragua" in Security Operation* (Jan. 20, 2025), https://www.telesurenglish.net/venezuela-dismantles-criminal-gang-tren-de-aragua-in-security-operation.[3]

Upon information and belief, the government plans to immediately commence unlawful summary removals pursuant to the Proclamation, removing individuals including Plaintiffs to Venezuela, or a third country like El Salvador, which has offered to imprison detainees transported from the United States. *See* Remarks of Secretary of State Marco Rubio and Salvadoran Foreign Minister Alexandra Hill Tinoco at the Signing of a Memorandum of Understanding Concerning Strategic Civil Nuclear Cooperation, Feb. 3, 2025.[4]

In addition to violating the substantive terms of the AEA, the executive branch's attempt to use the AEA to summarily remove individuals from the United States deprives them of the process afforded by Congress's comprehensive immigration laws. It also deprives them of the process prescribed by the AEA itself, which permits the President to remove only those "alien enemies" who "refuse or neglect to depart" the United States voluntarily. *See* 50 U.S.C. § 21. The AEA requires that the President generally afford individuals who are removable under the statute a "reasonable time" to depart, "as may be consistent with the public safety, and according to the dictates of humanity and national hospitality," *id.* § 22, as well as the opportunity to "recover[], dispos[e], and remov[e]" their "goods and effects," *id.* Here, however, Defendants are intending to imminently and summarily remove individuals from the United States—including Plaintiffs—in contravention of each of these statutory processes, and without any judicial review of whether any of the AEA's prerequisites have been met.

IV. Plaintiffs

Plaintiffs are noncitizens in immigration custody who face a substantial risk of imminent removal

[3] Plaintiffs use "the Proclamation" to refer to President Trump's expected invocation of the AEA as well as Defendants' actions to implement detentions and removals pursuant to the AEA.
[4] *Available at*: https://www.state.gov/secretary-of-state-marco-rubio-and-salvadoran-foreign-minister-alexandra-hill-tinoco-at-the-signing-of-a-memorandum-of-understanding-concerning-strategic-civil-nuclear-cooperation.

under the President's AEA Proclamation.

Plaintiff-Petitioner J.G.G. is a Venezuelan national who is detained at El Valle Detention Center in Texas and who, upon information and belief, is at imminent risk of removal under the expected Proclamation. J.G.G. is seeking asylum, withholding of removal, and CAT protection because he fears being killed, arbitrarily imprisoned, beaten and tortured by Venezuelan police since they have done so previously to him. During an interview with ICE, he was detained because the officer erroneously suspected that J.G.G. was a Tren de Aragua member on account of his tattoos. J.G.G. is a professional tattoo artist, and his two tattoos, a rose and skull on his leg, which cover a monkey tattoo that he no longer liked, and an eye with a clock inside it, which a fellow tattoo artist applied as practice—neither are associated with Tren de Aragua. While he was awaiting a hearing on the merits of his applications for protection in Adelanto, California, J.G.G. was awakened at 2:00 am on March 6, 2025, and he was told that he was being released and that he had to sign documents that were available only in English to receive his property. J.G.G. then signed documents under false pretense. Instead of being released, J.G.G. was abruptly and without explanation transferred to El Valle Detention Center in Texas. While in El Valle, he was awakened at 3:00 am on March 14, 2025, and told without explanation that he was going to be transferred elsewhere. He was not transferred because the plane had malfunctioned. J.G.G. fears that he will be removed under the Proclamation because he has tattoos, despite not being involved whatsoever with Tren de Aragua and despite his ongoing asylum proceedings.

Plaintiff-Petitioner J.A.V. is a Venezuelan national who is detained at El Valle Detention Center in Texas, and who, upon information and belief, is at imminent risk of removal under the expected Proclamation. J.A.V. Decl. ¶ 1. J.A.V. is seeking asylum because of his political views and fear of harm and mistreatment from multiple criminal groups, including Tren de Aragua. J.A.V. Decl. ¶ 3. At his asylum interview on February 27, 2025, he was arrested and interrogated by ICE, during which time ICE questioned him about Tren de Aragua. J.A.V. Decl. ¶¶ 4, 5. J.A.V. is not and has never been a member of Tren de Aragua – he was in fact victimized by that group and the group is the reason he cannot return to Venezuela. J.A.V. Decl. ¶ 5. Still, ICE proceeded to detain J.A.V. at Moshannon Valley Processing

Center in Pennsylvania. J.A.V. Decl. ¶ 6. On March 9, 20205, J.A.V was transferred with a group of other Venezuelans to El Valle. J.A.V. Decl. ¶ 7. Notwithstanding the fact that J.A.V. has a master calendar hearing scheduled for March 19, 2025, he was told on March 14, 2025 that that he was being moved in preparation for a later flight with a group of other Venezuelans. J.A.V. Decl. ¶¶ 9, 10. J.A.V has since been informed that he will be put on a plane on Saturday March 15, 2025 or Sunday March 16, 2025. J.A.V. Decl. ¶ 11. J.A.V fears being deported, being unable to speak with his attorney, and being denied adequate medical care. J.A.V. Decl. ¶ 12.

Plaintiff-Petitioner G.F.F. is a 21-year-old Venezuelan national who is detained at El Valle Detention Center in Texas, and who, upon information and belief, is at imminent risk of removal under the expected Proclamation. Carney Decl. ¶ 2. G.F.F. entered the United States in May 2024. *Id.* ¶ 4. He was released on his own recognizance after a credible fear interview. *Id.* G.F.F. was arrested and detained in New York. *Id.* ¶ 6. Upon his detention, DHS filed an I-213 identifying him as an "associate/affiliate of Tren de Aragua." *Id.* ¶ 9. On March 9, 2025, he was moved to Moshannon and then quickly to El Valle. *Id.* ¶¶ 11-12. Only Venezuelans were transferred with him. *Id.* ¶ 13. G.F.F.'s final individual immigration hearing is scheduled for March 17, 2025. *Id.* ¶ 10. On March 14, 2025, ICE officers told G.F.F. that he was going to be deported in the middle of the night on March 14, 2025. *Id.* ¶ 19.

Plaintiff-Petitioner W.G.H. is a 29-year-old Venezuelan national who is detained at El Valle Detention Center in Texas, and who, upon information and belief, is at imminent risk of removal under the expected Proclamation. W.G.H. Decl. ¶ 1. W.G.H. lives in Brooklyn, New York, with his wife and his stepdaughter. W.G.H. Decl. ¶ 4. W.G.H. requested asylum because he was extorted and threatened by multiple criminal groups in Venezuela, including Tren de Aragua. W.G.H. Decl. ¶¶ 3, 11; Lauterback Decl. ¶ 8. On February 20, 2025, ICE arrested W.G.H. and detained him at Moshannon. W.G.H. Decl. ¶¶ 4-5. He was assigned an attorney from Brooklyn Defender Services. W.G.H. Decl. ¶ 6. On March 7, 2025, ICE filed a Form I-213 stating that W.G.H. "has been identified as a Tren de Aragua gang associate." Lauterback Decl. ¶ 7. He is not a member of Tren de Aragua. W.G.H. Decl. ¶ 12. On March 9, 2025, he was abruptly transferred to El Valle, where many other Venezuelans were also present. W.G.H.

Decl. ¶ 7. W.G.H. was scheduled to have a court hearing on March 12, 2025, but W.G.H. was not produced. W.G.H. Decl. ¶ 8; Lauterback Decl. ¶ 13. W.G.H.'s next immigration court hearing is scheduled for March 26, 2025. Lauterback Decl. ¶ 17. He has been told that he will be taken to a plane on March 15 or 16. W.G.H. Decl. ¶ 10; Lauterback Decl. ¶ 21. He is extremely afraid of returning to Venezuela. W.G.H. Decl. ¶ 11.

Plaintiff-Petitioner J.G.O. is a 32-year-old Venezuelan national who is detained at El Valle Detention Center in Texas, and who, upon information and belief, is at imminent risk of removal under the expected Proclamation. Shealy Decl. ¶ 2. On January 30, 2025, ICE officers arrested and detained J.G.O. *Id.* ¶ 4. He was later transported to Moshannon. *Id.* On March 8, 2025, he was abruptly transferred to El Valle in the middle of the night. *Id.* ¶ 5. On March 12, J.G.O. was told to sign papers in English, which is not his native language. *Id.* ¶ 7. He refused to sign. *Id.* ICE officer told J.G.O. that he will be deported on the night of March 14, 15, or 16. *Id.* ¶ 8.

LEGAL STANDARD

To obtain a temporary restraining order, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Aamer v. Obama*, 742 F.3d 1023, 1038 (D.C. Cir. 2014); *Am. Foreign Serv. Ass'n v. Trump*, No. 1:25-cv-352 (CJN), 2025 WL 435415, at *1 (D.D.C. Feb. 7, 2025).[5]

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits.

A. The AEA does not authorize the President to summarily remove Plaintiffs from the United States.

Through the AEA, Congress delegated certain specifically enumerated powers to the President in times of actual or imminent war. *See Ludecke v. Watkins*, 335 U.S. 160, 165 (1948) (AEA vested the

[5] The standards for issuing a temporary restraining order and a preliminary injunction are "the same." *Doe v. McHenry*, No. 1:25-cv-286-RCL, 2025 WL 388218, at *2 (D.D.C. Feb. 4, 2025).

President with particular war powers); *Citizens Protective League v. Clark*, 155 F.2d 290, 293 (D.C. Cir. 1946) ("the constitutional power of Congress over alien enemies" is "part of the power to declare war"). Here, the President has exceeded his authority under the AEA for two key reasons. First, no "invasion or predatory incursion" has been "perpetrated, attempted, or threatened against the territory of the United States." 50 U.S.C. § 21. Second, the relevant actions were not perpetrated by a "foreign nation or government." *Id.* Accordingly, the Proclamation violates the AEA—and this Court has authority to restrain Defendants' impending attempt to summarily remove Plaintiffs from the United States. *See Ludecke*, 335 U.S. at 166–70 (recognizing that courts may review whether the statutory conditions for invoking and applying the AEA have been satisfied); *United States ex rel. Von Heymann v. Watkins*, 159 F. 2d 650, 653 (2d Cir. 1947) (finding restraint of foreign national under the AEA unlawful and recognizing that "[t]he executive orders are a justification [for restraining or removing a foreign national] only in so far as they are within the [AEA's] statutory provisions").

1. The purported invasion is not by a "foreign nation or government."

The AEA grants power to the President only when the relevant actions are taken by a "foreign nation or government." 50 U.S.C. § 21. The Proclamation is not expected to name the country of Venezuela, nor could it do so since the United States is not in a declared war with Venezuela nor is Venezuela invading the United States. Rather, the Proclamation is expected to name the gang "Tren de Aragua.,"

But Tren de Aragua is plainly not a foreign nation or government. A "nation" is a community of people possessing defined territory and a common government. *See* Samuel Johnson's Dictionary, Nation (1773) ("A people distinguished from another people; generally by their language, original, or government."); Merriam Webster's Dictionary, *Nation*, (2024) ("a community of people composed of one or more nationalities and possessing a more or less defined territory and government," e.g., "Canada"). A "government" is the political body that governs a nation. *See* Samuel Johnson's Dictionary, *Government* (1773) ("An established state of legal authority."); Merriam-Webster's Dictionary, *Government* (2024) ("the body of persons that constitutes the governing authority of a political unit or organization: such as

the officials comprising the governing body of a political unit"). But, as a nonstate actor, Tren de Aragua possesses neither a defined territory nor a common government.

Congress's strict limitation of the AEA only to actions by a "foreign nation or government" recognized the grave nature of the power granted. For most countries, including Venezuela, the United States recognizes a particular government as speaking on behalf of the nation. *See Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 11 (2015) ("Recognition is a 'formal acknowledgement' that a particular 'entity possesses the qualifications for statehood' or 'that a particular regime is the effective government of a state.'"); *see also United States ex rel. D'Esquiva v. Uhl*, 137 F.2d 903 (2d Cir. 1943) (considering for purposes of AEA analysis the State Department's recognition that Austria had become part of Germany). With respect to Venezuela in particular, "[t]he United States recognizes the 2015 democratically elected Venezuelan National Assembly as the only legitimate branch of the Government of Venezuela." U.S. Dep't of State, *U.S. Relations With Venezuela* (July 18, 2024), https://www.state.gov/u-s-relations-with-venezuela. Not Tren de Aragua.

Indeed, the AEA itself was passed in anticipation of a declared war with a recognized sovereign nation, France. *See* 5 Annals of Cong. 1453 (Apr. 1798) ("[W]e may very shortly be involved in war . . ."); John Lord O'Brian, Special Ass't to the Att'y Gen. for War Work, N.Y. State Bar Ass'n Annual Meeting: Civil Liberty in War Time, at 8 (Jan. 17, 1919) ("The [AEA] was passed by Congress . . . at a time when it was supposed that war with France was imminent."); Nikolas Bowie & Norah Rast, *The Imaginary Immigration Clause*, 120 Mich. L. Rev. 1419, 1430 (2022) (noting popular concern that "a French invasion force might land in America at any moment"). Although the war never materialized—and, accordingly, the Act was never invoked against France—the historical context reflects Congress's concern with military conflict against a recognized nation or government, not with an amorphous nonstate actor. *See also* Cong. Rsch. Serv., Declarations of War and Authorizations for the Use of Military Force 1 (2014) (Congress has never issued a declaration of war against a nonstate actor).

2. There is no "invasion" or "predatory incursion" upon the United States.

Text, history, and common sense make clear that the AEA's use of "invasion" and "predatory

incursion" refer to an *actual* military invasion or incursion that is very likely to lead to an *actual* war. In other words, predatory incursions and invasions are escalating military actions taken en route to a declared war. *See, e.g.*, Office of Legislative Affairs, Proposed Amendment to AEA, at 2 n.1 (Aug. 27, 1980) ("The Act contemplates use of its provisions by the President in situations where war is imminent."). Under no reasonable understanding could Tren de Aragua's criminal activities amount to a "predatory incursion" or "invasion" that places our nation on the brink of war.

At the time of the enactment of the AEA, "incursions" were understood to be small-scale military raids. *See* Webster's Dictionary, *Incursion* (1828) ("incursion . . . applies to the expeditions of small parties or detachments of an enemy's army, entering a territory for attack, plunder, or destruction of a post or magazine[6]"). Incursions aimed to destroy military structures or supplies, or to otherwise sabotage the enemy, often in anticipation of a subsequent invasion. *See, e.g.*, *id.*; *see also* Letter from George Washington, Commd'r in Chief of Army, to Thomas Jefferson, Gov. of Va. (Feb. 6, 1781)[7] (describing a British raid that destroyed military supplies and infrastructure in Richmond as a "predatory incursion"). The AEA's addition of "predatory" merely underscores that the purpose of a military party's "incursion" was "plundering" or "pillaging." *See* Webster's Dictionary, *Predatory* (1828). Predatory incursions resulted in military responses. *Id.* (militia required to repel predatory incursion); Letter from George Washington, Commd'r in Chief of Army, to Nathanael Greene, Commd'r in Chief of Southern Dep't of Army (Jan. 29, 1783)[8] ("predatory incursions" by the British could be managed with limited cavalry troops). There is no such incursion here.

Nor is United States under "invasion" by Tren de Aragua within the meaning of the AEA. An "invasion" refers to an escalated military action involving a larger-scale hostile entrance by an army, with

[6] A "magazine" is a structure that stores large amounts of ammunition and explosives.

[7] *Available at* https://founders.archives.gov/?q=%22predatory%20incursion%22&s=1111311111&sa=&r=1&sr=.

[8] *Available at* https://founders.archives.gov/?q=%22predatory%20incursion%22&s=1111311111&sa=&r=5&sr=.

the intent to conquer territory. *See* Webster's Dictionary, *Invasion* (1828) ("invasion" is "particularly, the entrance of a hostile army into a country for purpose of conquest or plunder"); *see also* Webster's Dictionary, *Invade* (1828) ("The French armies invaded Holland in 1795"); Webster's Dictionary, *Incursion* (1828) ("Incursion differs from invasion, which is a hostile entrance of any army for conquest."); Samuel Johnson's Dictionary, *Incursion* (1773) ("incursion" is "invasion without conquest"); Letter from Timothy Pickering, Sec'y of State, to Alexander Hamilton, Inspector Gen. of the Army (June 9, 1798)[9] (noting that French "invasion" of English could require France to keep troops in Europe "until the conquest was complete"); Draft of an Address of the Convention of the Representatives of the State of New York to Their Constituents (Dec. 23, 1776)[10] (describing the goal of British invasion as "the conquest of America"). In the context of the Guarantee Clause's contemporaneous use of the term "invasion," the Second Circuit held that "invasion" indicates a "armed hostility from another political entity, such as another state or foreign country that is *intending to overthrow the state's government*." *Padavan v. United States*, 82 F.3d 23, 28 (2d Cir. 1996) (emphasis added); *New Jersey v. United States*, 91 F.3d 463, 469 (3d Cir. 1996) (same). In essence, invasions were understood as the opening salvo in a war. *See* James Madison, The Report of 1800 (Jan. 7, 1800) ("Invasion is an operation of war.").[11]

In essence, Defendants have cited nothing more than alleged criminal activity in an attempt to unlock an extraordinarily grave war power. But there is simply no "predatory incursion" or "invasion" by a foreign government to support the AEA's invocation. Whatever military actions are encompassed within a predatory incursion or an invasion, the criminal activity of a gang simply does not qualify.

Thus, the Proclamation is both ultra vires and contrary to law under the Administrative Procedure Act. *See* 5 U.S.C. § 706(2)(A).

[9] *Available at* https://founders.archives.gov/?q=%22predatory%20incursion%22&s=1111311111&sa=&r=9&sr=.

[10] *Available at* https://founders.archives.gov/?q=invasion%20conquest&s=1111311111&sa=&r=17&sr=.

[11] *Available at* https://founders.archives.gov/?q=%22alien%20enemy%22&s=1111311111&sa=&r=19&sr=.

B. The Proclamation Violates the INA.

Even if the President had properly invoked the AEA—which he did not—Congress has, in legislation postdating the AEA, carefully specified the procedures by which noncitizens may be removed from the United States. "Unless otherwise specified" in the INA, a removal proceeding before an immigration judge under 8 U.S.C. § 1229a is "the sole and exclusive procedure" by which the government may determine whether to remove an individual. 8 U.S.C. § 1229a(a)(3).

The Proclamation is expected to entirely bypass the INA's comprehensive process for removal. That ignores the Supreme Court's instruction about how to reconcile statutes enacted over time. *See Brown & Williamson*, 529 U.S. at 143. The AEA permits the President to regulate and detain alien enemies. And it permits the President to remove certain noncitizens—but the INA lays out the specific procedure by which the removal must take place. Accordingly, the Proclamation is unlawful as to Plaintiffs not only because it exceeds the authority granted by Congress in the AEA, , but also—and independently—because it provides for an entirely separate set of immigration procedures that ignore the INA's "sole and exclusive" procedures for removal. 8 U.S.C. § 1229a(a)(3).

This Court must read the AEA and the INA together, to make sense of Congress's work and to harmonize the AEA's permission to remove certain alien enemies with the INA's subsequently enacted, comprehensive removal processes. *See FCC v. NextWave Pers. Commc'ns Inc.*, 537 U.S. 293, 304 (2003) ("[W]hen two statutes are capable of co-existence, it is the duty of the court, absent a clearly expressed congressional intent to the contrary, to regard each as effective."); *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 143 (2000) ("The classic judicial task of reconciling many laws enacted over time, and getting them to make sense in combination, necessarily assumes that the implications of a statute may be altered by the implications of a later statute." (internal quotation marks omitted)).

The INA leaves little doubt that its procedures must apply to *every* removal, unless otherwise specified by that statute. It directs that, "[u]nless otherwise specified in this chapter," the INA's comprehensive scheme provides "the sole and exclusive procedure for determining whether an alien may be admitted to the United States, or if the alien has been so admitted, removed from the United States. 8

U.S.C. § 1229a(a)(3); *see also United States v. Tinoso*, 327 F.3d 864, 867 (9th Cir. 2003) ("Deportation and removal must be achieved through the procedures provided in the INA."). This language makes clear that Congress intended for the INA to "supersede all previous laws with regard to deportability." S. Rep. No. 1137, at 30 (Jan. 29, 1952).

Presumably, Congress was aware that noncitizens from enemy countries were subject to removal in times of actual or imminent war when considering the INA and its subsequent amendments. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (courts presume Congress drafts statutes with full knowledge of the existing law); *see also* 8 U.S.C. § 1442(e) (requiring that removal of alien enemies be "consistent with the law"). But the INA does not carve alien enemies out of its standard immigration procedures, even as it expressly provides exceptions for other groups of noncitizens, including noncitizens who pose security risks. *See, e.g.* 8 U.S.C. § 1229a(a)(3) (excepting noncitizens in expedited removal proceedings from the INA's "sole and exclusive" provision); 8 U.S.C. § 1531 *et seq.* (establishing fast-track proceedings for noncitizens posing national security risks).

Ignoring the INA's role as the "sole and exclusive" procedure for determining whether a noncitizen may be removed, the Proclamation results in an entirely separate procedure for removal. Through their creation of an alternative removal system, Defendants have circumvented the carefully crafted scheme that Congress set forth for processing noncitizens prior to removal and usurped Congress's Article I power in the process. But where an agency's interpretation of one statute "tramples the work done" by another statute—as Defendants' sweeping view of the AEA tramples the immigration laws—the agency "bears the heavy burden of showing a clearly expressed congressional intention that such a result should follow." *Epic Sys. v. Lewis*, 138 S. Ct. 1612, 1624, 27 (2018). Defendants can show no such "clear and manifest" intention. *Id.* at 1624. Accordingly, the Proclamation violates the INA by denying Plaintiffs the process due under that law.

C. The Proclamation Violates the Specific Protections That Congress Established for Noncitizens Seeking Humanitarian Protection.

Plaintiffs have statutory rights to seek protection from persecution and torture, as Congress has

long prescribed. Consequently, even assuming the Proclamation permits summary removal of some individuals, it cannot override the more specific, subsequently enacted statutes providing special protection for those seeking humanitarian relief, such as asylum statutes.

First, the asylum statute, 8 U.S.C. § 1158, provides that "[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum." 8 U.S.C. § 1158(a)(1). Second, the withholding of removal statute, 8 U.S.C. § 1231(b)(3), provides that a noncitizen "may not" be removed to a country where their "life or freedom" would be threatened based on a protected ground. Congress creates specific and narrow bars to asylum and withholding of removal. *See* 8 U.S.C. § 1158(2); 8 U.S.C. § 1231(b)(3)(B). None of those bars apply here. Third, the CAT prohibits returning a noncitizen to a country where it is more likely than not she would face torture. There are no bars to eligibility for CAT protection. *See Negusie v. Holder*, 555 U.S. 511, 514 (2009). These forms of relief are generally adjudicated by an immigration judge in full removal proceedings under 8 U.S.C. § 1229a. *See* 8 C.F.R. §§ 1208.2(b), 1208.16(a).

In short, Congress carefully crafted the statutory provisions governing asylum, withholding, and CAT protection to ensure that noncitizens could seek review from persecution and torture. In so doing, Congress sought to satisfy its domestic and international obligations to protect those fleeing from torture. Defendants' position ignores the invaluable post-war steps that Congress took to ensure humanitarian protection for individuals who, like World War II refugees, were clearly subjects of an enemy nation but would face grave harm upon return.

The expected Proclamation and its implementation jettison all those protections and safeguards, subjecting Plaintiffs to summary deportation back to potential persecution and torture, including, for some, possible death. Whatever the AEA authorizes, it cannot override the provisions of immigration law specifically designed to ensure that vulnerable people seeking protection would have access a meaningful and robust system to assess their claims—even where such individuals have been deemed "alien enemies," however dubious that designation.

The AEA's general command that noncitizens from enemy countries are "liable to be . . .

removed as alien enemies" thus cannot be construed to bypass the specific procedural protections provided by the asylum, withholding of removal, and torture statutes. *See Radzanower v. Touche Ross & Co.*, 426 U.S. 148, 159 n.2 (1976) ("[T]he more specific legislation will usually take precedence over the more general.").

D. The Forced Removal of Plaintiffs, with No Opportunity to Voluntarily Depart, Violates the AEA and Due Process.

Even if the AEA authorized the President's expected Proclamation, Section 21 of the statute permits removal only where noncitizens alleged to be "alien enemies" "refuse or neglect to depart" from the United States. 50 U.S.C. § 21. Plaintiffs have neither refused nor neglected to depart. Even in the midst of World War II, courts held that German nationals subject to the AEA were entitled to the "privilege of voluntary departure" under Section 21 before they could be forcibly removed or restrained under the statute. *See United States ex rel Dorfler v. Watkins*, 171 F.2d 431, 432 (2d Cir. 1948) ("An alien must be afforded the privilege of voluntary departure before the Attorney General can lawfully remove him against his will."); *U.S. ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 653 (2d Cir. 1947) ("His present restraint by the respondent is unlawful in so far as it interferes with his voluntary departure, since the enforced removal, of which his present restraint is a concomitant, is unlawful before he does 'Refuse or neglect' to depart" under Section 21).

Moreover, both Section 22 of the AEA and due process require the government to afford noncitizens alleged to be "alien enemies" sufficient time to settle their affairs and to depart the United States. *See* 50 U.S.C. § 22. The statute provides that when a person "becomes liable" under Section 21 and "is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty" between the United States and his nation or government. *Id.* If no treaty exists, then "the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality." *Id.*

Although the Proclamation is expected to assert as a blanket matter that all individuals accused of

belonging to Tren de Aragua are chargeable with actual hostility, there has been no individualized finding with respect to Plaintiffs. Under these circumstances, the government's refusal to allow Plaintiffs an opportunity and sufficient time to voluntarily depart the United States violates the AEA and due process.

E. Defendants' Actions Are Arbitrary and Capricious Under the APA.

Defendants' final agency action is also arbitrary and capricious under the APA. 5 U.S.C. § 706(2)(A). Agency action is arbitrary and capricious when the agency did not engage in "reasoned decisionmaking." *DHS v. Regents of the Univ. of Cal.*, 591 U.S. 1, 16 (2020) (quoting *Michigan v. EPA*, 576 U.S. 743, 750 (2015)). "[T]he agency must examine the relevant data and articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'" *Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (quoting *Burlington Truck Lines v. United States*, 371 U.S. 156, 168 (1962)).

Far from reflecting fact-bound, rational decisionmaking, the President's expected Proclamation merely declares that Tren de Aragua is somehow a nation or government, and adopts an arbitrary system for identifying individuals who will be subjected to summary removal under the Proclamation.

II. The Administration's Abuse of the Alien Enemies Act Has Caused and Will Continue to Cause Plaintiffs-Petitioners Irreparable Harm.

Plaintiffs are likely to suffer irreparable harm in the absence of emergency relief.

As a result of the Proclamation and the government's intent to remove individuals from the United States without process, Plaintiffs face an imminent risk that they will be summarily removed from the United States to Venezuela or El Salvador without any meaningful opportunity to assert claims for relief.

For example, the government has already accused J.G.G., a young Venezuelan man, of membership in Tren de Aragua on the basis of his tattoos; abruptly transferred him from detention in California to El Valle Detention Facility in Texas while his proceedings were still ongoing; and told him that he would be taken elsewhere the night of March 14 or in the morning of March 15—all of which

makes it substantially likely that his removal under the AEA is imminent. *See* J.G.G. Decl. ¶¶ 1-6.[12] The same thing happened to W.G.H., J.A.V., G.F.F., and J.G.O., all young Venezuelan males who were abruptly transferred from Moshannon in Pennsylvania to El Valle while their proceedings were still in progress. W.G.H. Decl. ¶¶ 5-7; J.A.V. Decl. ¶¶ 6-7; Carney Decl. ¶ 12 (G.F.F.); Lauterback Decl. ¶ 8 (W.G.H.); Shealy Decl. ¶ 5. Four of five Plaintiffs have been accused by the government of membership in Tren de Aragua or questioned about the gang. Lauterback Decl. ¶ 7 (W.G.H.); Carney Decl. ¶ 6 (G.F.F.); J.G.G. ¶ 3; J.A.V. ¶ 5. And all have pending asylum claims and upcoming hearings.[13] W.G.H. ¶ 3; J.A.V. ¶ 9 (master calendar hearing scheduled for March 19); J.G.G. ¶ 2; Lauterback Decl. ¶ 17 (W.G.H.'s master calendar hearing set for March 26); Carney Decl. ¶ 3 (G.F.F.'s individual calendar hearing set for March 17); Shealy Decl. ¶¶ 3-4.

ICE has told multiple Plaintiffs that the agency intends to put them on a flight sometime between March 14 and March 16. Lauterback Decl. ¶ 21; Shealy Decl. ¶ 8; J.A.V. ¶ 11. For example, officers told G.F.F. that he would be deported in the middle of the night on March 14. Carney Decl. ¶ 19. Plaintiffs are terrified of being removed to Venezuela without an opportunity to present their asylum cases. W.G.H. Decl. ¶ 11; J.A.V. Decl. ¶ 13; J.G.G. Decl. ¶ 6; Carney Decl. ¶ 20 (G.F.F.). At least one Plaintiff has been physically ill at the thought of having to return to Venezuela where they fear persecution. Carney Decl. ¶ 20.

Because Venezuela does not share lists of gang members with the United States, the U.S. government's process for ascertaining who is or is not a member of Tren de Aragua is a haphazard one that relies heavily on guesswork.[14] That guesswork will undoubtedly sweep in individuals like Plaintiffs

[12] As J.G.G.'s Declaration explains, his tattoos do not in fact indicate any connection to Tren de Aragua. *See* J.G.G. Decl. ¶ 4.

[13] On March 12, the date of W.G.H.'s first immigration court hearing, no one came for him to appear in court. W.G.H. ¶ 8; Lauterback Decl. ¶ 13.

[14] *See, e.g.*, Laura Strickler, et al., *'Ghost Criminals': How Venezuelan gang members are slipping into the U.S.*, NBC News (June 12, 2024), https://www.nbcnews.com/politics/immigration/tren-de-aragua-venezuelan-gang-members-slip-into-us-rcna156290 (former Border Patrol agent explaining that unless the government receives a

who are not, in fact, members of Tren de Aragua. *See, e.g.*, W.G.H. Decl. ¶ 12; J.G.G. Decl. ¶ 3; J.A.V. Decl. ¶ 5. In fact, several Plaintiffs fled Venezuela specifically *because of* fear of Tren de Aragua. W.G.H. Decl. ¶ 11; J.A.V. Decl. ¶ 3.

In the absence of emergency relief, the government's removal of Plaintiffs to Venezuela or El Salvador would subject them to grave harm. *See, e.g.*, J.G.G. ¶ 2; Carney Decl. ¶ 20 (G.F.F.); J.A.V. Decl. ¶ 13; W.G.H. Decl. ¶ 11 (all discussing fear of violence or death upon return to Venezuela). El Salvador's prisons are notorious for their extraordinarily harsh detention conditions, including police-inflicted torture, other abusive and degrading treatment, extreme overcrowding, lack of access to counsel, rampant filth and disease, and deprivation of basic necessities, including food, water, and health care.[15] The U.S. State Department has described these prison conditions as "life-threatening." U.S. State Dep't, *2023 Country Reports on Human Rights Practices: El Salvador*, https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador.

These facts more than satisfy the TRO standard. Numerous courts have held that similar showings of threatened harm upon removal suffice to show irreparable injury. *See, e.g.*, *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 20 (D.D.C. 2005) (finding harsh conditions at Guantanamo that forced detainees to go on hunger strikes amounted to irreparable harm); *Americans for Immigrant Just. v. U.S. Dep't of Homeland Sec.*, No. 22-cv-3118 (CKK), 2023 WL 1438376, at *20 (D.D.C. Feb. 1, 2023) (finding irreparable harm satisfied for claims involving a lack of access to counsel); *Grace v. Whitaker*, 344 F. Supp. 3d 96, 146 (D.D.C. 2018), *aff'd in part, rev'd in part on other grounds sub nom.*, *Grace v. Barr*, 965 F.3d 883 (D.C. Cir. 2020) (finding fear of "domestic violence, beatings, shootings, and death" upon removal constitutes irreparable injury); *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) (holding

Venezuelan immigrant's criminal history from Interpol, or unless the immigrant already has a criminal record inside the United States, "we won't know who they are").

[15] *See, e.g.*, Human Rights Watch, *El Salvador's prisons are no place for US deportees* (Mar. 13, 2025), https://www.hrw.org/news/2025/03/13/el-salvadors-prisons-are-no-place-us-deportees; Human Rights Watch, *Widespread Human Rights Violations Under El Salvador's "State of Emergency"* (Dec. 7, 2022), https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el#2330.

that removal to a country where one faces harm constitutes irreparable injury); *Demjanjuk v. Holder*, 563 F.3d 565, 565 (6th Cir. 2009) (granting stay for noncitizen who asserted removal would violate CAT); *Devitri v. Cronen*, 289 F. Supp. 3d 287, 296–97 (D. Mass. 2018) (risk of persecution if removed is irreparable harm); *Innovation Law Lab v. Nielsen*, 342 F. Supp. 3d 1067, 1081 (D. Or. 2018) (considering "serious harm—including persecution, torture, and death—that may result if asylum is improperly denied" in finding irreparable harm); *J.B.B.C. ex rel. Barrera Rodriguez v. Wolf*, No. 1:20-cv-1509, 2020 WL 6041870, at *2 (D.D.C. June 26, 2020) ("declaration describing the possible harms that would result from plaintiff's return to Honduras" established irreparable harm); *see also Sessions v. Dimaya*, 584 U.S. 148, 157 (2018) (noting in the void-for-vagueness context the "grave nature of deportation," a "drastic measure" often amounting to lifelong "banishment or exile"). Moreover, "It has long been established that the loss of constitutional freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Mills v. Dist. of Columbia*, 571 F.3d 1304, 1312 (D.C. Cir. 2009) (citations omitted).

The threat of removal without the opportunity to apply for humanitarian protection further heightens the irreparable injury. *Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146, 172 (D.D.C. 2021) (finding irreparable harm where plaintiffs "face the threat of removal prior to receiving any of the protections the immigration laws provide"), *aff'd in part, rev'd in part on other grounds*, 24 F.4th 718 (D.C. Cir. 2022); *P.J.E.S. ex rel. Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 517 (D.D.C. 2020) (irreparable injury exists where class members were "threatened with deportation prior to receiving any of the protections the immigration laws provide"); *Orantes-Hernandez v. Meese*, 685 F. Supp. 1488, 1504–05 (C.D. Cal. 1988) (plaintiffs would suffer irreparable harm if they were summarily removed without being afforded opportunity to exercise their right to apply for asylum).

Plaintiffs would further face irreparable harm if removed under the AEA because the government will falsely paint them as members of Tren de Aragua—putting them at further risk of harm. This harm is irreparable: once these falsehoods about Plaintiffs are made public, they "could not be made secret again." *Ruckelshaus v. Monsanto Co.*, 463 U.S. 1315, 1317 (1983) (Blackmun, Circuit J.); *Senior Executives Ass'n v. United States*, 891 F. Supp. 2d 745, 755 (D. Md. 2012) (recognizing that disclosure of

information "is a bell that one cannot unring").

Once inflicted, the harm faced by Plaintiffs cannot be undone. "[O]nce expelled from the United States and outside the jurisdiction of the Court, a judicial remedy may be unavailable." *Huisha-Huisha*, 560 F. Supp. 3d at 172 (collecting cases where courts found deportation can render a remedy unavailable); *see also Int'l Immigrants Found., Inc. v. Reno*, No. 99-CV-5937, 1999 WL 787900, at *1 (E.D.N.Y. Sept. 29, 1999) (finding "irreparable harm" given "the threat of immediate deportation proceedings"). Nor can monetary damages repair the harm. *See New York v. DHS*, 969 F.3d 42, 86 (2d Cir. 2020) ("because money damages are prohibited in APA actions, [injuries that would result from implementation of a federal agency rule] are irreparable"); *see also Richards v. Napolitano*, 642 F. Supp. 2d 118, 134 (E.D.N.Y. 2009) ("absent injunctive relief, plaintiff faces mandatory deportation, which qualifies as 'irreparable injury'"). At bottom, "[u]nlike economic harm, the harm resulting from expulsion from the United States pursuant to an unlawful policy likely cannot be remediated after the fact." *Huisha-Huisha*, 560 F. Supp. 3d at 172.

Accordingly, Plaintiffs have demonstrated that they are at substantial risk of removal and that they will face serious and irreparable harm upon removal.

III. The Balance of Equities and Public Interest Weigh Decidedly in Favor of a Temporary Restraining Order.

The balance of equities and the public interest factors merge in cases against the government. *See Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (citations omitted). Where, as here, the challenged governmental conduct deprives Plaintiffs of their rights and is contrary to the rule of law, both factors weigh in Plaintiffs' favor. The public—and therefore the government—has an interest in protecting the rights of people in detention and ensuring the rule of law. *See Nken v. Holder*, 556 U.S. 418, 436 (2009) (describing the "public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 105 (D.D.C. 2012) ("It is always in the public interest to prevent the violation of a party's constitutional rights." (quotation marks and citations omitted)); *Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982) (protecting the rights of people who face persecution abroad "goes to the very

heart of the principles and moral precepts upon which this country and its Constitution were founded"); *Torres v. U.S. Dep't of Homeland Sec.*, 2020 WL 3124216, at *9 (C.D. Cal. Apr. 11, 2020) ("[T]he public has an interest in the orderly administration of justice[.]").

Defendants cannot claim any public interest in proceeding with agency action that exceeds their statutory authority. "[T]here is a substantial public interest 'in having governmental agencies abide by the federal laws that govern their existence and operations.'" *League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (quoting *Washington v. Reno*, 35 F.3d 1093, 1103 (6th Cir. 1994)); *see also, e.g.*, *Make the Road N.Y. v. Pompeo*, 475 F. Supp. 3d 232, 269 (S.D.N.Y. 2020) ("It is axiomatic that the President must exercise his executive powers lawfully. When there are serious concerns that the President has not done so, the public interest is best served by 'curtailing unlawful executive action.'" (quoting *Hawaii v. Trump*, 878 F.3d 662, 700 (9th Cir. 2017), *rev'd and remanded on other grounds,* 585 U.S. 667 (2018)). That is particularly true where the unlawful agency action will lead to wrongful removals to Venezuela or El Salvador's prisons, where Plaintiffs and others will face life-threatening conditions.

Second, Defendants cannot argue that there is any present risk to public safety to the government since the individuals immediately subject to removal are already detained and not at liberty to interact with the public. Nor is there any risk that individuals targeted by the AEA could in any way support the alleged "invasion" by Tren de Aragua while they remain in detention. And even if the Proclamation theoretically applies to yet-undetained individuals, law enforcement and immigration enforcement officials lose no authority or ability to *lawfully* detain such individuals, even if the AEA Proclamation is enjoined.

Third, not only does the Proclamation deprive Plaintiffs of their rights, *see supra* Sections I & II, but it results in far-reaching harms to immigrant communities and to the public at large. The vagueness and breadth of the expected Proclamation, along with the government's haphazard process for accusing individuals of affiliation with Tren de Aragua, will undoubtedly result in fear and uncertainty about the Proclamation's scope, and will chill immigrants in their day-to-day activities and the exercise of their

basic constitutional rights. In addition, Defendants' extraordinary and atextual invocation of a war power, outside of the context of an actual or imminent war, raises grave concerns about Defendants' unjustified invocation of war powers more generally—and the broader stability of the United States' legal order.

IV. The All Writs Act Confers Broad Power to Preserve the Integrity of Court Proceedings.

In addition to this Court's general equitable powers, this is a textbook case for use of the All Writs Act ("AWA"), which provides federal courts with a powerful tool to preserve the integrity of their jurisdiction to adjudicate claims before them. *See* 28 U.S.C. § 1651(a) (authorizing federal courts to "issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law"). If Plaintiffs are illegally sent to a foreign country, and the foreign government assumes jurisdiction over the Plaintiffs, the Court will likely lose jurisdiction to remedy the unlawful use of the AEA.

The All Wits Act encompasses a federal court's power to "maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels," *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966), and courts have found that the Act should be broadly construed to "achieve all rational ends of law," *California v. M&P Investments*, 46 F. App'x 876, 878 (9th Cir. 2002) (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)).

Whereas a traditional preliminary injunction requires a party to state a claim, an injunction based on the AWA requires only that a party identify a threat to the integrity of an ongoing or prospective proceeding, or of a past order or judgment. *Klay*, 376 F.3d at 1097 (a court may 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"). Thus, to issue an injunction pursuant to the AWA, this Court need not even find that there is a likelihood of success on the merits of the underlying claims. *See Wagner v. Taylor*, 836 F.2d 566, 571–72 (D.C. Cir. 1987) (showing of irreparable injury suffices); *Arctic Zero, Inc. v. Aspen Hills, Inc.*, 2018 WL 2018115, at *5 (S.D. Cal. May 1, 2018) (distinguishing AWA injunction from traditional preliminary injunction). Rather, it is sufficient for the Court to find that a party has identified a threat to the integrity of or "natural conclusion" of a federal case.

Courts have explicitly relied upon the AWA in order to prevent even a risk that a respondent's actions will diminish the court's capacity to adjudicate claims before it. *See Kurnaz v. Bush*, No. 04-cv-1135, 2005 WL 839542, *1–2 (D.D.C. Apr. 12, 2005) (enjoining Defense Department from transferring Guantánamo detainee with pending habeas petition, absent notice, outside the jurisdiction of the court); *Michael v. INS*, 48 F.3d 657, 664 (2d Cir. 1995) (using the AWA to stay an order of deportation "in order to safeguard the court's appellate jurisdiction" and preserve its ability to hear subsequent appeals by the petitioner).

V. The Court Should Not Require Plaintiffs to Provide Security Prior to the Temporary Restraining Order.

Federal Rule of Civil Procedure 65(c) provides that "[t]he court may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount that the court considers proper to pay the costs and damage sustained by any party found to have been wrongfully enjoined or restrained." However, "courts in this Circuit have found the Rule 'vests broad discretion in the district court to determine the appropriate amount of an injunction bond,' including the discretion to require no bond at all." *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 107 (D.D.C. 2012) (internal quotation marks, citation, and alterations omitted). District courts exercise this discretion to require no security in cases brought by indigent and/or incarcerated people, and in the vindication of immigrants' rights. *See, e.g.*, *P.J.E.S. by & through Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 520 (D.D.C. 2020). This Court should do so here.

CONCLUSION

The Court should grant Plaintiffs' motion for a temporary restraining order.

Dated: March 15, 2025

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*, Plaintiffs-Petitioners, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants-Respondents.	Civil Action No. 1:25-cv-00766

DEFENDANTS' MOTION TO VACATE TEMPORARY RESTRAINING ORDER

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INTRODUCTION

On March 15, 2025, the Court issued two orders that together enjoined—on a nationwide basis—the removal of aliens associated with Tren de Aragua ("TdA"), a designated foreign terrorist organization ("FTO"), under the Alien Enemies Act ("AEA"). These orders are an affront to the President's broad constitutional and statutory authority to protect the United States from dangerous aliens who pose grave threats to the American people. For a host of reasons, the Court lacks the power to review or enjoin the AEA Proclamation, and must therefore dissolve its orders at the first available opportunity.

First, the Court lacks jurisdiction because the presidential actions they challenge are not subject to judicial review, as the D.C. Circuit has long and squarely held. *See Citizens Protective League v. Clark*, 155 F.2d 290, 294 (D.C. Cir. 1946). And to the extent any review were available, it would be through habeas proceedings, *see Ludecke v. Watkins*, 335 U.S. 160 (1948) (considering challenge to action under AEA as habeas claim)—yet Plaintiffs voluntarily withdrew their habeas claims here. They had little choice, because habeas claims may be filed only in the district of confinement, *see Rumsfeld v. Padilla*, 542 U.S. 425, 435 (2004), and none of the Plaintiffs were detained in the District of Columbia. Plaintiffs tried to circumvent that defect by recasting their case as a putative class action, but D.C. Circuit precedent bars that attempt to avoid the "preclusive effect of habeas jurisdiction." *Lobue v. Christopher*, 82 F.3d 1081, 1083 (D.C. Cir. 1996); *see also id.* at 1085 (plaintiffs "cannot overcome their jurisdictional infirmities ... by reference to the characteristics of putative class members—a class uncertified at the time the jurisdictional issue should have been resolved"). There is similarly no jurisdiction for the Court to order the government to produce additional information about its missions. Accordingly, there was no

lawful basis for the Court to enjoin implementation of the President's Proclamation under the AEA.

Second, even if review were available in some form, the Court issued the orders without any proper basis to conclude that Plaintiffs are likely to succeed on the merits. The President's action is lawful and consistent with a long history of using war authorities against organizations connected to foreign states. It is properly premised on national security judgments, which are not subject to judicial second-guessing. Contrary to the Court's initial suppositions, TdA qualifies as a foreign "government" for purposes of the AEA, given its intricate connections with the Maduro regime and its own existence as a de facto governing entity in parts of Venezuela. The Proclamation makes those necessary findings, which Plaintiffs have yet to challenge in any briefing. And the illegal entry into the United States by TdA members and affiliates for purposes of engaging in criminal acts hostile to the interests of the United States constitutes an "invasion" or "predatory incursion" under accepted definitions of both terms. All prerequisites to a Proclamation under Section 21 are thus met in this case.

Finally, Plaintiffs have not shown the requisite irreparable harm, and the balance of equities weighs strongly against an injunction. Removal alone is not irreparable harm, as the Supreme Court expressly held in *Nken v. Holder*, where the petitioner similarly alleged a risk of persecution if removed. 556 U.S. 418, 422–23, 435 (2009). Regardless, the alleged harms to Plaintiffs are overwhelmingly outweighed by the President's interest in using his statutory and constitutional authority to address what he has identified as an invasion or predatory incursion by a group undertaking hostile actions and conducting irregular warfare. In balancing the interests otherwise, the orders "deeply intrude[] into the core concerns of the executive branch." *Adams v. Vance*, 570 F.2d 950, 954 (D.C. Cir. 1978). When dealing with such "sensitive and weighty interests of

national security and foreign affairs," the court must give "deference" to "evaluation of the facts by the Executive," *Holder v. Humanitarian Law Project*, 561 U.S. 1, 33–35 (2010), and the balance of the equities must favor the security of the United States above all else.

BACKGROUND

I. The Alien Enemies Act

The AEA provides that:

> 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.

Courts have recognized the legitimacy of the AEA as an exercise of the war power reserved to Congress and the Executive. The Supreme Court has observed that the AEA is "as unlimited" a grant of power "as the legislature could make it." *Ludecke*, 335 U.S. at 164 (quoting *Lockington v. Smith*, 15 F. Cas. 758, 760 (C.C.D. Pa. 1817)); *see also id.* at 165 n.8 (collecting cases). Courts have further explained that the statute encompasses "matters of political judgment for which judges have neither technical competence nor official responsibility." *Id.* at 170 (holding that the President's power under the AEA remained in effect even after actual hostilities in World War II had ceased). And the D.C. Circuit has held that this statute confers "[u]nreviewable power in the President to restrain, and to provide for the removal of, alien enemies." *Citizens Protective League*, 155 F.2d at 294. Courts have therefore limited their review in prior challenges to just a few, very narrow questions that sound in habeas: "the construction and validity of the statute";

whether, when relevant, there is a "declared war"; and whether the "person restrained is an enemy alien fourteen years of age or older." *Ludecke*, 335 U.S. at 171 & n.17.

II. The President's Proclamation

The President published the *Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua* (the "Proclamation") on March 15, 2025. *See* https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/.

In the Proclamation, the President made findings that members of the transnational criminal organization TdA, in conjunction with a narco-terrorism enterprise backed by the illegitimate regime of Nicolas Maduro in Venezuela, are "conducting irregular warfare and undertaking hostile actions against the United States." *Id. at* Preamble. TdA has also "engaged in and continues to engage in mass illegal migration to the United States," including to inflict harm on U.S. citizens and support Maduro's regime in undermining democracy. *Id.* Further, TdA is "closely aligned with" and "has infiltrated" Maduro's regime, growing under Tareck El Aissami's governance of the province of Aragua from 2012 to 2017. *Id.* Aissami himself is a "fugitive facing charges arising from his violations of United States sanctions triggered by his" designation as a Specially Designated Narcotics Trafficker under 21 U.S.C. § 1901 *et seq.* *Id.* And Maduro leads the "Cártel de los Soles, which coordinates with and relies on TdA and other organizations to carry out its objective of using illegal narcotics as a weapon to 'flood' the United States." *Id.*

Criminal organizations such as TdA have taken greater control over Venezuelan territory, resulting in the creation of a "hybrid criminal state" that poses "substantial danger" to the United States and is "perpetrating an invasion of and predatory incursion" into the nation. *Id.* (noting also INTERPOL Washington's finding that TdA has infiltrated the flow of immigrants from

Venezuela). TdA has independently been designated as an FTO under 8 U.S.C. § 1189 since February 20, 2025. *Id.* That designation has not been challenged in court.

Based on these 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." *Id.* § 1. The President further directed that all such alien enemies "are subject to immediate apprehension, detention, and removal." *Id.* § 3. The Attorney General and Secretary of Homeland Security have been tasked with executing these directives, in addition to any separate authority that may exist to apprehend and remove such persons. *Id.* §§ 4, 6.

The President also issued regulations prohibiting the entry, attempted entry, or presence of the alien enemies described in Section 1 of the Proclamation, with any such alien enemies "subject to summary apprehension." *Id.* § 6(a). Apprehended alien enemies are subject to detention until their removal from the United States, and they may be removed to "any such location as may be directed" by those responsible for executing the regulations. *Id.* § 6(b)–(c).

For its part, DHS has also developed a process for identifying TdA members that will be subject to the proclamation. Exhibit 1, Declaration of Robert Cerna, at ¶ 7. Agency personnel carefully vet each individual alien to ensure they are in fact members of TdA. *Id*. Officers and agents well versed in gang activity and TdA in particular reviewed the information gathered on each alien, "identifying TdA members based upon the results of investigative techniques and information such as previous criminal convictions for TdA-related activities, other court records indicating membership in TdA, surveillance, law enforcement encounters, interviews with the TdA member, testimonies and statements from victims of the TdA member, evidence that the alien had committed crimes in coordination with known members of TdA, evidence that the alien had

committed sophisticated financial transactions with known members of TdA, computer indices checks, and admission of TdA membership by the alien." *Id.*

III. This Suit

On March 15, 2025, Plaintiffs, five nationals of Venezuela who claim to fear removal under the Proclamation, filed this putative class-action complaint along with a motion for a temporary restraining order. In their complaint, Plaintiffs allege, among other things, that the Defendants' actions are contrary to the AEA and the INA.

Hours after the complaint was filed, without the actual Proclamation and without hearing from the Government, the Court granted Plaintiffs' motion and ordered that "Defendants shall not remove any of the individual Plaintiffs from the United States for 14 days absent further Order of the Court." Second Minute Order (Mar. 15, 2025). The Government appealed the district court's first order and filed an emergency motion to stay it. *See J.G.G. v. Trump*, No. 25-5067 (D.C. Cir. filed Mar. 15, 2025).

This Court then held a hearing on March 15, 2025, at 5:00 p.m. Third Minute Order (Mar. 15, 2025). At that hearing, Plaintiffs dismissed their habeas claims at this Court's suggestion. Afterward, the Court issued an order (1) provisionally certifying a class of individuals determined by the Executive to be members of a designated FTO, defined as "All noncitizens in U.S. custody who are subject to the March 15, 2025, Presidential Proclamation . . . and its implementation," (2) enjoining the Government "from removing members of such class (not otherwise subject to removal) pursuant to the Proclamation for 14 days or until further Order of the Court," and (3) setting a briefing schedule for a motion to vacate the TRO. Fourth Minute Order (Mar. 15, 2025).

The Government also appealed this nationwide order and sought a stay on an emergency basis. *See J.G.G. v. Trump*, No. 25-5068 (D.C. Cir. filed Mar. 15, 2025). The D.C. Circuit has ordered Plaintiffs to file a consolidated response to both emergency stay motions by March 18, 2025, with a reply 24 hours thereafter. *See* Per Curiam Order (Mar. 16, 2025).

ARGUMENT

I. This Court Has No Jurisdiction Over Plaintiffs' Claims

A. There is no jurisdiction to review the President's Proclamation and certainly no viable claim outside of habeas.

This Court lacks jurisdiction to review the Proclamation or enjoin the President's exercise of authority under Article II and the AEA. The Supreme Court has long recognized that courts cannot issue an injunction purporting to supervise the President's performance of his duties. *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867) (courts have "no jurisdiction … to enjoin the President in the performance of his official duties"); *Trump v. United States*, 603 U.S. 593, 607 (2024) (recounting that the President "has important foreign relations responsibilities: [including] … recognizing foreign governments, … overseeing international diplomacy and intelligence gathering, and managing matters related to terrorism, … and immigration").

Consistent with that general rule, courts have held for over a century that the President's authority and discretion under the AEA is not a proper subject for judicial scrutiny: "The authority of the President to promulgate by proclamation or public act 'the manner and degree of the restraint to which they (alien enemies) shall be subject, and in what cases,' is, of course, *plenary and not reviewable*." *Ex parte Gilroy*, 257 F. 110, 112 (S.D.N.Y. 1919) (emphasis added); *see also id.* ("Once the person is an alien enemy, obviously the course to be pursued is essentially an executive function, to be exercised in the discretion of the President.").

Indeed, the D.C. Circuit has described the statute as conferring "[u]nreviewable power in

the President." *Citizens Protective League*, 155 F.2d at 294. The court explained:

> As a practical matter, it is inconceivable that before an alien enemy could be removed from the territory of this country in time of war, the President should be compelled to spread upon the public record in a judicial proceeding the method by which the Government may detect enemy activity within our borders and the sources of the information upon which it apprehends individual enemies. No constitutional principle is violated by the lodgment in the President of the power to remove alien enemies without resort or recourse to the courts.

Id. That is binding circuit precedent. Unreviewable means *unreviewable*. It leaves no room for judicial review, much less sweeping national injunctions.

At most, a plaintiff seeking to challenge application of an AEA proclamation would be challenging the legality of detention, a habeas claim that is limited in scope. *See, e.g.*, *Ludecke,* 335 U.S. at 163–64 (reasoning, on appeal from "[d]enial of a writ of habeas corpus," that "some statutes 'preclude judicial review'" and "the Alien Enemy Act of 1798 is such a statute," as demonstrated by the clear text and "controlling contemporary construction"); *id.* at 164–65 (noting that "every judge before whom the question has since come has held that the statute barred judicial review"); *see also U.S. ex rel. Schlueter v. Watkins*, 67 F. Supp. 556, 565 (S.D.N.Y.), *aff'd*, 158 F.2d 853 (2d Cir. 1946) (reviewing habeas petition challenging detention as an alien enemy and explaining "courts are without power to review the action of the executive in ordering removal of an alien enemy in time of war except with respect to the question whether the relator is an enemy alien"); *U.S. ex rel. Schwarzkopf v. Uhl*, 137 F.2d 898, 900 (2d Cir. 1943) (similar); *Citizens Protective League*, 155 F.2d at 296 (affirming dismissal, for failure to state a claim, of non-habeas cases raising constitutional challenges to application of Alien Enemies Act and seeking

injunction).[1]

Plaintiffs' complaint contains a habeas claim, but they withdrew that claim at argument. *See* Mot. Hr'g Tr. at 22:23–25 (Mar. 15, 2025) ("grant[ing] plaintiffs' motion to dismiss their habeas count" and noting "that count is dismissed without prejudice"). They had little choice but to do so, because Plaintiffs by their own admission were not detained in this district, and habeas is available only in the district of detention. *See Padilla*, 542 U.S. at 435; *Fletcher v. Reilly*, 433 F.3d 867, 875 (D.C. Cir. 2006).

Insofar as Plaintiffs try to evade the preclusive effects of habeas jurisdiction by framing their claims in other ways—such as for declaratory or injunctive relief—the D.C. Circuit has rejected such maneuvers. In *Lobue v. Christopher*, for example, the Court of Appeals vacated a decision invalidating an extradition statute, on the ground that the district court lacked jurisdiction because the fugitives had a legal remedy (a petition for habeas relief under 28 U.S.C. § 2241) in the district that certified their extradition. 82 F.3d 1081 (D.C. Cir. 1996). The Court's rationale was that the district court should not have entertained a separate lawsuit for declaratory and injunctive relief where the statutory remedy of habeas corpus was available. *Id.* at 1084; *see also Fernandez v. Phillips*, 268 U.S. 311, 312 (1925) (in habeas petition, fugitive may raise constitutional challenges to validity and scope of extradition treaty).

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[1] Because jurisdiction in this context is limited to individual habeas claims challenging whether an alien has been properly included in the category of alien enemies—necessarily an individual determination—there is also no basis to certify a class to resolve those claims. *See Harris v. Med. Transp. Mgmt., Inc.*, 77 F.4th 746, 753 (D.C. Cir. 2023) (class certification not appropriate where "questions of law or fact … affecting only individual members" predominate); Compl. ¶¶ 9–13 (setting out separate factual circumstances of each Plaintiff).

Other circuit precedent underscores the conclusion; plaintiffs cannot avoid limits on habeas by restyling their claims. *See, e.g.*, *Kaminer v. Clark*, 177 F.2d 51, 52 (D.C. Cir. 1949) ("[A] declaratory judgment cannot serve as a substitute for habeas corpus relief in order to give jurisdiction to a district other than where the applicant is detained."); *Clark v. Memolo*, 174 F.2d 978, 981 (D.C. Cir. 1949) ("The action for declaratory judgment is not suitable and does not lie in the District of Columbia in such cases as a substitute ... for habeas corpus in the district where the unlawful detention occurs ..."); *cf. Monk v. Sec'y of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("In adopting the federal habeas corpus statute, Congress determined that habeas corpus is the appropriate federal remedy for a prisoner who claims that he is in custody in violation of the Constitution .... This specific determination must override the general terms of the declaratory judgment and federal question statute.").

Nor can Plaintiffs circumvent this problem by invoking the Administrative Procedure Act (APA), as they appear to acknowledge by raising their APA challenge as to all Defendants "except Defendant Trump." Compl. at 18 (Claim 6). The President is not an agency, and his actions are not subject to APA review. *See Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992); *Armstrong v. Bush*, 924 F.2d 282, 289 (D.C. Cir. 1991). But, of course, the AEA vests authority in the President, and the President is the one who issued the Proclamation. There is therefore no avenue under the APA for Plaintiffs to enjoin the Proclamation. *See Tulare Cnty. v. Bush*, 185 F. Supp. 2d 18, 28–29 (D.D.C. 2001), *aff'd*, 306 F.3d 1138 (D.C. Cir. 2002) (holding that APA review does not extend to agency action "merely carrying out directives of the President" for the same reasons "APA does not apply to presidential action," since "the action in question is an extension of the President's action"); *see also Vetcher v. Sessions*, 316 F. Supp. 3d 70, 78 (D.D.C. 2018) (recognizing that APA review is not available when relief can be had in habeas).

Finally, the All Writs Act does not confer jurisdiction either. *Contra* Mot. 23. That Act allows courts to issue "writs necessary or appropriate in aid of their respective jurisdictions," 28 U.S.C. § 1651(a), but it "does not erase separate legal requirements for a given type of claim." *Makekau v. Hawaii*, 943 F.3d 1200, 1204 (9th Cir. 2019). The All Writs Act thus "does not confer jurisdiction on the federal courts"; it simply permits a court to protect jurisdiction that was properly obtained on some other basis. *See Syngenta Crop Prot., Inc. v. Henson*, 537 U.S. 28, 32–33 (2002); *Clinton v. Goldsmith*, 526 U.S. 529, 534–35 (1999). As the D.C. Circuit has therefore made clear, if a "court does not and would not have jurisdiction to review the agency action sought by petitioners, it cannot bootstrap jurisdiction via the All Writs Act." *In re Nat'l Nurses United*, 47 F.4th 746, 752 (D.C. Cir. 2022). That is dispositive here.

In short, outside of limited habeas review, "[t]he control of alien enemies has been held to be a political matter in which the executive and the legislature may exercise an unhampered discretion," and an "alien enemy" otherwise "is not, under the Constitution and the Statute, entitled to any hearing." *Schlueter*, 67 F. Supp. at 565. That itself requires dissolving the orders.

B. The President's invasion determination is not subject to judicial review under the political question doctrine.

The Court lacks power for another reason as well. The President's determination that an "invasion" or "predatory incursion" has occurred under the AEA is a nonjusticiable political question, just like the President's determination to trigger the Constitution's Invasion Clause (Article IV, section 4). *See California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997) (collecting cases). Any challenge to that determination is therefore foreclosed.

The Supreme Court has held that the political question doctrine is "essentially a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 217 (1962). To guide courts in

determining when such a question is raised, the Supreme Court identified six "formulations" that indicate a question has been committed to the political branches:

> Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Id. "To find a political question, [the court] need only conclude that one [of these] factor[s] is present, not all." *Schneider v. Kissinger*, 412 F.3d 190, 194 (D.C. Cir. 2005). The President's invasion determination under the AEA implicates at least two independently sufficient factors.

First, the determination that an "invasion" or "predatory incursion" involving enemy aliens is being perpetrated sits at the intersection of two areas textually committed to the political branches: (1) foreign affairs, *see El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir. 2010) ("The political question doctrine bars our review of claims that, regardless of how they are styled, call into question the prudence of the political branches in matters of foreign policy or national security constitutionally committed to their discretion."); *see also California*, 104 F.3d at 1091 ("[T]he issue of protection of the States from invasion implicates foreign policy concerns which have been constitutionally committed to the political branches."); and (2) immigration policy, *see Mathews v. Diaz*, 426 U.S. 67, 81 (1976) ("[T]he responsibility for regulating the relationship between the United States and our alien visitors has been committed to the political branches of the Federal Government."). Indeed, "any policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations,

the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

Second, even without the clear textual commitment to the Executive of the constitutional responsibilities undergirding issuance of the Proclamation, there are no manageable standards that would permit a court to assess exactly when hostile entry and criminal and violent acts within the United States by aliens constitute an "invasion" or "predatory incursion" for AEA purposes. *See California*, 104 F.3d at 1091; *cf. Chiles v. United States*, 874 F. Supp. 1334, 1344 (S.D. Fla. 1994) ("[T]he Court is unable to identify[] a manageable standard for determining when the migration, as well as the costs associated with such migration, reaches the point at which it invades the State of Florida's state sovereignty"). The Constitution simply provides no basis for a court to determine when this AEA trigger has been met, and thus there is no basis for second-guessing the policy judgment by the Executive that such an "invasion" or "predatory incursion" is occurring.

II. Plaintiffs Cannot Succeed on the Merits of Their Claims.

A. The Proclamation comports with the requirements of the statute.

In all events, the Proclamation and its implementation are perfectly lawful. The AEA grants the President discretion to issue a proclamation directing the apprehension, restraint, and removal of alien enemies when two conditions are found by the President to be met. *First*, there must be "a declared war," *or* "an[] invasion" *or* a "predatory incursion" that is "perpetrated," *or* "attempted," *or* "threatened against the territory of the United States[.]" 50 U.S.C. § 21. *Second*, that hostile action must be by a "foreign nation" *or* "government." *Id.* The Proclamation signed by the President satisfies both conditions.

1. *TdA's actions constitute an invasion or a predatory incursion into the territory of the United States.*

As to the first prerequisite, the President determined that TdA is perpetrating an invasion *or* a predatory incursion into the United States. Although the word "invasion" of course includes a military entry and occupation of a country, the accepted definition of that term is far broader. An invasion is "[a]n intrusion or unwelcome incursion of some kind; esp., the hostile or forcible encroachment on another's rights," or "[t]he arrival somewhere of people or things who are not wanted there." Black's Law Dictionary, "Invasion" (12th ed. 2024). Nor is there any requirement that the purposes of the incursion are to possess or hold territory. *See*, *e.g.*, *United States v. Texas*, 719 F. Supp. 3d 640, 681 (W.D. Tex. 2024). Here, the actions of TdA fit accepted conceptions of what constitutes an invasion. TdA's illegal entry into and continued unlawful presence in the United States is an "unwelcome intrusion" that entails hostile acts contrary to the rights of U.S. citizens to be free from criminality and violence.

At minimum, the actions of TdA constitute a "predatory incursion" that justifies invocation of Section 21. The phrase "predatory incursion" encompasses (1) an entry into the United States (2) for purposes contrary to the interests or laws of the United States. *See*, *e.g.*, *Amaya v. Stanolind Oil & Gas Co.*, 62 F. Supp. 181, 189–90 (S.D. Tex. 1945) (noting use of the phrase to describe raids in Texas during hostilities with Mexico in the 1840s that fell well short of "invasion"); *see also Davrod Corp. v. Coates*, 971 F.2d 778, 785 (1st Cir. 1992) (using the phrase to refer to foreign fishing fleets unlawfully entering and fishing in U.S. territorial waters); *Bas v. Tingy*, 4 US 37 (1800) (broadly defining "enemy" and "war"). Here, there is no question that TdA and its members have effected entries into the United States, and similarly no question that the purposes of that entry are contrary to both the interests and laws of this country: trafficking in substances and

people, committing violent crimes, and conducting all its business for the benefit of a state whose interests are antithetical to the United States. *See* Proclamation, Sect. 1.

In arguing there is no "invasion" or "predatory incursion," Plaintiffs cherry-pick dictionary definitions limiting those terms to *military* incursions meant to displace a government or conquer territory. *See* Mot. at 10–12. But there is no reason to limit the textual language of Section 21 solely to acts meant to perpetrate active hostilities between two governments, and Plaintiffs' own proffered definitions are incomplete. In fact, every *full* definition they offer supports the government's position. The full definition of "invasion" that Plaintiffs rely on, for instance, includes "[a] hostile entrance into the possessions of another," a definition that encompasses what TdA is undertaking here. *See* Webster's Dictionary, "Invasion" (1828). Likewise, "incursion" is defined to include "entering into a territory with hostile intention." Webster's Dictionary, "Incursion" (1828). Both definitions *include* military action, but neither is *limited to* such action.

2. *Given its intimate connection to Venezuela, TdA is a "foreign nation or government" for purposes of Section 21.*

The Proclamation makes clear that TdA qualifies as a "foreign nation or government" for at least two independent reasons. To start, TdA's infiltration of key elements of the Venezuelan state, make it indistinguishable from Venezuela. *See* Proclamation. TdA's growth itself can be attributed to promotion via the actions of former Governor of Aragua Tareck El Aissami, who was later appointed Vice President in the Maduro regime. *Id*. And Maduro's connections to the group, via the regime-sponsored narco-terrorism enterprise Cártel de los Soles, are also clear. *Id*. The Cártel de los Soles "coordinates with and relies on TdA [] to carry out its objective of using illegal narcotics as a weapon to 'flood' the United States." *See id*.

Given how significantly TdA has become intertwined in the fabric of the Venezuela's structures, it functions as a governing entity in Venezuela. Through those ties, TdA has become

indistinguishable from the Venezuelan government, and the two may be folded together for purposes of invoking Section 21.

Although Plaintiffs try to depict this invocation of the AEA as novel, the United States has a long history of using war powers against formally nonstate actors. Historically, the United States has authorized the use of force against "slave traders, pirates, and Indian tribes." Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2066 (2005). It has engaged militarily, during broader armed conflicts, with "opponents who had no formal connection to the state enemy," including during the Mexican–American and Spanish–American Wars. *Id.* at 2066–67. President Wilson famously "sent more than seven thousand U.S. troops into Mexico to pursue Pancho Villa, the leader of a band of rebels opposed to the recognized Mexican government," *id.* at 2067, while, more recently, President Clinton authorized missile strikes on al Qaeda targets in Africa and elsewhere, *see generally El-Shifa*, 607 F.3d 836.

In all events, TdA also acts as a *de facto* government in the areas where it operates. As the Proclamation recognizes, "Venezuela national and local authorities have ceded ever-greater control over their territories to transnational criminal organizations, including TdA." Proclamation Preamble. In those areas where it operates, TdA is in fact acting as a criminal *government*, independent or in place of the normal civil society and government. Given TdA's governance and organizational structure, as well as its *de facto* control over parts of Venezuela in which it operates with impunity as an effective governing authority unto itself, it is well within the discretion of the President to determine it constitutes a foreign "government" for purposes of invoking Section 21.

Plaintiffs insist the United States' recognition of the "Venezuelan National Assembly as the only legitimate branch of the Government of Venezuela," Mot. 9–10, limits the AEA's scope.

By that logic, an invasion by Maduro's regime, which the United States does not recognize, would likewise fall outside the scope of the AEA. That obviously cannot be correct.

B. The Proclamation is supported by the President's inherent authority to conduct foreign affairs and address national security risks.

The President's inherent Article II authority bolsters the Proclamation. Under his authority to protect the nation, the President determined that TdA represents a significant risk to the United States, that it is intertwined and advancing the interests of a foreign government in a manner antithetical to the interests of the United States, and that its members should be summarily removed from this country as part of that threat. The exercise of authority in this case is firmly supported by longstanding Supreme Court precedent. Article II confers on the President expansive authority over foreign affairs, national security, and immigration. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 588 (1952); *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936). And where, as here, "the President acts pursuant to an express or implied authorization of Congress," *i.e.*, 50 U.S.C. § 21, coupled with the President's own Article II powers over foreign affairs and national security, "his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring); *see Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) (similar); *see also Ludecke*, 335 U.S. at 164.

If anything, this authority is heightened here. The Supreme Court has consistently noted that "[i]t is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe." *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892). Thus, laws involving aliens are "implementing an *inherent executive power*." *United States ex rel. Knauff v.*

Shaughnessy, 338 U.S. 537, 542 (1950) (emphasis added). The confluence of statutory and constitutional authority puts the President's actions on the strongest possible turf.

C. Plaintiffs' remaining arguments lack merit.

Plaintiffs' additional arguments against the legality of the Proclamation all lack merit.

First, Plaintiffs are wrong that Proclamation violates the Immigration and Nationality Act, 8 U.S.C. § 1101, *et seq.*, which, according to Plaintiffs, provides the "sole and exclusive" means by which aliens may be removed from the United States. Mot. at 13–14. There is no conflict; the INA and AEA are distinct mechanisms for effectuating the removal of certain aliens from the United States, just as Title 42 and the INA constituted different bases for excluding aliens from the United States. *See generally Huisha-Huisha v. Mayorkas*, 27 F.4th 718 (D.C. Cir. 2022).

The determination required under the AEA does not relate to the admissibility or deportability of any alien, so there is no reason to believe that Title 8 and its "sole and exclusive" means for addressing those questions is implicated in this case. *See* 8 U.S.C. § 1229a(a)(3) (removal proceedings are "exclusive" only to the extent the government is determining admissibility or removability, as those terms are defined under Title 8).

In any event, there is no conflict between the AEA and the INA, and a harmonious reading of the Executive's authority under the AEA and its authority under prevailing immigration laws was rendered over 75 years ago in the wake of World War II. *See United States ex rel. Von Kleczkowski v. Watkins*, 71 F. Supp. 429, 437 (S.D.N.Y. 1947). Not all alien enemies will be subject to removal under Title 8 because the authority under Title 50 extends to aliens regardless of lawful status in the United States. Likewise, not all aliens subject to Title 8 will be subject to removal under the AEA—as removal under the AEA is premised on discrete findings, such as nationality and age, beyond admissibility or removability as defined in the INA. And for aliens

subject to both Title 8 and Title 50 removals, the Executive has discretion in deciding how and whether to proceed under either or both statutes. *See id.* (recognizing this discretion under pre-INA immigration law). Thus, the AEA and the INA coexist with some overlap that gives the Executive discretion to determine how, whether, or when to apply them. *See, e.g.*, *Epic Systems Corp. v. Lewis*, 584 U.S. 497, 510 (2018) ("When confronted with two Acts of Congress allegedly touching on the same topic, this Court . . . must . . . strive to give effect to both." (cleaned up)).

Even if there *were* a conflict between the AEA and the INA, it is the AEA that would control. "[I]t is a commonplace of statutory construction that the specific governs the general." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). Here, the AEA provides specific rules for the removal of a subset of aliens—those designated as alien enemies through a discrete mechanism providing authority to the President—against the more general provisions relating to removability provided by the INA. Thus, to the extent there may be conflict, the AEA provides an exception to the more general applicability of the INA's removal provisions, and this is true regardless of the later enactment of the INA. *See*, *e.g.*, *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974) ("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.").

Second, Plaintiffs contend (Mot. at 14–15) that the AEA cannot be applied so as to bar applications for asylum and related protection. Yet alien enemies are not entitled to seek any relief or protection in the country that has designated them enemies, unless the President permits such applications. *See Citizens Protective League*, 155 F.2d at 294 (noting common law rule that "alien enemies have no rights, no privileges, unless by the king's special favor"). Again, Plaintiffs' argument ultimately relies on an assertion of a conflict between the two statutes. Yet there is none; the INA provides a system for determining removability and any relief or protection from removal

for aliens under the authority of Title 8, whereas the AEA provides its own mechanism permitting the President or his delegates to implement procedures and regulations governing removal, detention, and any other issue related to invocation of the AEA, *see* 50 U.S.C. § 21.

Beyond this fact, there is no *textual* indication that provisions of the INA relating to asylum and related protection place fetters on the President's exercise of authority under Title 50. None of the cited provisions constrain the *President's* actions. *See* 8 U.S.C. § 1158(b)(1)(A) (Attorney General or Secretary of Homeland Security); 8 U.S.C. § 1231(b)(3) (Attorney General); 8 C.F.R. § 1208.16, 1208.18 (Immigration Judges, via delegation from the Attorney General); *see also Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 172–73 (1993) (recognizing distinct grants of authority under the INA to, *inter alia*, President and Attorney General). Nor are such constraints implicated just because the President has delegated certain authorities, including implementation of the Proclamation, to the Attorney General. *See Sale*, 509 U.S. at 172 n.28 (in implementing the Proclamation, the Attorney General would be "carrying out an executive, rather than a legislative, command, and therefore would not necessarily [be] bound" by provisions of the INA).

In any event, asylum is a discretionary form of relief, and eligibility for such relief may be foreclosed on a categorical basis, as the D.C. Circuit has previously held in the context of Title 42. *See Huisha-Huisha*, 27 F.4th at 730–31. Here, the AEA disallows relief for covered enemy aliens, and that represents the Executive's categorical conclusion that such aliens are not entitled to relief in the exercise of discretion. The text and structure of the INA, as well its regulatory implementation, likewise support the prohibition on consideration of applications for protection from removal. Those provisions are fundamentally concerned with *removal* under the INA, a legal principle not relevant to the mechanics of the Proclamation at issue in this case. *See* 8 U.S.C. § 1231(b)(3)(A); 8 C.F.R. § 1208.16(a), 1208.18(b). The instant Proclamation does not deal with

removal proceedings or any other aspect of removal, and thus any constraint these provisions may impose on the *removal* of an alien are not implicated here.

Third, Plaintiffs argue (Mot. at 16–17) that both the statute and due process require that aliens who fall within the purview of the Proclamation be permitted time to voluntarily depart from the United States, and that forcible removal is permissible only where the alien refuses or neglects to do so. That is not a defensible reading of the statute, especially in context. To be sure, Section 21 permits the President to "provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom," 50 U.S.C. § 21, but it also broadly provides that alien enemies within the purview of a Proclamation "*shall be* liable to be . . . removed as alien enemies." In this context, where the alien enemies are members of the hostile force itself, the President cannot be required to provide any period of voluntary departure prior to effectuating removal, and the AEA's entire purpose would be undercut if active participants in hostilities had to be politely asked to depart on their own terms.[2]

For that reason, the Proclamation explains that TdA engaged in "mass illegal migration to the United States to further its objectives of harming United States citizens," and that this activity undermines public safety, while also enhancing the "Maduro regime's goal of destabilizing democratic nations in the Americas, including the United States." Proclamation Preamble. Plaintiffs have yet to challenge that reasoning directly.

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[2] The cases cited by Plaintiffs do not undercut this assertion, as both cases dealt with an alien who was a citizen of Germany during World War II but who was not a member of any German military unit and was otherwise not engaged in active hostility or criminal acts against the United States. *See* Mot. at 16 (citing *United States ex rel. Dorfler v. Watkins*, 171 F.2d 431, 432 (2d Cir. 1948); *U.S. ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 653 (2d Cir. 1947)).

Plaintiffs also cite a section allowing the President to, *inter alia*, "declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality," in which a covered alien enemy may conclude his affairs in the United States and voluntarily depart. 50 U.S.C. § 22. But that has no application in circumstances where the alien is "chargeable with actual hostility, or other crime against public safety." *Id.* The latter is categorically the case here: The Proclamation finds that the covered alien enemies are engaged in active hostility and criminality against the interests of the United States. *See* Proclamation Preamble. Section 22 thus has no relevance to the aliens covered by the Proclamation.

Finally, Plaintiffs contend that the Proclamation is "arbitrary and capricious" under the APA, *see* Mot. at 17, but the APA does not provide a cause of action for judicial review of the Proclamation. As noted above, the President is not an "agency," and his actions are not subject to APA review. *See supra*, pp. 9-10 (citing, *inter alia*, *Franklin*, 505 U.S. at 801). Nor do Plaintiffs otherwise identify any final agency action that *would* be subject to review under the APA. *See generally* Mot. at 17; *see also supra*, pp. 9-10.

III. The Remaining Equitable Factors Weigh Strongly in the Government's Favor.

A. Plaintiffs have not established irreparable harm.

Plaintiffs' arguments for irreparable harm are based on the "risk that they will be summarily removed from the United States to Venezuela or El Salvador without any meaningful opportunity to assert claims for relief." Mot. at 17; *see also id.* at 18–21. As the Supreme Court has explained, however, "[a]lthough removal is a serious burden for many aliens, it is not categorically irreparable." *Nken*, 556 U.S. at 435. And the Supreme Court reached that conclusion in a case where the petitioner argued he would face persecution if removed. *Id.* at 422–23 ("Nken claimed he had been persecuted in the past . . . would be subject to further persecution if he

returns" and that changed circumstances since he left his home country "made his persecution more likely"). "It is accordingly plain that the burden of removal alone cannot constitute the requisite irreparable injury." *Id*. at 435.

B. The balance of equities requires dissolving the injunction.

The balance of harms and the equities strongly favor the government here. The Court's orders prevent the President from using his statutory and constitutional authority to address what he has identified as an invasion or predatory incursion by a group undertaking hostile actions and conducting irregular warfare. It therefore "deeply intrudes into the core concerns of the executive branch," *Adams*, 570 F.2d at 954, and frustrates the "public interest in effective measures to prevent the entry of illegal aliens," *United States v. Cortez*, 449 U.S. 411, 421 n.4 (1981). The Executive Branch's protection of these interests, including "sensitive and weighty interests of national security and foreign affairs" that are implicated when the Executive is combating terrorist groups, warrants the utmost deference. *Humanitarian Law Project*, 561 U.S. at 33–35.

The Supreme Court has warned of "the danger of unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013); *Biden v. Texas*, 142 S. Ct. 2528, 2548 (2022) (Kavanaugh, J., concurring) ("Nothing in the relevant immigration statutes at issue here suggests that Congress wanted the Federal Judiciary to improperly second-guess the President's Article II judgment with respect to American foreign policy and foreign relations"). This Court's orders do just that, undermining delicate international negotiations to remove dangerous alien enemies, where even a short delay in removal can frustrate removal entirely. *See Zadvydas v. Davis*, 533 U.S. 678, 696 (2001); Ex. 2, Declaration of Michael G. Kozak. The orders divest the Executive of its key foreign-affairs and national-security authority oriented towards effectuating removal of alien enemies linked to a designated FTO—efforts that

may be forever stymied if halted even temporarily. *See* Kozak Decl. at ¶ 5.

These equities outweigh the equities Plaintiffs have raised. *See, e.g.*, *Nken*, 556 U.S. at 436 (noting there "is always a public interest in prompt execution of removal orders" even in cases where an alien asserts a risk of harm, and that interest "may be heightened" in circumstances where "the alien is particularly dangerous"). U.S. national security is of paramount importance.

IV. The Universal TRO Is Overbroad and Unconstitutional.

If nothing else, this Court should dissolve the sweeping injunction premised on provisional certification of a nationwide class. AEA jurisprudence limiting the courts to habeas review sharply contrasts with the universal TRO this Court issued with respect to the members of the provisionally certified class with no habeas claims before the Court. Precedent establishes that the role of the courts with respect to the AEA is only to assess whether a detainee is subject to the AEA proclamation, not to probe the national-security and foreign-policy judgments of the President in issuing the proclamation itself. *Ludecke*, 335 U.S. at 164 (providing habeas review only of whether detainee was subject to the proclamation); *United States ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 652 (2d Cir. 1947) (same); *United States ex rel. Kessler v. Watkins*, 163 F.2d 140, 141 (2d Cir. 1947) (same). Moreover, habeas jurisdiction must reach the custodian, *see Rasul v. Bush*, 542 U.S. 466, 483–84 (2004), but here the Court issued a nationwide injunction where most—if not all—of the provisional class members are beyond this Court's jurisdiction. That was improper.

The highly truncated class procedures here—in which a nationwide class was certified before the government could even file a brief in opposition—were improper too, and incompatible with "'foundational' limits on equitable jurisdiction." *Dep't of State v. AIDS Vaccine Advoc. Coal.*, No. 24A831, slip op. 7 (2025) (Alito, J., joined by Thomas, Gorsuch, and Kavanaugh, J.J., dissenting) (citation omitted). The injunction undermines longstanding deference to the Executive

Branch's national security judgments, including the President's responsibility to identify and respond to threats posed by the TdA. Moreover, Article III does not empower federal courts to "exercise general legal oversight of the Legislative and Executive Branches," *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423–24 (2021), much less empower them to assume a position of authority over the governmental acts of another coequal department, "an authority which plainly [courts] do not possess." *Massachusetts v. Mellon*, 262 U.S. 447, 489 (1923). To the contrary, courts have recognized the Judiciary's limitations in assessing national-security information and judging the necessity of action to counter national-security threats. *See Humanitarian Law Project*, 561 U.S at 34 ("[W]hen it comes to collecting evidence and drawing factual inferences in [the national security] area, the lack of competence on the part of the courts is marked").

This Court therefore lacked authority to issue the overbroad, universal TRO.

CONCLUSION

For these reasons, the Court should vacate both orders.[3]

March 17, 2025

Respectfully Submitted,

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[3] This court has jurisdiction to vacate its TRO, see Fed. R. Civ. P. 62(d), but if this Court disagrees we request an indicative ruling that it would vacate. *See* Fed. R. Civ. P. 62.1.

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CERTIFICATE OF SERVICE

I hereby certify that on March 17, 2025, I electronically filed this response with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. Counsel in the case are registered CM/ECF users and service will be accomplished by the CM/ECF system.

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*,

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

No. 1:25-cv-766 (JEB)

Declaration Of Acting Field Office Director Robert L. Cerna

DECLARATION OF ROBERT L. CERNA

I, Robert L. Cerna, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am an Acting Field Office Director Enforcement and Removal Operations ("ERO") at U.S. Immigration and Customs Enforcement ("ICE") within the U.S. Department of Homeland Security ("DHS").

2. As the (A)FOD of the Harlingen Field Office, I am responsible for, among other things, the detention and enforcement operations of more than 350 employees, assigned to six ERO Harlingen offices. ERO Harlingen encompasses fifteen South Texas counties and is responsible for six detention facilities with a combined total of 3,790 detention beds. I began my career with the U.S. Government as a detention enforcement officer with the former Immigration and Naturalization Service in Laredo, TX. Over time I was promoted into ICE leadership positions, including Supervisory Detention and Deportation Officer for both the Harlingen and

San Antonio Field Offices and Assistant Field Office Director and Deputy Field Office Director for the Harlingen Field Office.

3. I am aware that the instant lawsuit has been filed regarding the removal of Venezuelan members of Tren de Aragua ("TdA") pursuant to the Alien Enemies Act (AEA).

4. I provide this declaration based on my personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, and information portals maintained and relied upon by DHS in the regular course of business.

5. On March 15, 2025, President Trump announced the Proclamation *Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua* stating that, "Evidence irrefutably demonstrates that TdA has invaded the United States and continues to invade, attempt to invade, and threaten to invade the country; perpetrated irregular warfare within the country; and used drug trafficking as a weapon against our citizens" (the Proclamation) (https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/). In the same Proclamation, President Trump announced that, pursuant to 50 U.S.C. § 21, "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."

6. Members of TdA pose an extraordinary threat to the American public. TdA members are involved in illicit activity to invoke fear and supremacy in neighborhoods and with the general population. This has been evident from investigations throughout the nation where TdA members coalesce to conduct their criminal acts. For example, TdA's takeover of Denver apartment buildings stoked fear in the tenants when TdA committed burglaries, narcotics, and

weapons violations. Other inquiries into the actions of member of TdA have resulted in criminal investigations and prosecution of cases of human trafficking, to include trafficking of women from Venezuela; bank fraud; federal narcotics violations; extortion of human smuggling victims; and homicide, to name a few. This, along with the myriad state violations and investigations of groups of TdA members committing crimes throughout the nation are evidence of their criminal enterprise.

7. Agency personnel carefully vetted each individual alien to ensure they were in fact members of TdA. Officers and agents well versed in gang activity in general and TdA in particular reviewed the information gathered on each alien, identifying TdA members based upon the results of investigative techniques and information such as previous criminal convictions for TdA-related activities, other court records indicating membership in TdA, surveillance, law enforcement encounters, interviews with the TdA member, testimonies and statements from victims of the TdA member, evidence that the alien had committed crimes in coordination with known members of TdA, evidence that the alien had committed sophisticated financial transactions with known members of TdA, computer indices checks, and admission of TdA membership by the alien. ICE did not simply rely on social media posts, photographs of the alien displaying gang-related hand gestures, or tattoos alone.

8. It was critical to remove TdA members subject to the Proclamation quickly. These individuals were designated as foreign terrorists. Within Venezuela, TdA was able to grow its numbers from the steady prison population and build its criminal enterprise through the extortion of inmates. Keeping them in ICE custody where they could potentially continue to recruit new TdA members posed a grave risk to ICE personnel; other, nonviolent detainees; and the United

States as a whole. Holding hundreds of members of a designated Foreign Terrorist Organization, where there is an immediate mechanism to remove them, would be irresponsible.

9. While it is true that many of the TdA members removed under the AEA do not have criminal records in the United States, that is because they have only been in the United States for a short period of time. The lack of a criminal record does not indicate they pose a limited threat. In fact, based upon their association with TdA, the lack of specific information about each individual actually highlights the risk they pose. It demonstrates that they are terrorists with regard to whom we lack a complete profile.

10. However, even though many of these TdA members have been in the United States only a short time, some have still managed to commit extremely serious crimes. A review of ICE databases reveals that numerous individuals removed under the AEA have arrests and convictions in the United States for dangerous offenses, including an individual alleged to have committed murder; an individual with pending state charges for aggravated assault with weapon and who was identified by state authorities related to an armed home invasion and kidnapping; an individual with a state arrest for harassment, and indecent assault where he entered the room of a fourteen-year-old victim, tried to lift her shirt, grabbed her thigh, and rubbed his penis on her; an individual who was arrested for fourth-degree grand larceny and resisting arrest who was encountered in a home with other gang members, three automatic rifles, two handguns, and extended magazines; an individual convicted of conspiracy to harbor aliens, in violation of 8 U.S.C. § 1325(a)(1)(A)(v)(I) and (a)(1)(B)(i), involving his role in a stash house—including his job of taking and restricting access to the victims' cell phones—where officers and agents located sixteen individuals in the stash house, including a pregnant female and a fifteen-year-old unaccompanied child; an individual arrested for a misdemeanor sex offense and felony assault;

an individual with a state arrest for second-degree assault, intent to cause injury with weapon/instrument; an individual arrested for second-degree assault with intent to cause serious physical injury in a manner injure child less than seventeen, for which there is an order of protection in the case; an individual arrested at a TdA-run brothel and charged with evading arrest, promoting prostitution, possession of fentanyl, and possession of marijuana; an individual arrested for property damage, assault and simple assault; as well numerous other theft and larceny-related offenses.

11. Additionally, a review of ICE databases reveals that numerous individuals removed have arrests, pending charges, and convictions outside of the United States, including an individual who is under investigation by Venezuelan authorities for the crimes of aggravated homicide, qualified kidnapping, and illegal carrying of weapons of war and short arms with ammunition for organized gang in concealment and trafficking; an individual who is the subject of an active INTERPOL Blue Notice issued on or about January 2, 2025, and a Red Notice issued February 5, 2025, for the crime of kidnapping and rape in Chile; an individual who is the subject of an INTERPOL Red Notice issued by Chile for kidnapping for ransom and criminal conspiracy involving TdA; an individual who admitted he sold marijuana and crystal methamphetamine for the Colombian gang Las Paisas, assaulted someone with a knife for a cellphone while living in Venezuela, and has twice robbed people for money while living in Colombia; an individual who is the subject of an INTERPOL Red Notice for child abduction; an individual identified as a "high-ranking" member of the TdA by the Mobile Tactical Interdiction Unit in Guatemala City, Guatemala; an individual who is the subject of an INTERPOL Red Notice based on obstruction of justice, criminal conspiracy, and aggravated corruption based on the individual's role as a police officer in modifying evidence to cover up a murder; an individual

who, according to Peruvian Newspapers, is associated with high-ranking TdA members and who fled Peru while under investigation for illegal possession of firearm and distributing narcotics; an individual who is the subject of an INTERPOL Blue Notice stating that he is under investigation in Venezuela for murder with aggravating circumstances against a victim whose corpse was found inside a suitcase on a dirt road; and an individual who is the subject of an warrant from Chile for carrying or holding a weapon subject to control.

12. According to a review of ICE databases, numerous individuals removed were arrested together as part of federal gang operations, including two individuals who were in a vehicle during a Federal Bureau of Investigations gun bust with known TdA members; four individuals who were arrested during the execution of an Homeland Security Investigations New York City operation; and four individuals who were encountered during the execution of an arrest warrant targeting TdA gang member, all of whom were in a residence with a firearm and attempted to flee out the back of the residence.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 17th day of March 2025.

ROBERT L CERNA II

Digitally signed by ROBERT L CERNA II
Date: 2025.03.17 22:07:01 -05'00'

Robert L. Cerna
Acting Field Office Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

DECLARATION OF MICHAEL G. KOZAK

Pursuant to 28 U.S.C. § 1746, I, Michael G. Kozak, declare and state as follows:

1. I, Michael G. Kozak, am the Senior Bureau Official within the Bureau of Western Hemisphere Affairs (WHA) of the United States Department of State, a position I have held since January 2025. In that capacity, I lead and oversee WHA, including the country offices handling affairs regarding Central and South America and other countries in the Hemisphere. I am a career member of the Senior Executive Service, and have served in a variety of senior positions in the Department of State, including previously as the Acting Assistant Secretary of WHA, in other positions within WHA, and leading other bureaus and offices of the Department of State. WHA is responsible for diplomatic relations between the United States and countries in the Western Hemisphere, including El Salvador and Venezuela. I make the following statements based upon my personal knowledge, including from my extensive experience since 1971 engaging in diplomatic and other work of the Department with respect to El Salvador, Venezuela, and other countries in the region and around the world, as well as upon information made available to me in the performance of my official duties.
2. U.S. government officials from the White House and the Department of State, including special Presidential envoy Richard Grenell, Secretary of State Marco Rubio, and Special Envoy for Latin America Mauricio Claver-Carone, have negotiated at the highest levels with the Government of El Salvador and with Nicolas Maduro and his representatives in Venezuela in recent weeks for those countries to consent to the removal to Venezuela and El Salvador of some number of Venezuelan nationals detained in the United States who are associated with Tren de Aragua (TdA), a designated foreign terrorist organization.

3. Arrangements were recently reached to this effect with these foreign interlocutors to accept the removal of some number of Venezuelan members of TdA. These arrangements were the result of intensive and delicate negotiations between the United States and El Salvador, and between the United States and representatives of the Maduro regime.
4. The foreign policy of the United States would suffer harm if the removal of individuals associated with TdA were prevented, taking into account the significant time and energy expended over several weeks by high-level U.S. government officials and the possibility that foreign interlocutors might change their minds regarding their willingness to accept certain individuals associated with TdA removed or might otherwise seek to leverage this as an ongoing issue. These harms could arise even in the short term, as future conversations with foreign interlocutors seeking to resolve foreign policy matters would need to take this issue into account along with other issues, instead of allowing the discussions to fully move on to other issues.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on March 15, 2025, in Arlington, Virginia.

MICHAEL G. KOZAK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*,

Plaintiffs–Petitioners,

v.

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

Defendants–Respondents.

Case No: 1:25-cv-00766-JEB

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO VACATE TEMPORARY RESTRAINING ORDER

INTRODUCTION

The government's motion to dissolve the temporary restraining orders should be denied: the government is wrong that Plaintiffs' claims are unreviewable under the political question doctrine. Both the Supreme Court and the D.C. Circuit have made clear in recent decisions that the doctrine should be used sparingly, and that reviewability should be assessed on a claim-by-claim basis. Here, Plaintiffs contend that the specific statutory predicates for invoking the Alien Enemies Act ("AEA") have not been satisfied. No case law, under the AEA or otherwise, suggests that these claims are wholly unreviewable under the narrow political question doctrine.

Indeed, the World War II case on which the government relies heavily, *Ludecke v. Watkins*, 335 U.S. 160 (1948), makes clear that these types of threshold statutory claims are reviewable. The claim *Ludecke* declined to review was whether, where Congress and the President agreed that World War II was not yet over, the Court should declare otherwise. Here, by contrast, the President is trying to write the limits that Congress set out of the Act. The government is likewise incorrect that this case must be brought in habeas in the district of confinement. Under settled law, this is not a "core" habeas action, and consequently, the "immediate custodian" rule on which Defendants rely is inapplicable.

On the merits, the invocation of the Act against a criminal gang cannot be squared with the explicit terms of the statute requiring a declared war or invasion by a foreign government or nation. And given these explicit statutory predicates, the Act has unsurprisingly been invoked only three times in our country's history, all during declared wars.

As to irreparable harm, the government claims that national security will be compromised by pausing summary removals under the AEA. Yet the relevant temporary restraining order makes clear it does not prevent the arrest and detention of any individual, mandate the release of any

individual, or preclude removal under the immigration laws. And the government has not claimed that U.S. facilities are ill-equipped to detain these individuals (even assuming they are affiliated with the gang, a fact that is unknown given that none were afforded any opportunity to show that they do not fall under the Proclamation).

The implications of the government's position are staggering. If the President can label any group as enemy aliens under the Act, and that designation is unreviewable, then there is no limit on who can be sent to a Salvadoran prison, or any limit on how long they will remain there. At present, the Salvadoran President is saying these men will be there at least a year and that this imprisonment is "renewable."[1]

STATEMENT OF FACTS

The AEA is a wartime authority that grants the President specific powers with respect to the regulation, detention, and removal of enemy aliens. Passed in 1798 in anticipation of a war with France, the AEA, as codified today, 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.

This Act has only ever been used three times in the country's history and each time in a period of war—the War of 1812, World War I, and World War II. The Act provides that, generally, individuals designated as enemy aliens will have time to "settle affairs" before removal and the

[1] Nayib Bukele, X.com post, (Mar. 16, 2025, 5:13AM ET), *available at:* https://perma.cc/52PT-DWMR.

option to voluntarily "depart."[2] *See, e.g., United States ex rel. Dorfler v. Watkins*, 171 F.2d 431, 432 (2d Cir. 1948) ("An alien must be afforded the privilege of voluntary departure before the Attorney General can lawfully remove him against his will.").

On March 14, the President signed the AEA Proclamation at issue here. It provides that "all Venezuelan citizens 14 years of age or older who are members of TdA [Tren de Aragua], 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." *See* Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua (Mar. 15, 2025).[3] Although the AEA calls for a "public proclamation," 50 U.S.C. § 21, the administration did not make the invocation public until around 3:53 p.m. EDT on March 15, despite making extensive preparations to remove class members under the Act. ECF No. 28-1, Second Cerna Decl. ¶ 5; *see generally* ECF No. 1, Complaint.

And the Proclamation does not provide *any* process for individuals to contest that they are members of the TdA and do not therefore fall within the terms of the Proclamation. Nor does it provide individuals with the statutory grace period in which they can both seek judicial review or arrange their affairs and leave voluntarily. Instead, the Proclamation invokes the statutory exception to the "reasonable notice" requirement by claiming that the individuals subject to the Proclamation are "chargeable with actual hostility," and pose "a public safety risk"—despite the fact that there is no evidence of the sort of "hostility" that the Act requires, *e.g.*, skirmishes with

[2] 50 U.S.C. § 21 (providing for removal of only those "alien enemies" who "refuse or neglect to depart" from the United States); *id.* § 22 (providing for "departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality").

[3] *Available at*: https://perma.cc/ZS8M-ZQHJ.

U.S. forces, nor any public safety risk because the men can be securely confined. *See infra*; 50 U.S.C. § 22. The Proclamation also claims to supplant the removal process under the congressionally enacted immigration laws, which, among other things, provide a right to seek protection from persecution and torture. *See, e.g.*, 8 U.S.C. §§ 1158, 1231(b)(3); 1231 note.

To implement the Proclamation, approximately ten days ago, people with upcoming immigration proceedings started being moved overnight from ICE detention facilities around the country and not allowed to appear at their proceedings, where many were seeking asylum. *See* Kim Decl. ¶¶ 2, 4–5, 11–13; Caro-Cruz Decl. ¶¶ 2–6, 13; J.G.G. Decl. ¶¶ 2–5; J.A.V. Decl. ¶¶ 6–7; Thierry Decl. ¶¶ 5–6; Gonzalez Decl. ¶ 4. After searching for answers in online detainee locators, calling detention centers, and e-mailing officials within the detention system, lawyers for these men began to hear from their clients that they had been taken to detention centers in Texas. *See, e.g.*, Carney Decl. ¶ 12; Shealy Decl. ¶ 5; Kim Decl. ¶¶ 10–14; Caro-Cruz Decl. ¶ 18; Thierry Decl. ¶ 5; Quintero Decl. ¶¶ 2-3.

Detention officials began to tell the men they were to be immediately removed from the country. Those warnings began on March 14. Kim ¶ 19; Thierry Decl. ¶ 8. On March 15, by the time the secret Proclamation was made public, these men, five of whom are the named Plaintiffs here, had been shackled and driven to an airport and told they would get on a plane, despite having no order permitting ICE to remove them and facing grave danger even if they were removed to their home country of Venezuela. Shealy Decl. ¶ 8; Quintero Decl. ¶ 3; Carney Decl. ¶¶ 11-12; Smyth Decl. ¶ 14. For several Plaintiffs, their asylum claims were based in part on having been targeted by TdA itself. *See* J.G.O Decl. ¶ 8, ECF No. 3-5; Lauterback Decl. ¶ 8, ECF No. 3-7; J.A.V. Decl. ¶ 3, ECF No. 3-8; *see also* Carney Decl. ¶ 3; Smyth Decl. ¶ 5.

After being transferred from the El Valle Detention Facility to the airport on March 15,

named Plaintiffs spent hours while waiting for the planes to take off. Shealy Decl. ¶¶ 11-13; Quintero Decl. ¶¶ 3-5; Carney Decl. ¶¶ 12-14; Smyth Decl. ¶ 14. Media crews were present, taking pictures and recording video. Shealy Decl. ¶ 9. There was "chaos" on the planes, as people were crying and frightened about where they were being sent. Carney Decl. ¶ 13. When Plaintiffs were pulled off the plane, an officer verbally taunted them and laughed, saying that the group had just hit the lottery because they were not being deported that day. Shealey Decl. ¶ 11; Quintero Decl. ¶ 4; Carney Decl. ¶ 13; Smyth Decl. ¶ 14. They sat on the tarmac in the heat without being provided any water, to the point that one man's nose began to bleed, and officers told him to stop being dramatic. Shealey Decl. ¶¶ 12-13; Quintero Decl. ¶ 5; Carney Decl. ¶ 14. The five Plaintiffs were eventually driven back to the detention facility where they were finally fed for the first time since the early morning. Shealey Decl. ¶ 14; Quintero Decl. ¶ 6; Carney Decl. ¶ 15. Plaintiffs are traumatized by this experience. Shealey Decl. ¶ 15; Carney Decl. ¶¶ 17-18. One has been told by officers that he would be deported in 14 days. Carney Decl. ¶ 17.

What followed for the rest of the group was worse: dozens of Venezuelans were summarily removed the evening of March 15 pursuant to the Proclamation. *See* Exh. G ¶ 8; Exh. H ¶ 3; Exh. I ¶ 13; Exh J ¶ 14, Exh. K ¶ 14. The Court's request to the government for the exact number remains pending, *see* Minute Order (March 18, 2025), but various reports *suggest* that well over one hundred were removed. *See* Oscar Sarabia Roman Decl. Exh. 7 (putting number at 137); *see also* Statement from the White House Press Secretary (Mar. 18, 2025)[4] (describing Proclamation and stating that "nearly 300" people were removed). These removals occurred despite the Court's March 15 Orders granting temporary restraining orders and ordering that the planes be returned. Response to Defendants' Notice, ECF No. 21.

[4] *Available at*: https://perma.cc/5UMH-JDVA.

Because these individuals were removed in secret without any process, Plaintiffs do not have names or information about most of them. But all five of the named Plaintiffs dispute that they are members of the TdA. J.G.G. Decl. ¶ 3, ECF No. 3-3; Exh. J ¶ 3; Exh, H ¶ 4; Lauterback Decl. ¶ 8, ECF No. 3-7; J.A.V. Decl. ¶ 5, ECF No. 3-8.

For example, Plaintiff G.F.F. was accused of gang membership apparently as a result of attending a party with a friend, where he knew no one else, based on the government's claim that TdA members had been present. *See* G.F.F. Decl. ¶¶ 5–6, ECF No. 3-4. Plaintiff J.G.G., a tattoo artist, was questioned about his tattoos as the apparent basis for TdA membership: those tattoos are from a Google image search that turned up an eyeball design that he thought "looked cool." *See* J.G.G. Decl. ¶ 4, ECF No. 3-3. He also has other common tattoo designs. *See id.* (rose and a skull to cover up a monkey tattoo he no longer liked); Exh. K ¶ 9. Reports from counsel for other individuals are the same. One person is reportedly a soccer player with a calf tattoo of a soccer ball and a crown, chosen to resemble the logo of his favorite team, Real Madrid. Tobin Decl. ¶ 7.

In addition, increasing reports by the media suggest that many of the individuals were not members of the gang. *See*, *e.g.*, Exh. 2 ("families of three men who appear to have been deported and imprisoned in El Salvador told the Miami Herald that their relatives have no gang affiliation"); Exh. 3 ("The families strongly deny that their relatives are connected to the Venezuelan gang known as Tren de Aragua."); Exh. 4 ("A growing chorus of families, elected officials and immigration lawyers have begun coming forward in the news media to reject or cast doubt on the allegations.") Exh. 5 ("several relatives of men believed to be in the group say their loved ones do not have gang ties"); Exh. 6 (family member denied that loved one's tattoo, which ICE officers said linked him to TdA, was gang related); Exh. 8 ("in many cases, they insist the deportation involved a hasty and unjust assumptions that a tattoo identified a terrorist"). Multiple attorneys

have come forward with stories of their clients who were suddenly and without notice transferred to Texas, and removed to El Salvador despite upcoming asylum hearings and strong claims to that relief. *See generally* Tobin Decl.; Thierry Decl.; Caro-Cruz Decl.; Kim Decl.

These reports are consistent with a pattern that has played out over the past six weeks, with the administration overstating information about detainees. For instance, in early February, the administration sent approximately 177 Venezuelans to Guantanamo, calling them the "worst of the worst." Sarabia Roman Decl., Ex. 1. Yet it soon became clear that many of the men had only low-level or no criminal history or had committed only immigration offenses, and were far from the notorious individuals claimed by the administration. *Id*. Indeed, the government ultimately was forced to concede as much in court filings. For example, the government stated in sworn declarations that 51 of 178 of those transferred were classified as "low threat." *See* Ex. M, Jennifer Venghaus Decl. ¶¶ 11–13, (submitted at ECF No. 14-3, *Las Americas Immigrant Advocacy Center v. Noem*, No. 25-cv-418 (D.D.C. Feb. 20, 2025)) (acknowledging 51 out of 178 detainees detained at Guantanamo were classified as "LTIAs," referring to "low threat illegal aliens"); Sarabia Roman Decl., Ex. 1 (reporting that Administration officials confirmed people sent to Guantanamo with no criminal record nor any assessment as high risk).

Notably, even in this case the government has already had to acknowledge that "many of the TdA members removed under the AEA do not have criminal records in the United States" but sought to explain that away by the fact the men have supposedly "only been in the United States for a short period of time." ECF No. 26-1, First Cerna Decl. ¶ 9. Yet the five named Plaintiffs have no criminal history in *Venezuela* either. Remarkably, the government's declaration states that, "the lack of specific information about each individual actually highlights the risk they pose" because that "demonstrates that they are terrorists with regard to whom we lack a complete

profile." *Id.*

Of the removed group, the government's declaration lists "contact" with law enforcement anywhere in the world for 28 people, assuming that the same person is not described multiple times (*e.g.*, as having a foreign arrest and also having a domestic arrest). That includes descriptions of arrests in the U.S. for eight individuals, with no indication of any conviction, and only one individual who was convicted of a crime. *See id.* ¶ 10. It states that "numerous" people labeled as TdA have arrests or investigative notices abroad, identifying nine such people. *Id.* ¶ 11; *see also id.* (no mention of convictions). It further lists ten people as having come into ICE detention after arrests during some form of law enforcement investigation. *See id.* ¶ 12.

Despite acknowledging that it has no information about any crimes committed by many class members, the government asserts that it would be "irresponsible" for the government to keep them in detention, even if only long enough to give them a reasonable chance to contest the government's unilateral accusations. *See id.* In a sworn declaration submitted with this brief, however, Deborah Fleischaker, former Acting ICE Chief of Staff, states that "ICE detention facilities" are "prepared to detain any noncitizen regardless of their security level." Ex. A, Fleischaker Decl. ¶ 7. ICE's custody classification system permits the agency to separate detainees with no criminal history from those with a history of violence. *Id.* ¶ 9. And ICE has "numerous policies in place to ensure a safe and secure environment for both detainees and staff" and "specific tools to address gang recruitment concerns." *Id.* ¶¶ 13, 16. None of the individuals described in Mr. Cerna's declaration struck Ms. Fleischaker as "different than what ICE normally handles." *Id.* ¶ 20.

The members of the provisional class removed to El Salvador face prison conditions that have been deemed "harsh and life threatening," due to "systemic abuse in the prison system."

Bishop Decl. ¶ 21; *see also* Goebertus Decl. ¶ 4. Prison officials use electric shocks, and "beat, waterboard, and use implements of torture on detainees' fingers to try to force confessions of gang affiliation." Bishop Decl. ¶¶ 21, 33, 37, 39, 41; Goebertus Decl. ¶¶ 8, 10, 17 (describing how guards broke a detainee's rib, ruptured another's pancreas and spleen, and forced another into ice water for two hours). These abusive conditions are life threatening. Hundreds of people have died in Salvadorean prisons. Goebertus Decl. ¶ 5; Bishop Decl. ¶¶ 43–50. Inmates have reported that guards sometimes beat prisoners until they are dead, "then bring the body back into the [shared] cell and leave it there until the body started stinking." Bishop Decl. ¶ 39. The physical conditions are equally shocking. Some people at CECOT, the specific facility detaining class members, are held in solitary confinement cells, which are completely dark. Goebertus Decl. ¶ 3. The Salvadorean government announced plans to detain individuals from different gangs together at CECOT which is "certain to result in violence between the gangs." Bishop Decl. ¶ 59. Moreover, if CECOT reaches its full capacity, each prisoner would have just under two feet of space in shared cells. Bishop Decl. ¶¶ 30-31 (describing Salvadorean prisons with as many as 80 prisoners held in cells designed for 12 people). These horrific conditions are "created intentionally" to threaten and intimidate people. Bishop Decl. ¶ 22.

Worse, class members detained at CECOT face indefinite detention. *See* Goebertus Decl. ¶ 3 (quoting the Salvadorean government that people held in CECOT "will never leave"); *id.* ("Human Rights Watch is not aware of any detainees who have been released from that prison."); *see also* Nayib Bukele, X.com post, *supra* n.1 (detainees "were immediately transferred to CECOT . . . for a period of one year (renewable)").

Finally, the government states in its filings that 86 people it has identified as targeted by the Proclamation are in some form of detention and either in removal proceedings or soon to have

proceedings initiated. ECF No. 28-1, Second Cerna Decl. ¶ 6. Another 172 people currently in asylum proceedings and not detained, have also been deemed alien enemies. *Id*. There is no indication that these 172 people are aware that they have been deemed alien enemies. *Id*.

PROCEDURAL HISTORY

Early on March 15, Plaintiffs filed a class action complaint alleging that the invocation of the AEA and Plaintiffs' summary removal from the United States violated the express terms of the statute, illegally bypassed the immigration processes laid out in the Immigration and Nationality Act ("INA"), violated the APA, and did not satisfy the requirements of due process. Later that morning, this Court entered a temporary restraining order prohibiting Defendants from removing the named Plaintiffs pending a hearing. Defendants appealed the temporary restraining order within hours. ECF No. 12.

Late in the afternoon and early evening of March 15, this Court held a hearing and provisionally certified a class consisting of "All noncitizens in U.S. custody who are subject to the March 15, 2025 Presidential Proclamation entitled 'Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua' and its implementation." Third Minute Order (Mar. 15, 2025). The Court then issued a temporary restraining order prohibiting Defendants for 14 days from removing members of the class (who were not otherwise subject to removal) pursuant to the Proclamation. *Id.* The Court set the hearing on Defendant's motion to vacate the TROs for Friday, March 21. *Id.* Just over an hour later, Defendants appealed the second temporary restraining order. Notice of Appeal (ECF No. 17). On Sunday, March 16, Defendants filed emergency motions to stay both TROs pending appeal with the court of appeals.[5]

[5] On March 16, Defendants also filed a notice informing the district court that some individuals "subject to removal under the Proclamation had already been removed from United States territory under the Proclamation before issuance of this Court's second order." ECF No. 19. According to publicly available date and media reports (not disputed by Defendants), no plane

ARGUMENT

I. The Court Can Reach the Merits of Plaintiffs' Claims.

The government advances three threshold arguments. First, it invokes the political question doctrine to contend that this Court cannot reach the merits of Plaintiffs' claims. Second, it contends that illegal conduct by the President is unreviewable. Third, it suggests that this Court is limited to reviewing Plaintiffs' detention—which it conflates with the issue of challenging alien enemy status—and further argues that those claims must be brought in habeas in the district of confinement. All three arguments fail.

A. The AEA Cases Confirm the Justiciability of Plaintiffs' Claims.

Defendants argue that the AEA "is not a proper subject for judicial scrutiny." Mot. 7.[6] But the Supreme Court has made clear that claims like Plaintiffs' are justiciable. In *Ludecke v. Watkins*, the Court emphasized that "resort to the courts" *was* available "to challenge the construction and validity of the statute," explicitly noting that the AEA does not preclude judicial review of "questions of interpretation and constitutionality." 335 U.S. at 163, 171. Those questions—the "construction" and "interpretation" of the AEA—are precisely what are at issue here.

Plaintiffs raise three key statutory arguments, each of which is justiciable under *Ludecke*: (1) the AEA's use of "invasion" and "predatory incursion" refer only to military action in the

containing such individuals had yet landed and the government continued to have custody and control of class members, both when the district court issued its oral order requiring Defendants to "immediately" return anyone still in the air to the United States, and when it issued its written order memorializing the temporary restraining order. March 15, 5 p.m. Hearing Tr. at 43:6-43:19 (ECF No. 20). And the government has never claimed that the Defendants themselves, who were enjoined and commanded not to remove any class members, were somehow not under the Court's jurisdiction. Proceedings to determine whether Defendants violated the court's orders are ongoing.

[6] Mot. refers to the government's brief in support of its motion to vacate the TRO at ECF No. 26.

context of an actual or imminent war; (2) a criminal gang is not a "foreign nation or government"; (3) even if the AEA applies, it still requires (a) an opportunity to contest whether one falls within the Proclamation, (b) compliance with the INA and other later-enacted, more specific statutory protections for noncitizens, and (c) an opportunity to voluntarily depart the United States prior to any removal. Just as *Ludecke* addressed, on the merits, whether the AEA had been lawfully invoked, the Court here has jurisdiction to address whether the statute's predicates have been satisfied. *See* 335 U.S. at 171 (recognizing "the existence of [a] 'declared war'" as reviewable).

Ludecke recognized the courts' competence to determine the meaning of the AEA's statutory terms, and whether they had been satisfied. The "political judgment[]" that *Ludecke* declined to revisit, *see* Mot. 3 (quoting *Ludecke*, 335 U.S. at 170), was the question of when a *declared* war would be considered "over" for the purposes of the statute. The petitioner there asserted that World War II had ended—even though Congress had formally declared war and neither Congress nor the President had declared the war over. *Ludecke*, 335 U.S. at 170 & n.15. The Court declined to unilaterally hold that the war had ended, emphasizing that Congress's declaration of war remained in effect. *Id.* at 168. As *Ludecke* itself made clear, that narrow holding in no way precludes judicial review of the claims here: namely, that the President is exceeding the authority granted by, and violating the limits set by, Congress. *See also U.S. ex rel. Jaegeler v. Carusi*, 342 U.S. 347, 348 (1952) ("The statutory power of the Attorney General to remove petitioner as an enemy alien ended when Congress terminated the war."); *U.S. ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 653 (2d Cir. 1947) (stating that executive orders exceeded the AEA's authority by failing to provide individual with the opportunity to voluntarily depart the United States).

Rather than fully grapple with *Ludecke*, Defendants point to *Citizens Protective League v.*

Clark, 155 F.2d 290, 294 (D.C. Cir. 1946). *See* Mot. 3, 7–8. There, the D.C. Circuit merely observed that "[u]nreviewable power in the President to restrain, and to provide for the removal of, alien enemies *in time of war* is the essence of the Act." *Citizens Protective League*, 155 F.2d at 294 (emphasis added). In other words, where the AEA's statutory prerequisites have been satisfied, the President has "the power to remove alien enemies." *Id.* If anything, this statement only underscores that the AEA's activation is limited to times of war and imminent war. *See infra.* And the court's dicta that the President has power to remove alien enemies "without resort or recourse to the courts," Mot. 8 (quoting *Citizens Protective League*, 155 F.2d at 294), is overread by the government, given that court's own acknowledgment that individuals may challenge their classification as alien enemies, and its merits holding that "[t]he constitutional question raised by appellants was not substantial." *Citizens Protective League*, 155 F.2d at 294. In any event, to the extent *Citizens Protective League* might be read to suggest any broader justiciability rule, *Ludecke*'s subsequent holding that courts may review "questions of interpretation and constitutionality"—including the question of whether a "declared war" exists—controls. *Ludecke*, 335 U.S. at 163, 171.

B. The Political Question Doctrine Does Not Apply.

In light of *Ludecke*, there is no question that Plaintiffs' claims are justiciable, and no basis for Defendants' resort to the "political question" doctrine. But even setting *Ludecke* aside, Defendants' political question arguments are baseless. Mot. 11-13. The political question doctrine is a "narrow exception" to courts' presumptive exercise of jurisdiction. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012). It does not preclude this Court from deciding Plaintiffs' claims about the construction and interpretation of a federal statute, the applicability of the nation's immigration laws, or the limits Congress has placed on the President's authority—all

questions squarely within the judicial function in our system of separated powers.

Indeed, as then-Judge Kavanaugh observed, "[t]he Supreme Court has never applied the political question doctrine in cases involving statutory claims" that "the Executive Branch violated congressionally enacted statutes that purportedly constrain the Executive." *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 855 (D.C. Cir. 2010) (en banc) (Kavanaugh, J., concurring).

These are precisely the kinds of legal questions that courts can and must decide. The political question doctrine "is primarily a function of the separation of powers," *Baker v. Carr*, 369 U.S. 186, 210 (1962), and so the judiciary *must* act when the questions at issue fall within its own competence. *See, e.g.*, *U.S. Dep't of Com. v. Montana*, 503 U.S. 442, 458 (1992) ("As our previous rejection of the political question doctrine in this context should make clear, the interpretation of the apportionment provisions of the Constitution is well within the competence of the Judiciary."); *Al-Tamimi v. Adelson*, 916 F.3d 1, 11 (D.C. Cir. 2019) ("Policy choices are to be made by the political branches and purely legal issues are to be decided by the courts."); *Baker*, 369 U.S. at 216 (courts "will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power"); *see generally Loper Bright Enters. v. Raimondo*, 403 U.S. 369, 385 (2024) (emphasizing that "the final 'interpretation of the laws' [is] 'the proper and peculiar province of the courts'") (quoting Federalist No. 78 (A. Hamilton)).

Nevertheless, Defendants argue that what Congress meant by "invasion" or "predatory incursion" is a nonjusticiable political question. Mot. 12–13. Defendants are wrong.[7]

To start, the question of whether the AEA's "invasion" or "predatory incursion" prongs

[7] Notably, the government does not argue—and has waived or forfeited any argument—that the statutory interpretation of "foreign nation or government" is a political question. *See* Mot. 11–13; *see also Keepseagle v. Perdue*, 856 F.3d 1039, 1053 (D.C. Cir. 2017) (discussing waiver and forfeiture).

have been satisfied is not "textually committed" to the executive branch by the Constitution. Mot. 12 (quoting *Baker*, 369 U.S. at 217). Rather, the statutory question of whether the AEA's prerequisites have been satisfied is quintessentially one for the courts. As part of this analysis, the Court must consider whether the issues require the Court to "supplant" policy decisions reserved to the executive branch. *Zivotofsky*, 566 U.S. at 195 (question of whether statute validly allowed individual to obtain the word "Israel" on his passport was distinct from the nonjusticiable question of U.S. policy regarding Israel's sovereignty over Jerusalem).

The fact that the President has certain constitutional powers over foreign affairs, for example, Mot. 12, is not enough to establish a political question. In *Japan Whaling Association v. American Cetacean Society*, the Supreme Court rejected the idea that a "purely legal question of statutory interpretation" should be held nonjusticiable merely because it "involve[d] foreign relations," explaining that "interpreting congressional legislation is a recurring and accepted task for the federal courts" and the case "call[ed] for applying no more than the traditional rules of statutory construction, and then applying this analysis to the particular set of facts presented below." 478 U.S. 221, 230 (1986); *see also INS v. Chadha*, 462 U.S. 919, 940–41 (1983) (rejecting argument that Congress's plenary power over immigration renders all immigration-related arguments political questions); *County of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 249 (1985) (similar for Congress's power over Indian affairs). As the D.C. Circuit has held, although "[t]he Executive has broad discretion over the admission and exclusion of aliens, [] that discretion is not boundless. It extends only as far as the statutory authority conferred by Congress and may not transgress constitutional limitations. It is the duty of the courts, in cases properly before them, to say where those statutory and constitutional boundaries lie." *Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986), *aff'd*, 484 U.S. 1 (1987). Judicial review of Plaintiffs'

challenge *preserves* the separation of powers by ensuring that the President does not exceed the specific authority Congress delegated in the AEA. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637–38 (1952) (Jackson, J., concurring).

Defendants are also wrong to argue that there are no "manageable standards" to review Plaintiffs' claims. Mot. 13. The questions of whether migration and alleged criminal activity are military activities that constitute an "invasion" or "predatory incursion" within the meaning of the AEA are statutory questions, plainly susceptible to judicial determination. They require the Court to engage in statutory analysis, based on the text and history of the AEA and canons of construction. This type of statutory interpretation is a classic judicial exercise. For example, in *Zivotofsky*, the Court held that where the parties' arguments "sound in familiar principles of constitutional interpretation," including reliance on "the textual, structural, and historical evidence"—the exact kind of interpretive tools required to resolve the AEA's metes and bounds—that is "enough to establish that this case does not 'turn on standards that defy judicial application.'" 566 U.S. at 201; *see also Kaplan v. Cent. Bank of the Islamic Republic of Iran*, 896 F.3d 501, 514 (D.C. Cir. 2018) ("[A] court must determine whether the circumstances involve an act of war within the meaning of the statutory exception. That interpretive exercise, unlike with a non-justiciable political question, 'is what courts do.'"); *Al-Tamimi*, 916 F.3d at 12 n.6 (D.C. Cir. 2019) ("statutory interpretation is generally committed to the judicial branch").

Defendants cite out-of-circuit precedent addressing the Constitution's Invasion Clause. Mot. 11, 13 (citing *California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997)). As an initial matter, that court's broad-brush approach to the political question doctrine cannot be squared with the subsequent guidance from the Supreme Court on the narrow application of the doctrine. In any event, that case involved the interpretation of a constitutional provision, not a statutory provision

delegating power to the executive branch, as in this case. *See Ludecke*, 335 U.S. at 163.

The political question doctrine serves to reinforce the separation of powers. It is particularly critical for the judiciary to enforce the separation of powers when inter-branch disputes arise—where, as here, the executive violates or exceeds a statute. *See El-Shifa Pharm. Indus. Co.*, 607 F.3d at 855 (Kavanaugh, J., concurring); *Al-Tamimi*, 916 F.3d at 12 n.6 ("a statutory claim is less likely to present a political question").

As the Supreme Court has explained, "[t]he Judicial Branch appropriately exercises" review "where the question is whether Congress or the Executive is 'aggrandizing its power at the expense of another branch.'" *Zivotofsky*, 566 U.S. at 197; *cf. Youngstown*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). That is precisely what this case is about.

C. Defendants' Action Is Subject to Judicial Review Under the APA and in Equity.

Defendants' remaining jurisdictional arguments are unavailing. Even assuming that President Trump himself cannot be enjoined, Mot. 7, there is no question that the Court can enjoin the remaining Defendants and their implementation of the Proclamation, *see, e.g.*, *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996). More generally, there is no question that this Court may review the lawfulness of presidential action like the Proclamation and its implementation. *See, e.g.*, *Trump v. Hawaii*, 585 U.S. 667, 675–76 (2018) (reviewing President's authority under the INA to issue proclamation); *Dames & Moore v. Regan*, 453 U.S. 654 (1981) (reviewing President Carter's executive order ending the Iranian hostage crisis); *Youngstown*, 343 U.S. 579 (reviewing constitutionality of President Truman's executive orders); *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935) (reviewing validity of an executive order issued by President Franklin Roosevelt under the National Industrial Recovery Act in action against officials of the Department of the Interior); *see also Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327

(2015) ("The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England.").[8]

Defendants' argument that APA review does not extend to agency action carrying out the directives of the President, Mot. 10, is flatly incorrect. *See, e.g.*, *Reich*, 74 F.3d at 1327 ("that the Secretary's regulations are based on the President's Executive Order hardly seems to insulate them from judicial review under the APA, even if the validity of the Order were thereby drawn into question"). Defendants' only support for this proposition is a single district court case, *Tulare County v. Bush*, 185 F. Supp. 2d 18, 28–29 (D.D.C. 2001), that was wrongly decided with respect to the scope of APA review and affirmed on entirely separate grounds, *see* 306 F.3d 1138, 1143 (D.C. Cir. 2002) (implying that the plaintiffs' claims could have proceeded under the APA if pled with greater specificity); *cf. State v. Su*, 121 F.4th 1, 15–16 (9th Cir. 2024) ("*Tulare* . . . misapprehended the APA."). Regardless, Defendants' APA argument would not defeat jurisdiction because Plaintiffs' claims are also based in equity. *See* Compl.[9]

D. Plaintiffs' Claims Need Not Be Brought in Habeas.

Defendants concede that courts have jurisdiction to review whether each person subject to the order "has been properly included in the category of alien enemies." Mot. 9 n.1. That jurisdiction is unquestionable even in the case of a declared war against a foreign nation (where

[8] Moreover, President Trump remains a proper defendant because, at a minimum, Plaintiffs may obtain declaratory relief against him. *See, e.g.*, *Nat'l Treasury Emps. Union v. Nixon*, 492 F.2d 587, 616 (D.C. Cir. 1974) (concluding that court had jurisdiction to issue writ of mandamus against the President but "opt[ing] instead" to issue declaration).

[9] Defendants concede that the All Writs Act "permits a court to protect [its] jurisdiction," Mot. 11; *see also United States v. N.Y. Tel. Co.*, 434 U.S. 159, 173 (1977) (court can avail itself of auxiliary writs "when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it"), and it can do so here.

nationality is easily proved), and it is even more so here—where alleged criminal gang associations are a highly contestable predicate for invocation of the AEA. *Ludecke*, 335 U.S. at 171. Instead, Defendants argue that the District of Columbia is an improper venue to raise that question because it "sound[s] in habeas." Mot. 3. But there is no bar to Plaintiffs bringing claims outside habeas for the harms they allege.

Habeas is required where a claim (1) "goes directly to the constitutionality of [the] physical confinement itself" and (2) "seeks either immediate release from that confinement or the shortening of its duration." *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). The government claims that Plaintiffs are "challenging the legality of detention." Mot. 8. That is patently false. Neither TRO contemplates—much less requires—release of any individual. *See* Minute Order (Mar. 15, 2025); Minute Order (Mar. 15, 2025) (covering "noncitizens in U.S. custody"). Indeed, Plaintiffs do not seek release from custody. Mar. 15, 2025 Hearing, Tr. 19 ("[Plaintiffs] are not trying to get out of detention in this lawsuit . . . This lawsuit will not allow them to be released."). Nor are they challenging the validity of their confinement or seeking to shorten its duration. Rather, they challenge their removal without ordinary immigration processes, which is properly considered outside of habeas. *See* Br. for the United States, *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), 2019 WL 6727092, at *33 ("a challenge to an alien's deportation remains outside the 'historical core' of habeas"); *Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146, 159 (D.D.C. 2021) (considering challenge to use of Title 42 to bypass ordinary immigration procedures by class primarily detained in Texas), *aff'd in part, rev'd in part and remanded*, 27 F.4th 718 (D.C. Cir. 2022).

Defendants nonetheless assert that Plaintiffs' claims must be brought in habeas. Mot. 8.

But no court has required that challenges to the AEA be brought in habeas.[10] In fact, the only D.C. Circuit case reviewing threats of removal under the AEA did not involve claims brought in habeas. *See Citizens Protective League v. Clark*, 155 F.2d 290, 291 (D.C. Cir. 1946) (addressing three separate "civil actions" on behalf of 159 German nationals); *see also Citizens Protective League v. Byrnes*, 64 F. Supp. 233, 233 (D.D.C. 1946). The court decided those claims on the merits—not on jurisdictional grounds. *See* Mot. at 8 (conceding that *Clark* involved non-habeas cases and that the court dismissed for failure to state a claim). And, of course, no examples of challenges to AEA removals under the INA or the APA exist because those statutes were not yet in place when any of the prior AEA proclamations or regulations were last issued during World War II.

Indeed, courts within this Circuit regularly review constitutional, statutory, and APA challenges brought by people incarcerated or detained outside of Washington D.C. *See, e.g.*, *J.D. v. Azar*, 925 F.3d 1291, 1300 (D.C. Cir. 2019) (affirming in part injunction against the government's policy on behalf of a class of unaccompanied noncitizen minors in custody nationwide); *Huisha-Huisha*, 560 F. Supp. 3d at 159; *Bailey v. Fulwood*, 793 F.3d 127, 135–36 (D.C. Cir. 2015) (evaluating merits of ex post facto claim brought by prisoner incarcerated outside of D.C.); *see also Damus v. Nielsen*, 313 F. Supp. 3d 317, 323 (D.D.C. 2018) (granting injunction to class of detained plaintiffs challenging parole practices at five ICE field offices across the country); *Ramirez v. U.S. Immigr. & Customs Enf't*, 471 F. Supp. 3d 88, 94 (D.D.C. 2020), *judgment entered*, 568 F. Supp. 3d 10 (D.D.C. 2021) (considering APA challenge by class of detained noncitizens located across the country); *P.J.E.S. ex rel. Escobar Francisco v. Wolf*, 502

[10] While *Ludecke* happened to involve a challenge brought in habeas, nothing in the decision requires AEA challenges to lie in habeas. Moreover, that case preceded Supreme Court cases that distinguish between core and non-core habeas petitions, and it did not address venue or the immediate custodian rule.

F. Supp. 3d 492, 531 (D.D.C. 2020) (certifying class of all unaccompanied noncitizen children who are or will be detained in US government custody in the country and who would be subject to Title 42 expulsions); *S. Poverty L. Ctr. v. U.S. Dep't of Homeland Sec.*, No. 18-cv-760, 2019 WL 2077120, at *3 (D.D.C. May 10, 2019) (declining to transfer constitutional and APA challenges by immigration detainees in Georgia and Louisiana from D.C.).

Moreover, this rule applies even when the claim *could* also have been brought in habeas. *See, e.g.*, *Aracely R. v. Nielsen*, 319 F. Supp. 3d 110, 126–27 (D.D.C. 2018) ("Although . . . many of the relevant cases challenging the government's treatment of asylum seekers lie in habeas, those cases do not stand for the proposition that they *could only* have been brought as habeas petitions."); *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015) ("Insofar as the Government alternatively argues that Plaintiffs are required to proceed in habeas rather than under the APA, they have not provided a compelling reason why this is so. APA and habeas review may coexist.").[11] *See, e.g.*, *Davis v. U.S. Sent'g Comm'n*, 716 F.3d 660, 666 (D.C. Cir. 2013) (person in federal custody "need bring his claim in habeas only if success on the merits will 'necessarily imply the invalidity of confinement or shorten its duration'") (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005). Defendants' other cases are inapposite—all involved detained individuals who sought release or to shorten their sentence—in other words, core habeas relief. *See Kaminer v. Clark*, 177 F.2d 51, 52 (D.C. Cir. 1949) (plaintiff challenged his detention without a hearing and sought "release on bond"); *Clark v. Memelo*, 174 F.2d 978, 980 (D.C. Cir. 1949) (challenging

[11] To the extent *LoBue v. Christopher*, 82 F.3d 1081 (D.C. Cir. 1996), suggests otherwise, the intervening voluminous precedent from both the D.C. Circuit and the Supreme Court clearly control. The court in *LoBue* also noted that Plaintiffs already had pending habeas petitions in other districts. 82 F.3d at 1082. In that way, the case looks more like *Vetcher v. Sessions*, where Plaintiff was challenging his length of confinement—a core aspect of habeas—and "already had a habeas suit" in another jurisdiction. 316 F. Supp. 3d 70, 78 (D.D.C. 2018).

length of criminal sentence); *Monk v. Sec'y of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("this determination . . . might result in Monk's release from prison and, therefore, must be made in an action for habeas corpus"); *Fletcher v. Reilly*, 433 F.3d 867, 879 (D.C. Cir. 2006) (challenging retroactive application of regulation that "created a significant risk that [petitioner] will be subjected to a lengthier incarceration").

And even assuming habeas were the required vehicle—and it is not—venue in D.C. is still proper. When a petition does not challenge the detention itself as unlawful, and seeks relief other than simple release, the immediate custodian rule does not apply. *Wilkinson v. Dotson*, 544 U.S. 74, 92 (2005). Instead, "because 'the writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody,'" a district court acts 'within [its] respective jurisdiction' within the meaning of § 2241 as long as 'the custodian can be reached by service of process.'" *Rasul v. Bush*, 542 U.S. 466, 467 (2004) (quoting *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 494–95 (2004)). The entities responsible for this restraint reside in their official capacity in the District of D.C. In contrast, all of the cases cited by the government in support of application of the immediate custodian rule involved core habeas cases seeking release. *See* Mot. 10.

Not only are Defendants' habeas arguments wrong, but the alternative review and relief they purport to offer is illusory. Mot. 8; Def. Appeal Reply 14 (filed Mar. 19, 2025) (claiming that "individuals identified as alien enemies under the President's Proclamation may challenge that status in a habeas petition"). As the events of March 15 show, Defendants are not providing the individuals that it alleges are subject to the Proclamation with any meaningful notice that they have been identified as "enemy aliens" or that they are about to be immediately removed to El Salvador or another unknown country—and so they will have no genuine opportunity to seek relief, habeas

or otherwise, in the absence of the district court's TRO. *See, e.g.*, Compl. ¶¶ 9–13. Through the President's secret signing of the Proclamation, the government's failure to provide notice or an opportunity to voluntarily depart, and its actions to immediately remove class members to a foreign prison, Defendants have sought to thwart the very court review they now claim is available. Should the Court's TRO be terminated prior to further judicial review, Defendants have evidenced every intention of resuming their summary expulsions and removing the Plaintiff class members before they can have any resort to the courts. *See, e.g.*, Def. Appeal Reply 14 (objecting to even a "short delay" in carrying out removals of class members).

II. Plaintiffs Are Likely to Succeed on the Merits.

A. The AEA Does Not Authorize the President to Summarily Remove Plaintiffs from the United States.

The AEA, as noted, has been invoked only three times, all during declared wars. Defendants now seek to invoke this limited wartime authority to execute summary removals wholly untethered to any actual war or to the specific conditions Congress placed on this extraordinary authority. When the government asserts "an unheralded power" in a "long-extant statute," courts "greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014). That skepticism is well warranted here.

i. There is no "invasion" or "predatory incursion" upon the United States.

There is no "invasion" or "predatory incursion" upon the United States within the meaning of the AEA. Defendants' attempt to redefine these terms—by citing modern dictionaries, contemporary usage, and expansive readings of definitions, Mot. 14–15—is entirely disconnected from the AEA's text and historical context. Both the text and history make clear that the AEA's terms refer to military actions by foreign governments that imminently lead to, or constitute, acts of war. *See, e.g.*, Office of Legislative Affairs, Proposed Amendment to AEA, at 2 n.1 (Aug. 27,

1980) ("The Act contemplates use of its provisions by the President in situations where war is imminent."); *Ludecke*, 335 U.S. at 169 n.13 (explaining that "the life of [the AEA] is defined by the existence of a war"). At the time of the AEA's enactment, the operative understanding of "invasion" was a large-scale military action by an army intent on territorial conquest. *See* Webster's Dictionary, Invasion (1828) ("invasion" is "*particularly*, the entrance of a hostile army into a country for purpose of conquest or plunder") (emphasis added); Draft of an Address of the Convention of the Representatives of the State of New York to Their Constituents (Dec. 23, 1776) (describing the goal of British invasion as "the conquest of America");[12] Letter from Timothy Pickering, Sec'y of State, to Alexander Hamilton, Inspector Gen. of the Army (June 9, 1798) (noting that French "invasion" of English could require France to keep troops in Europe "until the conquest was complete");[13] James Madison, The Report of 1800 (Jan. 7, 1800) ("Invasion is an operation of war.").[14]

And the operative understanding of "predatory incursion" referred to smaller-scale military raids aimed to destroy military structures or supplies, or to otherwise sabotage the enemy, often as a precursor to invasion and war. *See* Webster's Dictionary, *Predatory* (1828) ("predatory" underscores that the purpose of a military party's "incursion" was "plundering" or "pillaging"); *id.*, *Incursion* (1828) ("incursion . . . applies to the expeditions of small parties or detachments of an enemy's army, entering a territory for attack, plunder, or destruction of a post or magazine"); Samuel Johnson's Dictionary, Incursion (1773) ("incursion" is "invasion without conquest"); Letter from George Washington, Commd'r in Chief of Army, to Thomas Jefferson, Gov. of Va.

[12] *Available at* https://perma.cc/AX3D-EV53.

[13] *Available at* https://perma.cc/Y3GX-R9PM.

[14] *Available at* https://perma.cc/36LL-TFMZ.

(Feb. 6, 1781) (describing a British raid that destroyed military supplies and infrastructure in Richmond as a "predatory incursion"); Letter from George Washington, Commd'r in Chief of Army, to Nathanael Greene, Commd'r in Chief of Southern Dep't of Army (Jan. 29, 1783) ("predatory incursions" by the British could be managed with limited cavalry troops). "Mass illegal migration" or criminal activities are categorically not an "invasion" or "predatory incursion" threatening war. *See United States v. Texas*, 719 F. Supp. 3d 640, 681 (W.D. Tex. 2024) (rejecting argument that cartel's criminal activity and immigration constitute an "invasion").

Defendants cite three cases as examples of a broad understanding of "predatory incursion." Mot. 14 (citing *Amaya v. Stanolind Oil & Gas Co.*, 62 F. Supp. 181, 189–90 (S.D. Tex. 1945); *Davrod Corp. v. Coates*, 971 F.2d 778, 785 (1st Cir. 1992); *Bas v. Tingy*, 4 U.S. 37 (1800)). None of these cases are applicable. *Amaya* used "predatory incursion" in the context of *military* forces or actions—not a criminal gang like TdA. 62 F. Supp. at 184, 189–90. *Dayrod* mentioned "predatory incursion" in passing, while analyzing the Magnuson Fishery Conservation and Management Act—a statute whose text and known legislative history make no reference to the term. *See* 971 F.2d at 785; 16 U.S.C. § 1801 *et seq.*; 128 Cong. Rec. 31695 (97th Cong. 2d Sess., Dec. 16, 1982). And *Bas* never used the term "predatory incursion" at all. *See* 4 U.S. 37. Moreover, *Amaya* and *Dayrod* both long post-date the AEA's enactment, so none of these cases shed light on the AEA's original meaning of "predatory incursion."

ii. The purported invasion is not by a "foreign nation or government."

Defendants scarcely attempt to defend their actions as consistent with the text of the AEA's second—and equally mandatory—requirement: that any "invasion" or "incursion" be perpetuated by a "nation" or "government." They gesture at the President's "findings" and the political branches' historical use of broader "war powers" against certain nonstate actors. Mot. 16–18. Notably, Defendants do not—and cannot—point to any past invocation of the AEA in

those instances. Rather, they assert that TdA acts as a "*de facto* government" in certain areas "where it operates." *Id.* at 16.

At the time of the AEA's enactment, the terms "nation" and "government" were defined by their possession of territory and legal authority. *See* Samuel Johnson's Dictionary, *Nation* (1773) ("A people distinguished from another people; generally by their language, original, or government."); Samuel Johnson's Dictionary, *Government* (1773) ("An established state of legal authority."). As a criminal gang, however, TdA possesses neither a defined territory nor a common government.

Moreover, when a "nation or government" is designated under the AEA, the statute unlocks power over that nation or government's "natives, citizens, denizens, or subjects." 50 U.S.C. § 21. *Countries* have "natives, citizens, denizens, or subjects." Criminal organizations, in the government's own view, have "members." Proclamation § 1 ("members of TdA"). The Proclamation singles out Venezuelan nationals—but does not claim that Venezuela is invading the United States. And it designates TdA "members" as subject to AEA enforcement—but "members" are not "natives, citizens, denizens, or subjects." Similarly, the AEA's presumes that a designated nation possesses treaty-making powers. *See* 50 U.S.C. § 22 ("stipulated by any treaty . . . between the United States and the hostile nation or government"). Nations—not criminal organizations—are the entities that enter into treaties. *See, e.g.*, *Medellin v. Texas*, 552 U.S. 491, 505, 508 (2008) (treaty is "a compact between independent nations" and "agreement among sovereign powers") (internal quotation marks omitted); *Holmes v. Jennison*, 39 U.S. 540, 570-72 (1840) (similar).

The glaring mismatch underscores that Defendants are attempting not only to use the AEA in an unprecedented way, but in a way that Congress never permitted—as a mechanism to address,

in the government's own words, a *non*-state actor. While Defendants attempt to paper over these problems by claiming that TdA and Venezuela are "indistinguishable," Mot. 16, that is plainly wrong, as Defendants themselves distinguish between the two—*Venezuela* has citizens, but TdA (not Venezuela) is designated under the proclamation. Similarly, Defendants' half-hearted effort to suggest TdA is now a country because it exerts control in certain regions of Venezuela falls flat. *Id.* at 16. Again, even Defendants do not suggest that people in those regions are "natives, citizens, denizens, or subjects" *of TdA*. No amount of wordplay can avoid the obvious fact that *Venezuela* is the relevant country here—and TdA is a non-state criminal organization.

In effect, the Government asks this Court to read the nation/government requirement out of the statute entirely, and accept that the AEA reaches the fullest extent of the political branches' more expansive "war powers." Mot. 15 (analogizing invocation to political branches' use of "war powers against formally nonstate actors"). But the Alien Enemies Act does not encompass the full scope of the political branches' "war powers." It operates as a specific delegation of authority from Congress to the President, a delegation Congress specifically limited to instances where action is taken by "foreign nation[s]" or "governments." *Cf. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

If Congress had intended to vest the President with broader authority, it could have said so. After all—as explained in a source that the government itself cites—Congress has long been aware of the distinction between executive branch authority to use "military force against non-traditional actors" and "more traditional conflicts" waged against formally-recognized states—as a source the Government itself cites explains. Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2066 (2005); *see also* Mot. 16 (citing same). Congress knows how to delegate authority over such actors to the Executive Branch

when it wants to. *See* 22 U.S.C. § 6442a ("review and identify any non-state actors operating in any such reviewed country"); 18 U.S.C. § 2339A (criminalizing providing material support to non-state actors). But Congress did not make this choice with the AEA. It intentionally limited its scope to actions taken by "foreign nation[s]" and "government[s]." 50 U.S.C. § 21. And it has never amended the statute to broaden that scope.

While the United States has, at times, asserted war-based authority to use force against non-state actors, Mot. 16, these actions were justified under separate legal frameworks, not under the AEA. And the AEA's historical record confirms that it was intended to address conflicts with foreign sovereigns, not a criminal gang like TdA. *See* 5 Annals of Cong. 1453 (Apr. 1798) ("[W]e may very shortly be involved in war . . ."); John Lord O'Brian, Special Ass't to the Att'y Gen. for War Work, N.Y. State Bar Ass'n Annual Meeting: Civil Liberty in War Time, at 8 (Jan. 17, 1919) ("The [AEA] was passed by Congress . . . at a time when it was supposed that war with France was imminent."); Cong. Rsch. Serv., Declarations of War and Authorizations for the Use of Military Force 1 (2014) (Congress has never issued a declaration of war against a nonstate actor). If Defendants were allowed to designate any group with ties to officials as a foreign government, and courts were powerless to review that designation, any group could be deemed a government, leading to an untenable and overbroad application of the AEA.

Finally, Defendants' broad argument that the Proclamation is supported by the President's Article II authority, and that his power is at its "maximum" under *Youngstown*, Mot. 17, is plainly wrong because the President is acting in a manner that is not authorized the by the AEA, and his Proclamation also violates Congress's other delegations of statutory authority concerning immigration. *See infra*. Accordingly, under Justice Jackson's *Youngstown* framework, the President's power is at its "lowest ebb": "Courts can sustain exclusive Presidential control in such

a case only by disabling the Congress from acting upon the subject." 343 U.S. at 637–38. There is no basis for doing so here. Under Article I, Congress holds plenary power over immigration, *INS v. Chadha*, 462 U.S. 919, 940 (1983), and has a broad, distinct set of war powers, *Hamdan v. Rumsfeld*, 548 U.S. 557, 591 (2006). Through the INA and a variety of statutory safeguards, Congress comprehensively regulated the removal of immigrants. *See infra*. And through the AEA, Congress granted a specific set of war powers to the President; he is not at liberty to exceed those statutory powers or to exercise them outside of the context of war or imminent war. There is simply no ground for disabling Congress's specific, bounded delegations of authority in the AEA and the INA, and ultimately Congress's constitutional power to legislate with respect to immigration, including in times of war.

Moreover, even when the executive asserts war powers, the Supreme Court has repeatedly refused to grant the President a blank check as Commander-in-Chief. *See, e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 732 (2008) (rejecting executive's argument that noncitizens designated as "enemy combatants" outside the United States have no habeas privilege); *Hamdan*, 548 U.S. at 593 (interpreting statutes constraining the President's war powers; rejecting executive's arguments about the scope of the Uniform Code of Military Justice); *Hamdi v. Rumsfeld*, 542 U.S. 507, 530, 535–36 (2004) (plurality op.) (rejecting executive's arguments about the process due to alleged enemy combatants);[15] *Ex Parte Milligan*, 71 U.S. 2, 125 (1866) ("[The Founders] knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war . . . and that unlimited power, wherever lodged at such a time, was especially

[15] *See also Hamdi*, 542 U.S. at 530 ("[A]s critical as the Government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.").

hazardous to freemen.").

iii. The Proclamation violates the INA.

Defendants' argument that the Proclamation does not conflict with the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., cannot be squared with the statute. The INA provides that, "[u]nless otherwise specified" in the INA, a removal proceeding before an immigration judge under 8 U.S.C. § 1229a is "the sole and exclusive procedure" by which the government may determine whether to remove an individual. 8 U.S.C. § 1229a(a)(3). The INA directs specific procedures and processes by which removals must take place. *Id.* § 1229a(e)(2). The Proclamation here entirely bypasses the INA's comprehensive process.

Defendants' reliance on *Huisha-Huisha* is misguided. While the government *argued* in that case that Title 42 public health authority and the INA provided "distinct mechanisms for effectuating the removal" of noncitizens, Mot. 18, the D.C. Circuit did not accept that view. Rather, the court noted that 8 U.S.C. § 1227(a)(1)(B)—part of the INA—provided the authority to expel. *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 729 (D.C. Cir. 2022). Far from supporting Defendants' claim, *Huisha-Huisha* bolsters Plaintiffs' argument that the AEA must be understood in the context of Congress's choice to channel *all* removal into the INA's specific procedures.

Immigration laws have changed substantially since the last invocation of the AEA more than eighty years ago. The enactment of the INA in 1952 "br[ought] together for the first time in our history all the laws regulating immigration and naturalization, into one extensive compilation." *In re Barnes*, 219 F.2d 137, 145 (2d Cir. 1955), *judgment rev'd by United States v. Minker*, 350 U.S. 179 (1956). This "established a comprehensive federal statutory scheme for regulations of immigration and naturalization." *Chamber of Comm. v. Whiting*, 563 U.S. 582 (2011) (internal quotation marks omitted).

Congress was aware that alien enemies were subject to removal in times of war or invasion

when it enacted the INA. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (courts presume Congress drafts statutes with full knowledge of the existing law). Indeed, the AEA had been invoked just a few years earlier; many Members of the Congress that enacted the INA had been Members at that time. With this awareness, Congress designated the INA to have the "sole and exclusive" procedures for deportation or removal. *See United States v. Tinoso*, 327 F.3d 864, 867 (9th Cir. 2003) ("Deportation and removal must be achieved through the procedures provided in the INA."). And Congress did not carve out AEA removals as an exception from standard immigration procedures. Rather, Congress provided that the INA sets forth "the sole and exclusive" procedures for determining removal. 8 U.S.C. § 1229a(a)(3).

To the degree there is conflict between the INA and the AEA, the INA must control. Statutory construction dictates that a later enacted statute generally supersedes an earlier one. *See Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662-63 (2007). While Defendants argue that the AEA is more "specific," Mot. 19, the reality is the AEA says *nothing* about what procedures are to be used in determining whether someone who is allegedly removable should in fact be removed.

By contrast, the INA provides a comprehensive and carefully crafted scheme that Congress set forth for processing noncitizens prior to removal. As one example, the INA describes specific countries to which individuals can and cannot be removed. 8 U.S.C. § 1231. The INA's "sole and exclusive procedure" is thus not only later enacted but also more specific.

Defendants attempt to circumvent the statutory scheme. But where an agency's interpretation of one statute "tramples the work done" by another statute—as Defendants' sweeping view of the AEA tramples the immigration laws—the agency "bears the heavy burden of showing a clearly expressed congressional intention that such a result should follow." *Epic Sys.*

v. Lewis, 583 U.S. 497, 510, 515-16 (2018). Defendants can show no such "clear and manifest" intention. *Id.* at 510 (internal quotation marks omitted).

None of this is to say the AEA is superfluous after the enactment of the INA. For example, lawful permanent residents can only be removed in peacetime under certain conditions. 8 U.S.C. § 1227. But in wartime, the president can deem all noncitizen nationals of a foreign country removable. The AEA thus does important work—authorizing detention and potential removal of noncitizens otherwise secure against those actions. But when it comes to what procedural rights are available, and what defenses against deportation may be granted, the AEA is simply silent, while the INA provides an explicitly exclusive answer.

iv. The Proclamation violates the specific protections that Congress established for noncitizens seeking humanitarian protections.

The Proclamation also unlawfully overrides statutory protections for noncitizens seeking relief from persecution or torture, subjecting them to removal without considering their claims. Congress intentionally enacted statutory provisions for asylum, withholding, and the Convention Against Torture (CAT) to ensure that noncitizens can seek protection from persecution and torture. *See* 8 U.S.C. §§ 1158 (asylum), 1231(b)(3) (withholding of removal); 1231 note (CAT). The Proclamation cannot supersede these more specific, subsequently enacted statutes that expressly provide special protections for individuals seeking humanitarian relief.

Specifically, the asylum statute unequivocally provides that "[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum." 8 U.S.C. § 1158(a)(1). Similarly, the withholding of removal statute explicitly prohibits the removal of a noncitizen to a country where their "life or freedom" would be threatened based on a protected ground. *Id.* § 1231(b)(3)(A). Congress has narrowly defined circumstances under which individuals may be barred from asylum and withholding of

removal, none of which are applicable here. *See id.* §§ 1158(b)(2)(A), 1231(b)(3)(B). Additionally, CAT categorically prohibits returning a noncitizen to any country where it is more likely than not the person would face torture. *See Huisha-Huisha*, 27 F.4th at 725.

Defendants contend that the INA does not restrain actions taken under the AEA, suggesting that they may designate noncitizens as "alien enemies" who would then be barred from seeking any relief against persecution or torture. Mot. 19-20 (citing *Citizens Protective League*, 155 F.2d at 294). This is wrong. Congress specifically provided humanitarian protections that remain available regardless of a noncitizen's status or circumstances. While asylum, withholding, and CAT protections each are subject to statutory exceptions, being designated "alien enemies" are not among those exceptions. *See, e.g.*, 8 U.S.C. § 1158(b)(2)(A)(ii)-(iii) (noncitizens barred from asylum if convicted of particularly serious crime or if "serious reasons to believe" they "committed a serious nonpolitical crime" outside the U.S.); *id.* § 1231(b)(3)(B)(ii)-(iii) (same for withholding); *see also* 8 U.S.C. §§ 1226(c), 1231(a)(6).

Nor does *Citizens Protective League* say otherwise; indeed, that decision long predates these critical statutory enactments and thus did not consider the extensive statutory rights and procedural safeguards now available. *See* Refugee Act of 1980, Pub. L. 96-212, 94 Stat. 102 (asylum and withholding); Convention Against Torture art. 3, Dec. 10, 1984, S. Treaty Doc. No. 100-20, at 20 (1988); Pub. L. No. 105-277, Div. G. Title XXI, § 2242(a), 112 Stat. 2681 (1998) (implementing CAT). Thus, the AEA's general authority to remove noncitizens designated as alien enemies must yield to the explicit humanitarian protections provided by Congress in later and more targeted enactments. *See NLRB v. SW Gen., Inc.*, 580 U.S. 288, 305 (2017) ("[I]t is a commonplace of statutory construction that the specific governs the general.") (internal quotation marks omitted).

"In understanding this statutory text, 'a page of history is worth a volume of logic.'" *Jones v. Hendrix*, 599 U.S. 465, 472 (2023) (quoting *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921)). These humanitarian protections were enacted in the aftermath of World War II, when the United States joined other countries in committing to never again turn our backs on people fleeing persecution and torture. Sadako Ogata, U.N. High Comm'r for Refugees, Address at the Holocaust Memorial Museum, Washington, DC (Apr. 30, 1997).[16] Yet under Defendants' reading of the AEA, a President could simply sweep away these protections.

Finally, the Defendants' reliance on *Huisha-Huisha*, 27 F.4th 718, is again misplaced. Mot. 20. The D.C. Circuit in fact *rejected* the argument offered by the government here, that withholding and CAT protection had no application to Title 42 expulsions. *See Huisha-Huisha*, 27 F.4th at 731-33. And it affirmed the importance of humanitarian protections codified in the INA, emphasizing the prohibition against removing individuals to places where they face persecution or torture. *Id*. at 722. The government's position here is even more extreme: In *Huisha-Huisha* the government at least claimed to have a procedure for torture protection, albeit not for persecution. Here, the government argues that it may remove individuals under the Proclamation without even a torture screening. *See* Reply Br., *Huisha-Huisha*, 27 F.4th 718 (D.C. Cir. 2022), 2021 WL 5579941, at *19. And it does so even though *Congress* has said that every noncitizen is entitled to a torture screening with no exceptions.

In sum, the AEA cannot override the INA provisions that were deliberately enacted to provide vulnerable individuals with meaningful access to protections from prosecution and torture. The individuals sent to a horrific Salvadorean prison are now as vulnerable as it gets.

[16] https://perma.cc/X5YF-K6EU.

v. The absence of all due process violates the AEA and Due Process.

Due process and the AEA permit removal only where noncitizens alleged to be alien enemies have first been given the opportunity to contest their removals. *See, e.g.*, *Ralls Corp. v. Comm. on Foreign Inv. in U.S.*, 758 F.3d 296, 318 (D.C. Cir. 2014) ("Both the Supreme Court and this Court have recognized that the right to know the factual basis for [government] action and the opportunity to rebut the evidence supporting that action are essential components of due process."). The AEA also requires that individuals be allowed to depart voluntarily, and removed only if they have explicitly "refuse[d] or neglect[ed] to depart" from the United States voluntarily. 50 U.S.C. § 21.

Courts interpreting the AEA even during World War II recognized that noncitizens designated as "alien enemies" retained the right to voluntary departure. *See United States ex rel. Dorfler v. Watkins*, 171 F.2d at 432 ("An alien *must* be afforded the privilege of voluntary departure before the Attorney General can lawfully remove him against his will.") (emphasis added); *U.S. ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 653 (2d Cir. 1947) ("His present restraint by the respondent is unlawful in so far as it interferes with his voluntary departure, since the enforced removal, of which his present restraint is a concomitant, is unlawful before he does 'Refuse or neglect' to depart" under Section 21).

The government incorrectly contends that the voluntary departure procedures do not apply here because the designated individuals are "chargeable with actual hostility, or other crime against public safety." Mot. 22 (citing 50 U.S.C. § 22). But that exception cannot be invoked categorically, without individualized assessments—each noncitizen must specifically be "chargeable" with actual hostility or a crime against public safety to lose eligibility for voluntary departure.

B. The Equitable Factors Weigh In Favor of Plaintiffs.

i. Plaintiffs will suffer irreparable harm if the TRO is dissolved.

Plaintiffs face an imminent risk that they will be summarily removed from the United States to El Salvador or to Venezuela without any meaningful opportunity to assert claims for relief. Contrary to Defendants' arguments, Mot. 22-23, Plaintiffs do not claim irreparable harm from the mere fact of removal. Instead, as Plaintiffs described in detail in the TRO motion and above, their removal constitutes grave and immediate irreparable harm because of what awaits them upon deportation. ECF No. 3-2, TRO Mot. 17-21; *see also supra*. Indeed, the video released by Salvadorean authorities (and approved of by Cabinet-level officials in the United States) leaves no doubt about what awaits individuals in El Salvador. Nayib Bukele, X.com, *supra* n.1.

If this Court dissolves the TRO, additional members of the provisional class will be sent to El Salvador, where they will be confined in detention centers to face torture and persecution for an indefinite amount of time. *See* TRO Mot. 17-19; *see generally* Bishop Decl.; Goebertus Decl. Prison conditions in El Salvador are "harsh and life threatening." Bishop Decl. ¶ 21; *see also* Goebertus Decl. ¶ 4. Prison officials engage in widespread physical abuse, including waterboarding, electric shocks, using implements of torture on detainees' fingers, forcing detainees into ice water for hours, and hitting or kicking detainees so severely that it causes broken bones or ruptured organs. Bishop Decl. ¶¶ 21, 33, 37, 39, 41; Goebertus Decl. ¶¶ 8, 10, 17. People in detention in El Salvador also face psychological harm, including solitary confinement in pitch dark cells or being forced to stay in a cell with the body of a fellow prisoner who was recently beaten to death. Goebertus Decl. ¶ 3; Bishop Decl. ¶ 39. In fact, El Salvador creates these horrific conditions intentionally to terrify people. Bishop Decl. ¶ 22. These inhumane conditions clearly amount to irreparable harm. *Huisha-Huisha*, 27 F.4th at 733 (irreparable harm exists where petitioners "expelled to places where they will be persecuted or tortured"); *Al-Joudi v. Bush*, 406

F. Supp. 2d 13, 20 (D.D.C. 2005) (harsh conditions at Guantanamo that forced detainees to go on hunger strikes amounted to irreparable harm). And there is no escaping the irreparable harm any time soon. *See* Nayib Bukele, X.com, *supra* n.1; *see also* Goebertus Decl. ¶ 3 (quoting the Salvadorean government that people held in CECOT "will never leave"); *id.* ("Human Rights Watch is not aware of any detainees who have been released from that prison.").

While "removal alone cannot constitute the requisite irreparable injury," *Nken v. Holder*, 556 U.S. 418, 435 (2009), these are hardly run-of-the-mill removals. Moreover, not only do Plaintiffs face grave harm, they do so without having received any due process. *See Huisha-Huisha*, 560 F. Supp. 3d at 172 (finding irreparable harm where plaintiffs "face the threat of removal prior to receiving any of the protections the immigration laws provide"); *P.J.E.S.*, 502 F. Supp. 3d at 517 (irreparable injury exists where class members were "threatened with deportation prior to receiving any of the protections the immigration laws provide"). Once deported, the harm to Plaintiffs cannot be undone; their deportation "pursuant to an unlawful policy likely cannot be remediated after the fact." *Huisha-Huisha*, 560 F. Supp. 3d at 172; *compare Nken*, 556 U.S. at 435 (noting that deportation is not an irreparable injury where noncitizens can "continue to pursue their petitions for review").

ii. The remaining equitable factors weigh decidedly in favor of continuing the TRO.

In arguing that the balance of harms and equities favor the government, Defendants summarily claim that Plaintiffs are dangerous gang members who are engaged in an invasion or predatory incursion into the United States, without having given Plaintiffs any opportunity to contest those allegations. Mot. 23. Notably, some Plaintiffs' asylum claims assert the real fear of harm upon returning even to Venezuela because they fled the very same violent gangs the Government has wrongfully accused them of belonging to. Pls. Mot. for TRO at 17-19; *see supra*.

Arguing that the President's assertion of unchecked power is somehow self-justifying, Defendants argue that the balance of equities favors the government because the Court's orders "deeply intrude[] into the core concerns of the executive branch." Mot. 23. But it is the government's very abuse of this power, unchecked authority that tips the balance of equities in favor of Plaintiffs.

Importantly, the TRO does not prevent the government from detaining and removing any individuals who have committed deportable conduct under existing law. And while Defendants cite the public interest in "prompt execution of removal orders," Mot. 24, that interest applies to noncitizens "lawfully deemed removable." *Nken*, 556 U.S. at 436 (emphasizing that "there is a public interest in preventing aliens from being *wrongfully removed*, particularly to countries where they are likely to face substantial harm" (emphasis added)). Plaintiffs here have not been "lawfully deemed removeable"; if they had been, then they could be removed in the usual course and the government would have no need to rely on the AEA. *See, e.g.*, *Hawaii v. Trump*, 878 F.3d 662, 700 (9th Cir. 2017) ("public interest is best served by curtailing unlawful executive action") (cleaned up), *rev'd and remanded on other grounds*, 585 U.S. 667 (2018).

The public interest of ensuring the rule of law also favors Plaintiffs. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("[T]here is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.") (citation and internal quotation marks omitted). "The public interest is, of course, best served when government agencies act lawffully," and "the inverse is also true": the public interest is harmed when the government acts unlawfully—and even more so when it does so in secret. *Minney v. U.S. Off. of Pers. Mgmt.*, 130 F. Supp. 3d 225, 236 (D.D.C. 2015). Moreover, "the public has a strong interest in 'preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.'" *Huisha-Huisha*, 27 F.4th at 734

(quoting *Nken*, 556 U.S. at 436). In this case, specifically, the public interest is best served by "curtailing unlawful executive action." *Texas v. United States*, 809 F.3d 134, 187 (5th Cir. 2015), *as revised* (Nov. 25, 2015).

III. The TRO Is Not Overbroad.

Defendants criticize the scope of the temporary restraining order. But this is not a "nationwide injunction." It is simply an injunction that applies to the members of a provisionally certified class. *See Trump v. CASA, Inc.*, No. 24A884 (U.S.), Gov't's App. for Partial Stay of Inj. 38 (Mar 13, 2025) (arguing that class certification and class-wide preliminary relief, "unlike the issuance of nationwide injunctions, complies with Article III and respects limits on courts' equitable authority"). Defendants' citation to *Department of State v. AIDS Vaccine Advocacy Coalition*, No. 24A831 (U.S. 2025), Mot. 24, is inapposite, as that case was not a class action. *See AIDS Vaccine Advoc. Coal. v. U.S. Dep't of State*, No. 25-cv-400, 2025 WL 485324, at *1 (D.D.C. Feb. 13, 2025).

CONCLUSION

Defendants' motion to vacate the temporary restraining orders should be denied.

Dated: March 19, 2025

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: March 19, 2025

Respectfully Submitted,

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Oral Argument Not Yet Scheduled

Nos. 25-5067 & 25-5068

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

J.G.G., *et al.*,
Plaintiffs-Appellees,

v.

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

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
No. 1:25-cv-00766
The Hon. James E. Boasberg

EMERGENCY MOTION FOR A STAY PENDING APPEAL

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INTRODUCTION

A few hours ago, a District Court lacking jurisdiction issued an unprecedented, nationwide temporary restraining order ("TRO") purporting to halt the removal of aliens associated with Tren de Aragua ("TdA"), a designated foreign terrorist organization ("FTO") pursuant to both the President's constitutional authority to protect the nation and statutory authority under the Alien Enemies Act ("AEA"). A stay pending appeal is manifestly warranted, as is an immediate administrative stay.

This Court should halt this massive, unauthorized imposition on the Executive's authority to remove people that Defendants had determined to be members of TdA, a group the President and the Secretary of State have found to be a threat to national security. This Court should halt this unprecedented intrusion upon the Executive's authority to remove dangerous aliens who pose grave threats to the American people.

The district court acted without any jurisdiction—these claims sound in habeas. *See, e.g.*, *Ludecke v. Watkins* 335 U.S. 160 (1948) (considering challenge to action under AEA as habeas claim). Yet the plaintiffs waived their habeas claims after Defendants argued that only the Southern District of Texas, where plaintiffs were held, had jurisdiction over their claims. *See Rumsfeld v. Padilla*, 542 U.S. 425, 435 (2004).

The Presidential actions at issue here are not subject to judicial review, as this Court has squarely held. *Citizens Protective League v. Clark*, 155 F.2d 290, 294 (D.C. Cir. 1946). Accordingly, there was no lawful basis for the district court to enjoin the implementation of that action. And even if reviewable, the President's action is lawful and based upon a long history of using war authorities against organizations connected to foreign states and national security judgments, which are not subject to judicial second guessing.

Further underscoring the impropriety of this TRO, Plaintiffs would not necessarily be irreparably injured by removal, as the Supreme Court has expressly held. *Nken v. Holder*, 556 U.S. 418, 435 (2009).

If this TRO were allowed to stand, district courts would have license to enjoin virtually any urgent national-security action upon bare receipt of a complaint. District courts might next see fit to issue TROs restraining drone strikes, sensitive intelligence operations, or terrorist captures or extraditions. This Court should stay the district court's unprecedented order.

BACKGROUND

I. The Alien Enemies Act

The AEA provides that:

> 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 courts have recognized the legitimacy of the AEA as an exercise of the war power reserved to Congress and the Executive. The Supreme Court has observed that the AEA is "as unlimited" a grant of power "as the legislature could make it." *Ludecke*, 335 U.S. at 164 (quoting *Lockington v. Smith*, 15 F. Cas. 758, 760 (C.C.D. Pa. 1817)); *see also id.* at 165 n.8 (collecting cases). The Court has further explained that the statute encompasses "matters of political judgment for which judges have neither technical competence nor official responsibility." *Id.* at 170 (holding that the President's power under the AEA remained in effect even after actual hostilities in World War II had ceased). And this Court has held that this statute confers "[u]nreviewable power in the President to restrain, and to provide for the removal of, alien enemies." *Citizens Protective League*, 155 F.2d at 294. The courts have therefore limited their review in prior challenges to very narrow questions, there: "the construction and validity of the statute," whether, when relevant, there is a "declared war," and whether the "person restrained is an enemy alien fourteen years of age or older." *Ludecke*, 335 U.S. at 171 & n.17.

II. The President's Proclamation

The President published the *Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua* (the "Proclamation") on March 15, 2025. *See* https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/. The President made findings that members of the transnational criminal organization TdA, in conjunction with a narco-terrorism enterprise backed by the illegitimate regime of Nicolas Maduro in Venezuela, are "conducting irregular warfare and undertaking hostile actions against the United States." Proclamation Preamble. TdA has also "engaged in and continues to engage in mass illegal migration to the United States" for several purposes, including to inflict harm on U.S. citizens and support Maduro's regime in undermining democracy. *Id.* Further, TdA is "closely aligned with" and "has infiltrated" Maduro's regime, growing under Tareck El Aissami's governance of Aragua from 2012 to 2017. *Id.* Aissami is a "fugitive facing charges arising from his violations of United States sanctions triggered by his" designation as a Specially Designated Narcotics Trafficker under 21 U.S.C. § 1901 *et seq. Id.* And Maduro leads the "Cártel de los Soles, which coordinates with and relies on TdA and other organizations to carry out its objective of using illegal narcotics as a weapon to 'flood' the United States." *Id.*

Criminal organizations such as TdA have taken greater control over Venezuelan territory, resulting in the creation of a "hybrid criminal state" that poses "substantial danger" to the United States and is "perpetrating an invasion of and predatory incursion" into the nation. *Id.* (noting also INTERPOL Washington's finding that TdA has infiltrated the flow of immigrants from Venezuela). The TdA is a designated FTO under 8 U.S.C. § 1189. *Id.*

Based on these 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." *Id.* § 1. The President further directed that all such alien enemies "are subject to immediate apprehension, detention, and removal." *Id.* § 3. The Attorney General and the Secretary of Homeland Security have been tasked with executing these directives, in addition to any separate authority to DHS has apprehend and remove such persons. *Id.* §§ 4, 6.

The President has further issued regulations prohibiting the entry, attempted entry, or presence of the alien enemies described in Section 1 of the Proclamation, with any such alien enemies "subject to summary apprehension." *Id.* § 6(a). Apprehended alien enemies are subject to detention until their removal from the

United States, and they may be removed to "any such location as may be directed" by those responsible for executing the regulations. *Id.* § 6(b)–(c).

III. This Suit

On March 15, 2025, five nationals of Venezuela who claim to fear removal under the Proclamation filed this class-action complaint and petition for a writ of habeas corpus along with a motion for TRO. In their complaint, Plaintiffs allege, among other things, that the Defendants' actions are contrary to the AEA and the Immigration and Nationality Act ("INA").

Hours after the complaint was filed, without the actual Proclamation and without hearing from the Government, the district court granted Plaintiffs' TRO motion and ordered that "Defendants shall not remove any of the individual Plaintiffs from the United States for 14 days absent further Order of the Court." Second Minute Order (Mar. 15, 2025). A short time later the court set a hearing on Plaintiffs' motion for class certification for March 15, 2025, at 5:00 p.m. Third Minute Order (Mar. 15, 2025).

The Government appealed the district court's first TRO and filed an emergency motion to stay it. *See J.G.G. v. Trump*, No. 25-5067 (D.C. Cir. filed Mar. 15, 2025).

A few hours after the Government appealed, the district court held a hearing on the motion for class certification during which Plaintiffs dismissed their habeas

claims at the district court's suggestion. Afterward, the court issued an order (1) provisionally certifying a class of individuals determined by the Executive to be members of a designated FTO, defined as "All noncitizens in U.S. custody who are subject to the March 15, 2025, Presidential Proclamation . . . and its implementation," (2) enjoining the Government "from removing members of such class (not otherwise subject to removal) pursuant to the Proclamation for 14 days or until further Order of the Court," and (3) setting a briefing schedule for a Government motion to vacate the TRO. Fourth Minute Order (Mar. 15, 2025). The Government noticed its appeal of this nationwide TRO and asks for an immediate stay.

ARGUMENT

I. The TRO Is an Appealable Order.

This Court has jurisdiction to review the district court's order. Although TROs are ordinarily not appealable, they are when they are "more akin to preliminary injunctive relief." *Garza v. Hargan*, 2017 WL 9854552, at *1 n.1 (D.C. Cir. Oct. 20, 2017), *vacated in part on reh'g en banc*, 874 F.3d 735 (D.C. Cir. 2017), *vacated sub nom. Azar v. Garza*, 584 U.S. 726 (2018); *see Belbacha v. Bush*, 520 F.3d 452, 455

(D.C. Cir. 2008) (treating denial of TRO as "tantamount to denial of a preliminary injunction").[1] That is true here for two reasons.

First, the order would work an extraordinary harm to the President's authority to declare an invasion of the United States and his inherent Article II authority to repel such an invasion and conduct foreign affairs. Courts have consistently held that the Executive's determination of whether there is an "invasion" is a nonjusticiable political question. *See, e.g.*, *California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997). And the Supreme Court has long recognized that courts cannot issue an injunction purporting to supervise the President's performance of his duties. *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867) (Courts have "no jurisdiction . . . to enjoin the President in the performance of his official duties."); *Trump v. United States*, 603 U.S. 593, 607 (2024) (The President "has important foreign relations responsibilities: [including] … recognizing foreign governments, … overseeing international diplomacy and intelligence gathering, and managing matters related to terrorism, … and immigration."). The President's discretion in this context, and the court's lack of authority to hinder the exercise of that discretion, is plain under the AEA: "[t]he authority of the President to promulgate by proclamation or public act 'the manner and degree of the restraint to which they (alien enemies)

[1] Because of the speed with which this case is moving, and because of the importance of the issues presented, it was not practicable to seek a stay pending appeal first in the district court. *See* Fed. R. Appellate Procedure 8(a)(1).

shall be subject, and in what cases,' is, of course, plenary and not reviewable." *Ex parte Gilroy*, 257 F. 110, 112 (S.D.N.Y. 1919). This Court similarly described the statute as conferring "[u]nreviewable power in the President." *Citizens Protective League*, 155 F.2d at 294. This Court also has identified the significance of the harm that a TRO poses to the Executive as a relevant factor in determining the TRO's appealability. *See Adams v. Vance*, 570 F.2d 950, 953 (D.C. Cir. 1978) (permitting appeal of TRO "command[ing] an unprecedented action irreversibly altering the delicate diplomatic balance in the environmental arena").

Second, the injunction risks scuttling delicate international negotiations to remove dangerous alien enemies, and even a short delay in removal can frustrate removal, full stop. *See Zadvydas v. Davis*, 533 U.S. 678, 696 (2001); Exhibit A, Declaration of Michael G. Kozak. Furthermore, the district court has extended the potential harm nationwide—after scheduling an unusual emergency class-certification hearing the same day of filing, the court ordered a nationwide provisional class certification and issued a universal TRO with no briefing by the Government on either issue. *Id.* The district court's actions divest the Executive of its key foreign-affairs and national-security authority oriented towards effectuating removal of alien enemies linked to a designated FTO—efforts that may be forever stymied if halted even temporarily. *See* Exh. A. The Supreme Court has stressed that a district court cannot "shield its orders from appellate review merely by designating

them as temporary restraining orders, rather than as preliminary injunctions." *Sampson v. Murray*, 415 U.S. 61, 86–87 (1974).

And even if the order were unappealable, this Court should exercise its discretion to treat this motion as a petition for writ of mandamus. *Ukiah Adventist Hosp. v. FTC*, 981 F.2d 543, 548 n.6 (D.C. Cir. 1992). The district court's extraordinary order readily satisfies the standard to grant mandamus. *See Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380–81 (2004). First, if the district court's order is not appealable, then there is "no other adequate means," *id.* at 380–81, for the Government to vindicate the President's authority under Article II to exercise the Foreign Affairs power of the United States. Second, as explained below, the Government's "right to issuance of the writ is clear and indisputable," *Cheney*, 542 U.S. at 381 (quotation marks omitted). And finally, the writ "is appropriate," *id.*—indeed, necessary—to protect our constitutional structure by safeguarding the President's prerogative against judicial intrusion.

II. The District Court Erred in Issuing the TRO

The district court abused its discretion in granting provisional class certification and TRO without allowing the Government sufficient time to respond to Plaintiffs' motions. As an initial matter, the balance of harms weighs decisively in favor of the United States. The district court has enjoined the President from using his statutory and constitutional authority to address what he has identified as an

invasion or predatory incursion by a group undertaking hostile actions and conducting irregular warfare. The TRO thus "deeply intrudes into the core concerns of the executive branch," *Adams*, 570 F.2d at 954, and frustrates the "public interest in effective measures to prevent the entry of illegal aliens," *United States v. Cortez*, 449 U.S. 411, 421 n.4 (1981).

The Executive's authority in these areas, including "sensitive and weighty interests of national security and foreign affairs" that, when subject to judicial review at all, warrants the utmost deference. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 33–35 (2010). The Supreme Court has warned of "the danger of unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013); *Biden v. Texas*, 597 U.S. 785, 816 (2022) (Kavanaugh, J., concurring) (noting courts "must be deferential to the President's Article II foreign-policy judgment . . . with respect to American foreign policy and foreign relations").

Moreover, effective, efficient removal of enemy aliens linked to an FTO when that opportunity is available is a key priority for the United States, and avoids exposing U.S. residents to severe harm. *See* Proclamation Preamble (TdA "commits brutal crimes, including murders, kidnappings, extortions, and human, drug, and weapons trafficking."). The Secretary of State's designation of TdA as an FTO represents the extraordinary finding that TdA is an organization that engages in

terrorist activity that "threatens the security of United States nationals or the national security of the United States." *See* 8 U.S.C. § 1189(a)(1)(C). This Court, to which Congress assigned the sole jurisdiction over the review of FTO designations, *see* 8 U.S.C. § 1189(c)(1), has emphasized its limited and extremely deferential review of the Executive Branch's role in protecting the nation and its citizenry from terrorism. *In re People's Mojahedin Org. of Iran*, 680 F.3d 832, 838 (D.C. Cir. 2012); *see Islamic Am. Relief Agency v. Gonzales,* 477 F.3d 728, 734 (D.C. Cir. 2007) ("[O]ur review—in [this] area at the intersection of national security, foreign policy, and administrative law—is extremely deferential."); *Oetjen v. Cent. Leather Co.*, 246 U.S. 297, 302 (1918) ("The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—'the political'—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision.").

And delayed removal may be removal denied. Removal operations entail delicate international negotiations, and those operations, once halted, have the significant potential of never resuming.

On the other hand, as the Supreme Court has explained, "[a]lthough removal is a serious burden for many aliens, it is not categorically irreparable, as some courts have said." *Nken v. Holder*, 556 U.S. 418, 435 (2009). The Supreme Court reached that conclusion in a case where an alien argued he would face persecution if

removed. *Id.* at 422–23 ("Nken claimed he had been persecuted in the past" and "would be subject to further persecution if he returns"). *A fortiori* an alien member of an FTO cannot fairly assert irreparable harm from removal from the United States. *Id*. at 436 (Even where an alien asserts a risk of harm, there "is always a public interest in prompt execution of removal orders" that "may be heightened" if "the alien is particularly dangerous."). "It is accordingly plain that the burden of removal alone cannot constitute the requisite irreparable injury." *Id.* at 435.

III. The Government Is Likely to Succeed on the Merits of Plaintiffs' AEA Claims

Defendants are also likely to prevail on the underlying merits of Plaintiffs' challenge to the Government's exercise of AEA authority.

At the threshold, this case implicates questions outside the competence of the courts—questions only the political branches can resolve. *See Ludecke*, 335 U.S. at 164 ("The very nature of the President's power to order the removal of all enemy aliens rejects the notion that courts may pass judgment upon the exercise of its discretion."). The determination of whether there has been an "invasion" or "predatory incursion," whether an organization is sufficiently linked to a foreign nation or government, or whether national security interests have otherwise been engaged so as to implicate the AEA, is fundamentally a political question to be answered by the President. *See California*, 104 F.3d at 1091 (determination of an "invasion" under the constitution "implicates foreign policy concerns which have

been constitutionally committed to the political branches"); *see also El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 842 (D.C. Cir. 2010) ("The political question doctrine bars our review of claims that . . . call into question the prudence of the political branches in matters of foreign policy or national security constitutionally committed to their discretion."). Accordingly, "[n]o constitutional principle is violated by the lodgment in the President of the power to remove alien enemies without resort or recourse to the courts." *Citizens Protective League*, 155 F.2d at 294.

Likewise, any threshold determinations the President must make before invoking the AEA are "political judgments for which judges have neither technical competence nor official responsibility." *Ludecke*, 335 U.S. at 170. The sole question potentially open to review is "whether the individual involved is or is not an alien enemy," *Citizens Protective League*, 155 F.2d at 294, but that is a claim sounding in habeas, *see id*., and all habeas claims have been dismissed in this case (and were outside the district court's jurisdiction even if they had not been dismissed, as discussed in the Government's first stay motion), *see* Section III of the Background. In this case's current posture, there is no jurisdictional basis for a federal court's review of the Proclamation or any related determination—there can be no APA claim brought against the President's exercise of authority, and beyond that no claim of agency action.

Even if the Proclamation were reviewable at all, it is a proper exercise of the President's authority under the AEA and is reinforced by the President's inherent Article II authority to conduct foreign affairs and address urgent security threats and compelling immigration matters.

First, the Proclamation appropriately targets a "foreign nation or government." The President has vast discretion in making such a determination, and the findings satisfy any proper review in this context. *See Trump v. Hawaii*, 585 U.S. 667, 686 (2018) ("questionable" whether President's finding subject to any review). TdA's close and intimate connections with the Maduro regime, and its infiltration of key elements of the Venezuelan state, including military and law enforcement entities, make it sufficiently tied to Venezuela so as to be within the scope of the AEA. TdA's growth itself can be attributed to promotion via the actions of Aissami, Venezuela's Vice President. And the Maduro regime's connections to the group, via the regime-sponsored narco-terrorism enterprise Cártel de los Soles, are also clear. The Maduro regime coordinates with and relies on TdA to "sow violence and discord throughout the United States." *See* Proclamation Preamble (noting utilization of TdA to "carry out its objective of using illegal narcotics as a weapon to 'flood' the United States"). The President could properly find that given how significantly TdA has become intertwined in the fabric of Venezuela's state structures, it is a de facto arm of the Maduro regime.

As an independent rationale, TdA also operates as a de facto government in the areas in which it operates. As the Proclamation recognizes, "Venezuela national and local authorities have ceded ever-greater control over their territories to transnational criminal organizations, including TdA." *Id.* In those areas, TdA is in fact operating as a criminal *government*, independent or in place of the normal civil society and government. Given its governance and organizational structure, as well as its de facto control over parts of Venezuela in which it operates with impunity as an effective governing authority unto itself, it would be well within the discretion of the President to determine it constitutes a foreign "government" for purposes of invoking Section 21.

Although the Proclamation's findings adequately justify its treatment of TdA as a "government" for purposes of the AEA, the United States has a long history of using war powers against non-state actors. Historically, the United States has authorized the use of force against "slave traders, pirates, and Indian tribes." Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2066 (2005). It has engaged militarily, during broader armed conflicts, with "military opponents who had no formal connection to the state enemy," including during the Mexican–American War and the Spanish–American War. *Id.* at 2066–67. President Wilson famously "sent more than seven thousand U.S. troops into Mexico to pursue Pancho Villa, the leader of a band of

rebels opposed to the recognized Mexican government," *id.* at 2067, while, more recently, President Clinton authorized missile strikes on al Qaeda targets in Africa and elsewhere, *see generally El-Shifa*, 607 F.3d 836. Military force is frequently invoked and used against non-state actors. Thus, even were TdA a non-state actor, rather than being intimately intertwined with the Maduro regime, the Proclamation is still valid under the AEA.

Second, TdA is clearly perpetrating an invasion *or* a predatory incursion into the United States. Although the definition of "invasion" obviously encapsulates a *military* entry , the accepted definition of that term is far broader. An invasion is "[a]n intrusion or unwelcome incursion of some kind; esp., the hostile or forcible encroachment on another's rights," or "[t]he arrival somewhere of people or things who are not wanted there." Black's Law Dictionary, "Invasion," (12th ed. 2024). Nor is there any requirement that the purposes of the incursion be to possess or hold territory of the invaded country. *See*, *e.g.*, *United States v. Texas*, 719 F. Supp. 3d 640, 681 (W.D. Tex. 2024). Here, the actions of TdA fit accepted conceptions of what constitutes an invasion. Their illegal entry into and continued unlawful presence in the United States is an "unwelcome intrusion" of a foreign-government-linked entity that additionally entails hostile acts contrary to the rights of U.S. citizens to be free from violence and criminality.

Even if the actions of TdA did not fall within the broad definition of "invasion," they still constitute a "predatory incursion" under Section 21. The phrase "predatory incursion" encompasses (1) an entry into the United States, (2) for purposes contrary to the interests or laws of the United States. *See, e.g.*, *Amaya v. Stanolind Oil & Gas Co.*, 62 F. Supp. 181, 189–90 (S.D. Tex. 1945) (noting use of the phrase to describe raids in Texas during hostilities with Mexico in the 1840s that fell short of "invasion"); *see also Davrod Corp. v. Coates*, 971 F.2d 778, 785 (1st Cir. 1992) (using the phrase to refer to foreign fishing fleets unlawfully entering and fishing in U.S. territorial waters).

Here, TdA and its members have entered the United States for purposes contrary to the country's interests and laws to engage in "predatory" activity under any meaning: illicit trafficking in controlled substances and people, committing violent crimes, and conducting business that benefits a foreign government antithetical to the United States. *See* Proclamation Preamble. Those actions clearly constitute "predatory incursions" into the United States.

Beyond the statute, the TRO violates the President's inherent Article II authority. As a function of such authority to protect the nation, the President determined that TdA represents a significant risk to the United States, that it is intertwined and advancing the interests of a foreign government in a manner antithetical to the interests of the United States, and that its members should be

summarily removed from this country as part of that threat. The exercise of authority in this case is firmly supported by longstanding Supreme Court precedent. As that Court has repeatedly held, Article II confers upon the President expansive authority over foreign affairs, national security, and immigration. *See Harisiades v. Shaughnessy*, 342 U.S. 580, 588 (1952); *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936). And where, as here, "the President acts pursuant to an express or implied authorization of Congress," *i.e.*, 50 U.S.C. § 21, coupled with the President's own Article II powers over foreign affairs and national security, "his authority is at its maximum, for it includes all that he possesses in his own right plus all that Congress can delegate." *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring); *see Zivotofsky ex rel. Zivotofsky v. Kerry*, 576 U.S. 1, 10 (2015) (similar); *see also Ludecke*, 335 U.S. at 164 (remarking that the AEA is "as unlimited" a grant of power "as the legislature could make it" (quoting *Lockington*, 15 F. Cas. at 760)).

If anything, this authority is heightened here. The Supreme Court has consistently noted that "[i]t is an accepted maxim of international law that every sovereign nation has the power, as inherent in sovereignty, and essential to self-preservation, to forbid the entrance of foreigners within its dominions, or to admit them only in such cases and upon such conditions as it may see fit to prescribe." *Nishimura Ekiu v. United States*, 142 U.S. 651, 659 (1892). Thus, laws involving

aliens are "implementing an *inherent executive power*." *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542 (1950) (emphasis added).

IV. The Universal TRO is Overbroad and Unconstitutional.

This Court held in *Citizens Protective League*, rejecting the plaintiffs' claims for injunctive relief against the AEA, that "[n]o constitutional principle is violated by the lodgment in the President of the power to remove alien enemies without resort or recourse to the courts." 155 F.2d at 294.

The AEA-related jurisprudence limiting the courts to habeas review of AEA-related enforcement sharply contrasts with the universal TRO issued by the district court over the members of the provisionally certified class with no habeas claims before it. AEA precedent establishes that the role of the courts is only to assess whether a detainee is subject to the AEA proclamation, not to probe the national-security and foreign-policy judgments of the President in issuing the proclamation itself. *Ludecke*, 335 U.S. at 164 (providing habeas review only of whether detainee was subject to the proclamation); *United States ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 652 (2d Cir. 1947) (same); *United States ex rel. Kessler v. Watkins*, 163 F.2d 140, 141 (2d Cir. 1947) (same). Moreover, while habeas jurisdiction must reach the custodian, *see Rasul v. Bush*, 542 U.S. 466, 483–84 (2004), here the court issued a nationwide injunction where most—if not all—of the provisional class members are beyond the court's jurisdiction. This sweeping order conflicts with the tight limits

on habeas jurisdiction, the AEA precedent under which review of AEA enforcement lies only in habeas, and the absence of other jurisdictional authority.

The highly truncated class procedures here were improper, an excuse for the Court to issue a universal injunction, which is incompatible with "'foundational' limits on equitable jurisdiction." *Dep't of State v. AIDS Vaccine Advoc. Coal.*, No. 24A831, slip op. 7 (2025) (Alito, J., joined by Thomas, Gorsuch, and Kavanaugh, J.J., dissenting) (citation omitted). The injunction undermines longstanding deference to the Executive Branch's national security judgments, including the President's responsibility to identify and respond to threats posed by the TdA . Moreover, Article III does not empower federal courts to "exercise general legal oversight of the Legislative and Executive Branches," *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423–24 (2021), much less empower them to assume a position of authority over the governmental acts of another coequal department, "an authority which plainly [courts] do not possess." *Massachusetts v. Mellon*, 262 U.S. 447, 489 (1923). To the contrary, the courts have recognized the limitations of the judiciary in assessing national security information and judging the necessity of action to counter national security threats. *See Humanitarian Law Project*, 561 U.S at 34 ("[W]hen it comes to collecting evidence and drawing factual inferences in [the national security] area, the lack of competence on the part of the courts is marked") (internal quotations omitted).

CONCLUSION

This Court should stay the district court's order pending appeal and should immediately enter an administrative stay. To the extent the Court harbors any doubt about its appellate jurisdiction, it should treat this appeal as a petition for a writ of mandamus and grant a writ directing the district court to vacate its order.

Dated: March 16, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because the motion contains 4997 words. The motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5) and (6) because it has been prepared using Microsoft Word 365 in proportionally spaced 14-point Times New Roman typeface.

/s/ Christina P. Greer
CHRISTINA P. GREER

CERTIFICATE OF SERVICE

I hereby certify that on March 16, 2025, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ Christina P. Greer
CHRISTINA P. GREER

DECLARATION OF MICHAEL G. KOZAK

Pursuant to 28 U.S.C. § 1746, I, Michael G. Kozak, declare and state as follows:

1. I, Michael G. Kozak, am the Senior Bureau Official within the Bureau of Western Hemisphere Affairs (WHA) of the United States Department of State, a position I have held since January 2025. In that capacity, I lead and oversee WHA, including the country offices handling affairs regarding Central and South America and other countries in the Hemisphere. I am a career member of the Senior Executive Service, and have served in a variety of senior positions in the Department of State, including previously as the Acting Assistant Secretary of WHA, in other positions within WHA, and leading other bureaus and offices of the Department of State. WHA is responsible for diplomatic relations between the United States and countries in the Western Hemisphere, including El Salvador and Venezuela. I make the following statements based upon my personal knowledge, including from my extensive experience since 1971 engaging in diplomatic and other work of the Department with respect to El Salvador, Venezuela, and other countries in the region and around the world, as well as upon information made available to me in the performance of my official duties.
2. U.S. government officials from the White House and the Department of State, including special Presidential envoy Richard Grenell, Secretary of State Marco Rubio, and Special Envoy for Latin America Mauricio Claver-Carone, have negotiated at the highest levels with the Government of El Salvador and with Nicolas Maduro and his representatives in Venezuela in recent weeks for those countries to consent to the removal to Venezuela and El Salvador of some number of Venezuelan nationals detained in the United States who are associated with Tren de Aragua (TdA), a designated foreign terrorist organization.

3. Arrangements were recently reached to this effect with these foreign interlocutors to accept the removal of some number of Venezuelan members of TdA. These arrangements were the result of intensive and delicate negotiations between the United States and El Salvador, and between the United States and representatives of the Maduro regime.
4. The foreign policy of the United States would suffer harm if the removal of individuals associated with TdA were prevented, taking into account the significant time and energy expended over several weeks by high-level U.S. government officials and the possibility that foreign interlocutors might change their minds regarding their willingness to accept certain individuals associated with TdA removed or might otherwise seek to leverage this as an ongoing issue. These harms could arise even in the short term, as future conversations with foreign interlocutors seeking to resolve foreign policy matters would need to take this issue into account along with other issues, instead of allowing the discussions to fully move on to other issues.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on March 15, 2025, in Arlington, Virginia.

MICHAEL G. KOZAK

Oral Argument Not Yet Scheduled

Nos. 25-5067 & 25-5068

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

J.G.G., *et al.*,
Plaintiffs-Appellees,
v.
DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*,
Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE DISTRICT OF COLUMBIA
No. 1:25-cv-00766
The Hon. James E. Boasberg

REPLY IN SUPORT OF EMERGENCY MOTION FOR A STAY PENDING APPEAL

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INTRODUCTION

The district court's hasty order enjoining—on a nationwide basis—the President's invocation of the Alien Enemies Act ("AEA") against a designated foreign terrorist organization linked to the Venezuela government represents an extraordinary intrusion upon the President's constitutional and statutory authority to protect the Nation from alien enemies. Moreover, as the Government has explained in additional filings and as this Court is undoubtedly aware, the district court is continuing to attempt to pry sensitive information from the Government. All of the district court's orders should be stayed, and the Executive Branch's standing as a coequal branch of Government should be respected.

Most fundamentally, the district court lacked jurisdiction to issue this highly irregular nationwide injunction. This Court has long held that the President's AEA authority is not subject to judicial review. The only exception is that individuals who are detained under the AEA may challenge the legality of custody in habeas—yet Plaintiffs here intentionally waived their habeas claims, and there is no such thing as a habeas "class action" that would support universal nationwide relief.

Even if a court could review the Proclamation, it expressly makes the two findings that the AEA require: (1) Tren de Aragua (TdA) is both linked to the Venezuelan government and operates as a government unto itself in parts of Venezuelan territory, and that (2) it has engaged in an "invasion" or "predatory

incursion" into our country. There is no basis for a court to look behind those factual determinations. And, far from being novel, the President's invocation of the Act in these circumstances is consistent with a long history of using war authorities against groups and entities that are connected to foreign states.

Merits aside, the equities strongly favor the government, given the manfiest harms to the public from letting dangerous alien members of a foreign terrorist organization remain in the country. The injunction also impairs the constitutional order, by interfering with the President's inherent and statutory powers to conduct foreign relations and protect the Nation from harm and the grave intrusions upon the statutory and inherent Article II powers of the President. Indeed, the court's order is already undermining the credibility with international partners in Central America with whom the President engaged in high-stakes diplomacy, and it threatens to jeopardize delicate foreign affairs negotiations with law enforcement partners.

For all these reasons, this Court should stay the district court's sweeping and improper interference with the President's exercise of his authorities under Article II and the AEA.

ARGUMENT

I. The Orders Below Are Appealable

As the government explained, Mot. 7–10, the district court's unusual orders, while styled as TROs, are appealable under 28 U.S.C. § 1292(a). Plaintiffs argue

that the nationwide halt in the President's expulsion of dangerous terrorists is brief, so appellate review can wait. Opp. 6. That is wrong.

Even the orders' temporary period of restraint has caused (and continues to case) serious foreign policy harms that cannot be remedied. The district court has threatened to scuttle carefully organized removal operations that involved sensitive negotiations with multiple foreign partners. And the court is continuing to pursue intrusive inquiries that could hamper negotiations in the future. This diplomacy is already fraught given the TdA's dangerous nature, designation as a foreign terrorist organization, and links to a hostile regime. (Indeed, the challenges involved effectively caused the prior Administration to abandon efforts to remove these dangerous individuals). The court's orders undermine these efforts further, in a way that cannot readily be repaired even if the government ultimately prevails. *See Adams v. Vance*, 570 F.2d 950, 953 (D.C. Cir. 1978) (allowing appeal of a TRO that "commanded an unprecedented action irreversibly altering the delicate diplomatic balance in the environmental arena"); *cf. United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 542–43 (1950).

The national security implications also support immediate review. The Court's orders, global in scope, makes further removals of TdA members impossible during this critical period. Even when a person does not pose a threat, removal delayed tends to become removal denied. *Zadvydas v. Davis*, 533 U.S. 678, 696

(2001). That is true *a fortiori* when dealing with some of the most dangerous criminals on Earth. Plaintiffs agree immediate appeal is available from an order removing an alien "to a country where he alleged" he will face harm (Opp. at 7, citing *Belbacha*, 520 F.3d at 458)—but insists the government cannot immediately appeal an order that may make it impossible to transfer *out* of our country highly dangerous individuals who are dedicated to causing harm to the American people. That cannot be right.

For these same reasons, even if the Court deems the orders enjoining unappealable, it should nevertheless grant mandamus. *See Cheney v. U.S. Dist. Ct. for D.C.*, 542 U.S. 367, 380–81 (2004). Absent appeal, there are "no other adequate means" to protect the President's constitutional and statutory authority to safeguard Americans from the dangerous threats posed by the TdA. *Id.* Further, the Government's "right to issuance of the writ is clear and indisputable," *id.* at 381 (quotation marks omitted), as demonstrated below. And the writ is also "appropriate,"—and necessary—to safeguard the President's prerogative against judicial intrusion. *Id.*

II. Plaintiffs Have No Viable Claim.

A challenge to an AEA designation lies in habeas, and there is no other judicial review avenue. First, the challenge is to Presidential action, which cannot be reviewed under the APA. Second, habeas provides the only historic basis for alien

enemies to challenge their custody, as recognized by the long line of cases decided under the AEA.

As previously explained, Mot. 8, the district court lacks jurisdiction to review the Proclamation or "enjoin the President in the performance of his official duties." *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867). That is what the district court purported to do, yet for over a century, courts have held that the President's invocation of his authority under the AEA is "not to be subjected to scrutiny by the courts" even though implemented by others. *Ludecke*, 335 U.S. at 165. The statute vests "[u]nreviewable power in the President." *Citizens Protective League*, 155 F.2d at 294. Accordingly, "[n]o constitutional principle is violated by the lodgment in the President of the power to remove alien enemies without resort or recourse to the courts." *Id.* That is binding circuit precedent.

Unreviewable means *unreviewable*. It leaves no room for APA or nonstatutory judicial review, much less sweeping national injunctions issued without the benefit of any briefing from the government. *Ludecke* expressly held that the AEA "preclude[s] judicial review" under such authorities. *Ludecke*, 335 U.S. at 163–64 ("some statutes 'preclude judicial review'" and "the Alien Enemy Act of 1798 is such a statute"); *id.* at 164–65 ("every judge before whom the question has since come has held that the statute barred judicial review"). Indeed, "in cases in which the executive possesses a constitutional or legal discretion, nothing can be more

perfectly clear than that [his] acts are only politically examinable." *Marbury v. Madison*, 1 Cranch 137, 166 (1803).

The only, limited review courts have permitted is in habeas, to challenge whether an individual may be restrained. That is a challenge to the legality of AEA detention, a core habeas claim. *See Ludecke*, 335 U.S. at 163, 173; *see also Johnson v. Eisentrager*, 339 U.S. 763, 774 (1950) ("Executive power over enemy aliens, undelayed and unhampered by litigation, has been deemed, throughout our history, essential to war-time security."); *United States ex rel. Schwarzkopf v. Uhl*, 137 F.2d 898, 900 (2d Cir. 1943).

And even Plaintiffs appear to understand that venue is improper in the District of Columbia for such a challenge to detention—they dismissed their detention claims orally in order to avoid the immediate custodian rule, which requires that a challenge to detention be brought in the district of confinement, here Texas. *See* Opp. 19; *Padilla*, 542 U.S. at 435; *Fletcher v. Reilly*, 433 F.3d 867, 875 (D.C. Cir. 2006). But that is the *only* remedy available under the AEA.

And because jurisdiction is limited to habeas claims challenging whether an alien has been properly included in the category of alien enemies—necessarily individual determinations—there is no basis to certify a class to resolve those claims. *See Harris v. Med. Transp.*, 77 F.4th 746, 753 (D.C. Cir. 2023) (class certification inappropriate if "questions of law or fact . . . affecting only individual members"

predominate); Compl. ¶¶ 9–13 (setting out separate factual circumstances of each Plaintiff).

The district court also significantly erred in failing to make affirmative findings in writing that Plaintiffs satisfied all the Rule 23 requirements, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 345-46 (2011), a requirement the district judge long understood to apply to provisional class certification, until this week. *See R.I.L-R v. Johnson*, 80 F. Supp. 3d 164, 179–80 (D.D.C. 2015).

The cases Plaintiffs cite suggest the district court may review the President's action because they assert their claims fall outside "core habeas" review, are all inapposite. The key problem is this: as *Ludecke* recognizes, the only allowable challenge is a core habeas claim challenging custody under the AEA, so the other theories of review must be rejected. Plaintiffs assert that they "do not seek a release from custody," Opp. 16, but they are seeking exactly that, arguing they cannot lawfully be held under the AEA. Indeed, an initial premise of their suit was a challenge to their detention under the AEA. Compl. ¶¶105-106. And because the only viable cause of action they might have is a habeas challenge to their detention under the AEA, now that they have dropped that claim at the district court's urging, there is no jurisdictional basis whatsoever to hear their claims, let alone outside of the district of their confinement at the time of filing. *Padilla*, 542 U.S. at 435; *Fletcher v. Reilly*, 433 F.3d 867, 875 (D.C. Cir. 2006). The cases Plaintiffs cite by

for the proposition that immigration policy challenges may be brought outside of habeas, Opp. 17–19, arise under the APA to challenge actions of federal agencies, a review path foreclosed here since the challenged action is of the President. *See, e.g.*, *Huisha-Huisha*, 27 F.4th 718.[1] As mentioned above, the President is not an agency, and his actions are not subject to APA review. *See Franklin v. Massachusetts*, 505 U.S. 788, 801 (1992). The AEA vests authority in the President, and the President is the one who issued the Proclamation. There is therefore no avenue under the APA for Plaintiffs to enjoin the President's actions, the Proclamation, or the "power with which Congress vested the President . . . to be executed by him through others." *Ludecke*, 335 U.S. at 166.

In short, outside of limited habeas review, "[t]he control of alien enemies has been held to be a political matter in which the executive and the legislature may exercise an unhampered discretion," and an "alien enemy" otherwise "is not, under the Constitution and the Statute, entitled to any hearing." *Schlueter*, 67 F. Supp. at 565. Plaintiffs have no remedy other than a habeas petition brought in the district of their confinement.

[1] The only case Plaintiffs cite under the AEA (Opp. 17) is this Court's decision in *Citizens Protective League*, but that decision did not discuss the source of its subject matter jurisdiction, predated *Ludecke* and modern guardrails on the exercise of subject matter jurisdiction, and even by its terms declined to review the President's actions.

III. The Proclamation Is Lawful

In all events, the government is also likely to succeed on its appeal because the Proclamation and its implementation are lawful. The AEA grants the President discretion to issue a Proclamation directing the apprehension, restraint, and removal of alien enemies when two conditions are found by the President to be met. *First*, there must be "a declared war," *or* "an[] invasion" *or* a "predatory incursion" that is "perpetrated," *or* "attempted," *or* "threatened against the territory of the United States[.]" 50 U.S.C. § 21. *Second*, that hostile action must be by a "foreign nation" *or* "government." *Id.* The President's Proclamation satisfies both conditions: TdA is intricately intertwined with the Maduro regime and functions as a government onto itself in parts of Venezuela, while the illegal entry into the United States of its members for hostile reasons is an "invasion" or "predatory incursion."

Plaintiffs' contrary arguments lack merit. *First*, Plaintiffs cherry-pick definitions of "invasion" and "predatory incursion" to argue that those terms are limited to *military* incursions. *See* Opp. 20–22. But there is no *textual* reason to limit the AEA's language is not so limited, and their own proffered definitions are incomplete. The full definitions in Plaintiffs' preferred dictionaries actually support the government's position. The full definition of "invasion" includes "[a] hostile entrance into the possessions of another." Webster's Dictionary, "Invasion" (1828). Likewise, "incursion" is defined to include "entering into a territory with hostile

intention." Id. Both definitions *include* military action, but neither is *limited to* such action.

Second, Plaintiffs argue the AEA is limited to "foreign sovereigns," or at least actors with a "defined territory" or "common government." Opp. 23–24. But even under this approach, TdA clearly qualifies: as the Proclamation notes, it has *de facto* control over parts of Venezuela in which it operates with impunity as an effective governing authority, *i.e.*, it operates as a "common government" in "defined territory," to use Plaintiffs' formulation. There is no judicial warrant to look behind that presidential finding. In any event, Plaintiffs' approach ignores the reality of the connections between TdA and the Maduro regime. Through its ties to that regime, including its sponsorship by a Vice President and its connection to regime-sponsored Cartel de los Soles, TdA has become virtually indistinguishable from the regime and Plaintiffs offer no compelling rationale for why, given those links, the two cannot be confronted together in exercising authority under the AEA. *See Zivotofsky v. Kerry*, 576 U.S. 1, 15 (2015) (President has the exclusive power to recognize governments).

Plaintiffs' attempts to minimize the history of military action against non-state actors also misses the point. Opp. 23–24. If the United States can attack non-state actors or entities with military force, surely it can take the lesser step of identifying the same hostile forces within U.S. borders and summarily removing them from the country.

Third, Plaintiffs contend that invocation of the AEA "illegally bypasses" the procedures for removal and relief from removal enacted in the Immigration and Nationality Act. *See* Opp. 24–25. This argument, under which AEA removals could only be exercised if an alien was *also* removable under the INA, would render the AEA superfluous and an effective nullity. Yet the AEA is a key authority that Congress has seen fit to retain because it provides an essential authority to the President to expel foreign threats to the nation. And it is a statute that Presidents Roosevelt and Truman employed *after* enactment of the pre-1952 federal immigration statutes—with those invocations being uniformly upheld by federal courts where jurisdiction to review existed at all. *See N.Y. Tr. Co. v. Eisner*, 256 U.S. 345, 349 (1921) ("A page of history is worth a volume of logic.").

Rather than the AEA being subordinated to the INA, the statutes are *distinct* mechanisms for effectuating the removal of certain aliens, just as this Court has previously recognized that the INA and Title 42 are different bases for excluding aliens from the United States. *See generally Huisha-Huisha*, 27 F.4th 718. There may be points of overlap for the classes covered by the INA and AEA, but there is also divergence, and deciding which Act to apply to any given alien is a matter for the Executive's discretion. *See United States ex rel. Von Kleczkowski v. Watkins*, 71 F. Supp. 429, 437 (S.D.N.Y. 1947) (recognizing a harmonious reading of the AEA and pre-INA immigration law).

Similarly, there is no conflict between the INA and the Proclamation's bar on applications for relief and protection. *See* Opp. 24. Enemy aliens are not entitled to seek any relief or protection in the country that has designated them enemies, absent dispensation by the President. *See Citizens Protective League*, 155 F.2d at 294 (noting common law rule that "alien enemies have no rights, no privileges, unless by the king's special favor"). Nor does any INA relief or protection provision place fetters on the *President* or his potential exercise of authority under Title 50. *See* 8 U.S.C. § 1158(b)(1)(A) (Attorney General or Secretary of Homeland Security); 8 U.S.C. § 1231(b)(3) (Attorney General); 8 C.F.R. §§ 1208.16, 1208.18 (Immigration Judge, via delegation from the Attorney General); *see also Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 172–73 (1993).

Plaintiffs' claim (Opp. 24–25) that aliens who fall within the purview of the Proclamation must be permitted time to voluntarily depart from the United States is not a defensible reading of the statute, especially in context. To be sure, the statute permits the President to "provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom," 50 U.S.C. § 21, but it also broadly provides that alien enemies within the purview of a Proclamation "*shall* be liable to be . . . removed as alien enemies." In this context, where the alien enemies are members of the hostile force itself, the President cannot be required to provide any period of voluntary departure prior to effectuating

removal, and the AEA's entire purpose would be undercut if invading individuals had to be politely asked to depart on their own terms.

Finally, Plaintiffs' crabbed view of the President's inherent Article II authority does not withstand scrutiny. *See* Opp. 25–26. Plaintiffs fail to meaningfully address the longstanding Supreme Court precedent on the President's expansive authority over foreign affairs, national security, and immigration, *see*, *e.g.*, *United States v. Curtiss-Wright Exp. Corp.*, 299 U.S. 304, 320 (1936), and the effect that has on the President's authority when coupled with the explicit delegation at issue in this case, *see Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635 (1952) (Jackson, J., concurring). The exercise of authority by the President in this case falls within a long tradition of exercising inherent Article II powers for foreign affairs and national security priorities.

IV. The Equities Favor the Government

The balance of harms and the equities strongly favor the government here. *Contra* Opp. 27–29. The district court's orders impede the President from using his constitutional and statutory authority to address a predatory invasion by a hostile group that is harming Americans–and is backed by the Maduro regime, thereby intruding on matters squarely within the executive's purview: national security, foreign affairs, and immigration. *See Humanitarian Law Project*, 561 U.S. at 33–35*; Adams*, 570 F.2d at 954; *United States v. Cortez*, 449 U.S. 411, 421 n.4 (1981).

Therefore, they must be stayed.

Plaintiffs insist that because the district court's orders do not prevent the detention of individuals identified as alien enemies and simply halt "an unlawful practice," the government cannot show irreparable harm. Opp. 28. But the orders undermine delicate international negotiations to remove such dangerous alien enemies, where even a short delay can frustrate the government's efforts entirely. *See* Kozak Decl. Indeed, U.S. foreign policy "*would* suffer harm if the removal of individuals associated with TdA were prevented," given "the significant time and energy expended over several weeks by high-level U.S. government officials and the possibility that foreign interlocutors might change their minds regarding the willingness to accept certain individuals . . . or might otherwise seek to leverage this as an ongoing issue." *Id.* ¶¶ 3–4 (emphasis added). Ccntrary to Plaintiffs' argument that *Zadvydas* does not support the government's position here, the Supreme Court in that case certainly *did* recognize that because circumstances involving terrorism and national security are within the domain of the President, they demand heightened deference. *Zadvydas*, 533 U.S. at 696; *contra* Opp. 29.

Plaintiffs' assertion that the government's position would have "staggering" implications is overblown, Opp. 2, and entirely ignores the fact that individuals identified as alien enemies under the President's Proclamation may challenge that status in a habeas petition, something Plaintiffs here voluntarily withdrew. *See supra*

at 6–7.

The district court's orders divest the Executive of its key foreign-affairs and national-security authority oriented towards effectuating removal of alien enemies linked to a designated FTO. These equities plainly outweigh the equities of permitting aliens linked to a hostile power and a terrorist gang to remain in the United States. *See, e.g.*, *Nken*, 556 U.S. at 436 (the "public interest in prompt execution of removal orders" "may be heightened" in circumstances where "the alien is particularly dangerous"). U.S. national security is of paramount importance and outweighs any risk of potentially erroneous removal under the AEA, particularly where such individuals may seek relief in habeas. *Contra* Opp. 28–29.

If nothing else, this Court should stay the court's sweeping universal injunction premised on provisional certification of a nationwide class. AEA jurisprudence limiting the courts to habeas review sharply contrasts with the universal TRO the district court issued with respect to the members of the provisionally certified class with no habeas claims before the Court. Precedent establishes that the role of the courts with respect to the AEA is only to assess whether a detainee is subject to the AEA proclamation, not to probe the national-security and foreign-policy judgments of the President in issuing the proclamation itself. *Ludecke*, 335 U.S. at 164 (providing habeas review only of whether detainee was subject to the proclamation); *United States ex rel. Von Heymann v. Watkins*, 159

F.2d 650, 652 (2d Cir. 1947) (same); *United States ex rel. Kessler v. Watkins*, 163 F.2d 140, 141 (2d Cir. 1947) (same). Moreover, habeas jurisdiction must reach the custodian, *see Rasul v. Bush*, 542 U.S. 466, 483–84 (2004), but here the district court issued a nationwide injunction where most—if not all—of the provisional class members are beyond this Court's jurisdiction. That was improper.

The highly truncated class procedures here—in which a nationwide class was certified before the government could even file a brief in opposition—were improper too, and incompatible with "'foundational' limits on equitable jurisdiction." *Dep't of State v. AIDS Vaccine Advoc. Coal.*, 145 S. Ct. 753, 756 (2025) (Alito, J., dissenting) (citation omitted). The injunction undermines longstanding deference to the Executive Branch's national security judgments, including the President's responsibility to identify and respond to threats posed by the TdA. Moreover, Article III does not empower federal courts to "exercise general legal oversight of the Legislative and Executive Branches," *TransUnion LLC v. Ramirez*, 594 U.S. 413, 423–24 (2021), much less empower them to assume a position of authority over the governmental acts of another coequal department, "an authority which plainly [courts] do not possess." *Massachusetts v. Mellon*, 262 U.S. 447, 489 (1923). To the contrary, courts have recognized the Judiciary's limitations in assessing national-security information and judging the necessity of action to counter national-security threats. *See Humanitarian Law Project*, 561 U.S at 34 ("[W]hen it comes to

collecting evidence and drawing factual inferences in [the national security] area, the lack of competence on the part of the courts is marked").

CONCLUSION

For all of these reasons, the Court should stay all the district court's orders pending appeal.

Dated: March 19, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing motion complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2)(A) because the motion contains 3887 words. The motion complies with the typeface and type-style requirements of Federal Rules of Appellate Procedure 27(d)(1)(E) and 32(a)(5) and (6) because it has been prepared using Microsoft Word 365 in proportionally spaced 14-point Times New Roman typeface.

/s/ August E. Flentje
AUGUST E. FLENTJE

CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2025, I electronically filed the foregoing motion with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system. Participants in the case are registered CM/ECF users, and service will be accomplished by the appellate CM/ECF system.

/s/ August E. Flentje
AUGUST E. FLENTJE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*, *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Defendants*.	Case No: 1:25-cv-00766-JEB

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

The unprecedented Proclamation at the heart of this case is unlawful because the Alien Enemies Act is a wartime measure that cannot be used where, as here, there is neither an "invasion or predatory incursion" nor such an act perpetrated by a "foreign nation or government." And even if it could be used against a non-military criminal "gang" during peacetime, targeted individuals must be provided with a meaningful chance to contest that they fall within the Proclamation's scope. That is particularly so given the increasing number of class members who dispute the government's allegations of gang affiliation. For these and other reasons, Plaintiffs are likely to succeed on the merits. The remaining factors also decidedly tip in Plaintiffs' favor. In the absence of an injunction, the government will be free to send hundreds more individuals, without notice, to the notorious Salvadoran prison where they may be held incommunicado for the rest of their lives. The government will suffer no comparable harm given that this Court has not prohibited it from prosecuting anyone who commits a criminal offense, detaining anyone under the Act or other authority, or removing anyone under the immigration laws, and the government has already conceded that some form of judicial review is appropriate. A preliminary injunction is warranted to preserve the status quo.

LEGAL AND FACTUAL BACKGROUND

As described in more detail in Plaintiffs' prior filings, on March 14, the President signed a Proclamation announcing that Tren de Aragua ("TdA"), a Venezuelan gang, is "perpetrating, attempting, and threatening an invasion or predatory incursion" against the United States. *See* Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de

Aragua (Mar. 15, 2025)[1] ("Proclamation"); *see also* Mot. for TRO at 4-5, ECF No. 3-2.[2] Prior to the Proclamation, ICE had moved Venezuelan detainees into position such that, when it was made public, the detainees had already being transported to the airport and were being loaded onto planes. *See* Mot. for TRO at 5. Those flights took off quickly and, despite this Court's order to return individuals on the flights who were being removed pursuant to the AEA, the planes continued to El Salvador and the individuals were handed over to El Salvador. Pls.' Response to Defs.' Notice, ECF No. 21. Class members were promptly detained in that country's Terrorism Confinement Center (CECOT). Opp. to Mot. to Vacate at 10, ECF No. 44. As detailed previously, the conditions in El Salvador's prisons are horrific. *See generally* Goebertus Decl., ECF No. 44-3; Bishop Decl. ECF No. 44-4; Opp. to Mot. to Vacate at 9-10.

The government also sent eight Venezuelan women to CECOT, presumably pursuant to the Proclamation. Exh. I, Beckman Decl. ¶¶ 8-10; *see also* S.Z.F.R. Decl. ¶ 9, ECF No. 55-1; E.E.P.B. Decl. ¶ 7, ECF No. 55-2. However, upon landing, Salvadoran officials informed U.S. officials that CECOT does not imprison women. S.Z.F.R. Decl. ¶ 20, ECF No. 55-1; E.E.P.B. Decl. ¶ 8, ECF No. 55-2. The government returned the eight Venezuelan women to the United States, along with a Nicaraguan man whom they also attempted to send to CECOT. S.Z.F.R. Decl. ¶ 21, ECF No. 55-1; E.E.P.B. Decl. ¶ 9, ECF No. 55-2; Beckman Decl. ¶ 11.

In the past two weeks, more details have begun to emerge. Named Plaintiffs received no advance notice of the basis for their removal. Exh. C, J.G.G. Second Supp. Decl. ¶ 4; Exh. E, Shealy Second Supp. Decl. ¶¶ 5-6; Exh. D, Carney Decl. Second Supp. Decl. ¶¶ 3, 5; Exh. F,

[1] *Available at* https://perma.cc/ZS8M-ZQHJ.
[2] Plaintiffs incorporate the facts and procedural history from prior filings, *see* Pls.' Mot. for a TRO, ECF No. 3-2 ("TRO Mot."); Pls.' Opp. to Defs.' Mot. To Vacate TRO, ECF No. 44 ("Opp. to Mot. to Vacate"), focusing here on further facts that have come to light and that show that a Preliminary Injunction is warranted.

Lauterback Supp. Decl. ¶¶ 4-5; Exh. G, Smyth Second Supp. Decl. ¶¶ 5-6. They were never given any paperwork. Indeed, no government officers bothered to inform them that the plane they were boarding was headed to El Salvador. *Id.*; *see also* J.G.G. Suppl. Decl. ¶ 4; Exh. L, Thierry Decl. ¶ 10; Smyth Supp. Decl. ¶ 3. The government suggests they provided individuals with a notice form that asserts the men are alien enemies and pointedly states that they are "not entitled to a hearing, appeal, or judicial review of this notice and warrant of apprehension and removal." Exh. S, Sarabia Roman Decl., Exh. 1 (AEA Validation Guide and Notice). But Plaintiffs and other class members received no such notice. Their immigration attorneys were never informed or notified of their impending deportation or the basis for the removal. Shealy Decl. ¶ 6; Thierry Decl. ¶ 9; Exh. M, Caro-Cruz Decl. ¶ 14; Exh. N, Kim Decl. ¶¶ 10-14; Smyth Supp. Decl. ¶ 6.

Whether most (or perhaps all) of the class members lack ties to TdA remains to be seen, because the government secretly rushed the men out of the country and has provided Plaintiffs with no information about the class. But evidence since the flights on March 15 increasingly shows that many class members removed to El Salvador are not "members" of TdA as is required to fall within the Proclamation; many have no ties to TdA at all.

For instance, one of the deported class members, Andry Jose Hernandez Romero, is a professional makeup artist who identifies as gay and never had an opportunity to contest the government's TdA allegations. Exh. H, Reyes Decl. ¶¶ 3-4, 25. While in detention he was tagged as a TdA associate based solely on his tattoos. *Id.* ¶¶ 4-7. Specifically, the government has apparently relied *solely* on two crown tattoos for a connection to TdA, having found no contact with gang members, no supporting evidence from intelligence agencies, or any other of its own indicators. *Id.* ¶¶ 22-24. Mr. Hernandez Romero has consistently denied affiliation with TdA, as the government's own records show, *id.* (Exhibit A); his crown tattoos, which accompany the

words "Mom" and "Dad," have nothing to do with the TdA and reflect his work as a makeup artist for beauty pageants and his hometown's association with the "Three Kings" festival, *id.* ¶¶ 21-23; *see also id.* (Exhibit B). Yet, he was subject to the Proclamation and deported without any notice to him or his attorney. Two days later, at his court hearing, his attorney learned for the first time of his removal. *Id.* ¶¶ 14-17. Even then the government's attorney did not know the basis for removal.

Another deported class member, Jerce Reyes Barrios, was accused of being in TdA based on a tattoo of a soccer ball with a crown. Exh. K, Tobin Decl. ¶ 7. But Mr. Reyes Barrios is a professional soccer player, and the tattoo is similar to the logo for his favorite soccer team, Real Madrid. *Id.* Moreover, the government pointed to a social media post where Mr. Reyes Barrios made a common hand gesture that means "I love you" in sign language. *Id.* ¶ 8. But Mr. Reyes Barrios was never given the opportunity to explain this because he was removed prior to his immigration hearing, which was set for just over a month after the government deported him. *Id.* ¶ 4.

Yet another deported class member, Neri Alvarado Borges, was told by ICE officers that they picked him up because of his tattoos—one of which was an autism awareness ribbon with the name of his brother, who is autistic, on it. Sarabia Roman Decl., Exh. 17 (photo of tattoo). While the ICE agent who inspected his tattoos and his phone said he had nothing to do with Tren de Aragua, the Dallas ICE Field Office decided to keep Mr. Alvarado Borges in detention. *Id.* Mr. Alvarado Borges's U.S.-citizen boss was stunned to hear that his employee—someone who he described as a "stand-up guy" and one of his few close friends—had been detained and ultimately deported. *Id.*

While these errors would be troublesome in any case, they are particularly devastating here,

where Plaintiffs have strong claims for relief under our immigration laws and have ended up in one of the worst prisons in the world. For example, Mr. Silva experienced threats of death and physical violence by political opponents in Venezuela because of his parents' political activities. Exh. O, A.V.S.O. Decl. ¶ 4. Mr. Hernandez Romero passed his asylum credible fear interview after suffering persecution on account of his sexual orientation and political opinion at the Venezuelan government sponsored news channel where he worked. Reyes Decl. ¶¶ 4-7. Mr. Reyes Barrios was tortured in Venezuela using electric shocks and suffocation after protesting Maduro's authoritarian regime. Tobin Decl. ¶ 2. And E.V. already had refugee status, after undergoing 17 months of background checks by the United Nations, the International Organization for Migration, and U.S. Citizenship and Immigration Services, and demonstrating the persecution he had faced at the hands of Venezuelan paramilitary groups, *colectivos*, for exposing government shortcomings. Sarabia Roman Decl., Exh. 11.

The government's errors are unsurprising, given the methods it is employing to identify members of TdA. The "Alien Enemy Validation Guide" that, upon information and belief, the government is using to ascertain alien enemy status, requires ICE officers to tally points for different categories of alleged TdA membership characteristics. Sarabia Roman Decl., Exh. 1. If an individual is given a score of 8 points, he is automatically deemed an "alien enemy;" six or seven points requires supervisor approval to label the individual a TdA member. *Id.* But experts have cast serious doubt on the checklist's methodology. For example, the checklist gives four points for "tattoos denoting membership/loyalty to TDA," but experts who study TdA explain that the gang "has never had . . . identity marks such as tattoos that identify its members." Exh. B, Antillano Decl. ¶ 14; Exh. A, Hanson Decl. ¶¶ 22, 24 ("Tattoos are not a reliable way to identify members of the group."); Exh. J, Dudley Decl. ¶ 25 (tattoos are not a "reliable means" of

identifying TdA); *see also* Sarabia Roman Decl., Exh. 20 ("Venezuelan gangs are not identified by tattoos."). Instead, tattoos are a common part of Venezuelan culture and many young people, whether in a gang or not, have them.[3] Hanson Decl. ¶¶ 22, 24; Antillano Decl.¶ 14; *see also* Sarabia Roman Decl., Exh. 20 ("gang members also sport tattoos considered culturally popular at the moment and popular among the general public").[4] The scoring system also gives between two to four points for the use of hand gestures, symbols, logos, graffiti, or manner of dress but experts say these are also unreliable ways to identify TdA members. Hanson Decl. ¶¶ 23-24 (TdA does not have "iconography or unifying cultural motifs, such as symbols, insignias, logos, notations, graffiti tags, music, or drawings" nor "a typical manner of dress . . ." "associated with them"); Antillano Decl. ¶ 14 (no "symbol" or "identity mark" to identify TdA members). And there is no evidence that TdA has a constitution or membership certificate—which is worth six points on the checklist. Antillano Decl. ¶ 14.

The arbitrariness of Defendants' process, particularly their reliance on tattoos as supposed

[3] Documents from the government demonstrate the patent absurdity of using tattoos and dress as an identifier for TdA. For example, the Chicago Homeland Security Investigations office identified wearing a Chicago Bulls jersey, especially a Michael Jordan jersey, as a TdA marker—never mind that the Bulls are the home team and Michael Jordan was one of Chicago's biggest stars. Sarabia Roman Decl., Exh. 2; *see also id.*, Exh. 20 ("The idea that a Jordan tatoo or jersey would be used to link someone with Tren de Aragua is close to laughable."); Hanson Decl. ¶ 24 (same). In fact, the government's own intelligence is internally contradictory. *See, e.g.*, Sarabia Roman Decl. ¶ 3 ("EPT-HUMINT-Gang Unit collections determined that the Chicago Bulls attire, clocks, and rose tattoos are typically related to the Venezuelan culture and not a definite indicator of being a member or associate of the TDA.").

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evidence of TdA affiliation, is underscored by Plaintiffs' experience. Indeed, four of the five named Plaintiffs possesses tattoos entirely unrelated to TdA—the fifth has no tattoos at all. *See* ECF No. 3-3 J.G.G. Decl. ¶ 4, ECF No. 3-3; Carney Second Supp. Decl. ¶ 6; Smyth Second Supp. Decl. ¶ 7; Lauterback Supp. Decl. ¶ 4 ; Shealy Second Supp. Decl. for J.G.O. ¶ 6 (no tattoos). All five vehemently deny membership in TdA, yet none was afforded an opportunity to contest this baseless designation. *See* ECF No. 3-3 (J.G.G. Decl.) ¶ 3, ECF No. 3-3; Carney Decl. ¶ 3, ECF No. 44-11; Smyth Decl. ¶¶ 9, 11, ECF No. 44-12; W.G.H. Decl. ¶ 12, ECF No. 3-6; Shealy Decl. ¶ 4, ECF No. 44-9; *see also* Exh. P, M.Y.O.R. ¶¶ 6-7. Likewise, numerous credible reports document additional noncitizens summarily removed under the Proclamation who had tattoos wholly unrelated to TdA—or no tattoos at all—and were similarly denied any chance to dispute their erroneous designations. *See* Sarabia Roman Decl., Exhs. 4-20; *see also* A.V.S.O. Decl. ¶ 9; Exh. Q, M.A.A. Decl. ¶¶ 8-9; M.Y.O.R. Decl. ¶ 6; Exh. R, Y.R.R. Decl. ¶ 10; Beckman Decl. ¶ 3.

Experts who have spent over a decade studying policing, violence, migration, prisons, and organized crime in Venezuela—and TdA in particular—submit declarations with this motion that provide a more accurate, comprehensive picture of TdA and its activities. TdA is a loose, decentralized group without a clear hierarchy or membership. Hanson Decl. ¶¶ 1, 27; Antillano Decl. ¶ 10. Following the Venezuelan government's raid on the gang's prison headquarters in 2023, the group has become even more diffuse and uncoordinated. Hanson Decl. ¶¶ 16, 27; Antillano Decl. ¶ 11; Dudley Decl. ¶ 22. TdA does not act as the de facto government in any region of Venezuela. Hanson Decl. ¶¶ 13-16. Experts further explain that there is no evidence of direct and stable links between the Maduro regime and TdA, nor evidence that the gang is intertwined with the Maduro regime or an arm of the Venezuelan state. Hanson Decl. ¶¶ 1, 14, 17; Antillano Decl. ¶ 13; Dudley Decl. ¶¶ 2, 21, 23.

Experts have also explained that TdA does not have a significant presence in the United States and that its activities here are not widespread or coordinated. Hanson Decl. ¶¶ 19, 27; Antillano Decl. ¶ 12; Dudley Decl. ¶¶ 2, 24. They have likewise stated that there is no evidence to indicate that the Venezuelan government has directed TdA to enter the United States or that it controls TdA's activities within the United States. Hanson Decl. ¶¶ 17, 20; Antillano Decl. ¶13; Dudley Decl. ¶¶ 2, 23-24. In fact, the government's own intelligence agencies circulated findings in February 2025 that contradict the assertions in the Proclamation. Sarabia Roman Decl. Exh. 19 (intelligence community assessment concluded that TdA "was not directed by Venezuela's government or committing crimes in the United States on its orders").

LEGAL STANDARD

To obtain a preliminary injunction, the party must show that (1) it is "likely to succeed on the merits"; (2) it is "likely to suffer harm in the absence of preliminary relief"; (3) "the balance of equities tips in its favor"; and (4) the issuance of a preliminary injunction is "in the public interest." *Alpine Secs. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314, 1324 (D.C. Cir. 2024) (citation omitted).

ARGUMENT

Since the Court granted the TRO, the justification for preliminary relief has only grown as evidence of Plaintiffs' irreparable harm grows and sheds doubt on the government's asserted justifications for summary removals. For the same reasons that the Court correctly granted a TRO, Plaintiffs easily satisfy the factors for a preliminary injunction. Defendants' actions violate the Alien Enemies Act (AEA), Administrative Procedure Act (APA), Immigration and Nationality Act (INA), and due process. Plaintiffs have already suffered and will continue to suffer immense and irreparable harm without the Court's intervention, and the balance of the equities and public

interest fall decisively in Plaintiffs' favor.

I. Defendants' Action is Subject to Judicial Review Under the APA and in Equity, and Need Not Be Brought in Habeas.

The Court has jurisdiction over Plaintiffs' claims because they need not be brought in habeas in the district of confinement, and Defendants' conduct is plainly reviewable under the APA and in equity. Because Plaintiffs are seeking injunctive, declaratory, and other relief that does not require release, this case need not be brought in habeas. Plaintiffs therefore can pursue their claims outside of habeas, just as courts in this District have allowed detained noncitizens to do in multiple cases over the years. *See, e.g.*, *Huisha-Huisha v. Mayorkas*, 27 F.4th 718 (D.C. Cir. 2022); *J.D. v. Azar*, 925 F.3d 1291, 1300 (D.C. Cir. 2019); *Damus v. Nielsen*, 313 F. Supp. 3d 317, 323 (D.D.C. 2018); *Aracely, R. v. Nielsen*, 319 F. Supp. 3d 110, 126-27 (D.D.C. 2018). And this Court has already properly rejected the government's contention that because Plaintiffs *could* bring their claims in habeas, they therefore *must* do so and cannot bring their claims under the APA or equity. Op. 13.[5]

First, a habeas action is not required. Although most past AEA cases were brought in habeas, "that fact is largely a relic of historical happenstance." Op. 13. No court has held that AEA challenges must be brought in habeas. Indeed, in World War II cases, the D.C. Circuit considered non-habeas civil actions seeking "injunction, mandatory injunction and ancillary relief" against the application of the AEA. *See Citizens Protective League v. Clark*, 155 F.2d 290, 291-92 (D.C. Cir. 1946) (addressing three consolidated actions on behalf of a nonprofit and 159 German nationals); *see also Citizens Protective League v. Byrnes*, 64 F. Supp. 233, 233 (D.D.C.

[5] Op. refers to this Court's opinion denying Defendants' motion to vacate the TRO. *See* ECF No. 53.

1946). And in *Clark*, although the government argued that one of the consolidated cases had to be brought in habeas, the district court "dismissed the complaints on the merits," 155 F.2d at 292, and the court of appeals affirmed, *id.* at 293. And when Congress wants to specifically require that certain immigration claims are brought only in a habeas petition, it knows how to do so. *See* 8 U.S.C.A. § 1252(e)(2) (providing for limited review of expedited removal orders "in habeas corpus proceedings"); *id.* § 1252(a)(2)(A) (stripping review "except as provided in subsection (e)"). Nothing in the AEA or elsewhere remotely requires Plaintiffs' claims to be brought in habeas.

More generally, as this Court thoroughly explained, only "core" claims—those seeking release—must be brought in habeas; here, Plaintiffs are not seeking release. *See* Op. 16-18; *see also, e.g.*, *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973); *Skinner v. Switzer*, 562 U.S. 521, 534 (2011) (Court has never "recognized habeas as the sole remedy, or even an available one, where the relief sought would 'neither terminat[e] custody, accelerat[e] the future date of release from custody, nor reduc[e] the level of custody'") (citation omitted). Thus, Plaintiffs can bring "non-core" habeas claims that do not seek release through other types of actions, *see Wolff v. McDonnell*, 418 U.S. 539, 554 (1974); *Wilkinson v. Dotson*, 544 U.S. 74, 81 (2005), and the immediate custodian rule does not apply, *see Braden v. 30th Jud. Cir. Ct. of Kentucky*, 410 U.S. 484, 495 (1973). *See also Davis v. U.S. Sent'g Comm'n*, 716 F.3d 660, 664 (D.C. Cir. 2013) (considering action by individual incarcerated outside of the District because "victory would not secure his immediate release or even a reduction in his time served").

Defendants ignore the Supreme Court and D.C. Circuit's long line of cases differentiating between "core" and "non-core" habeas claims and instead rely primarily on two cases to assert that venue must lie in the district of confinement. In *LoBue v. Christopher*, the D.C. Circuit held that plaintiffs challenging their extradition to Canada could not seek a declaratory judgment in this

District but rather must pursue their challenge through their already-existing petition for habeas corpus. 82 F.3d 1081, 1082 (D.C. Cir. 1996). But *extradition* has its own specialized body of law. The *LoBue* plaintiffs had to seek habeas because there was no APA review available to them. *Id.* at 1083 ("extension of the APA to *extradition* orders is impossible" as the judges involved do not constitute an agency). The D.C. Circuit itself acknowledged that immigration cases were different from extradition cases since the Supreme Court's decision in *Pedreiro* extended APA review over deportation orders. *Id.*; *see also* Op. 18. Additionally, *LoBue* rested on the unique circumstances in which the plaintiffs had a pending habeas petition in their district of confinement seeking release. The Court thus noted that because success in plaintiffs' declaratory suit would have "preclusive effect" on their pending habeas petition, it would secure release from confinement, thereby precluding the availability of other remedies. 82 F.3d at 1083-844 (citing *Chatman-Bey v. Thornburgh*, 864 F.2d 804 (D.C. Cir. 1988), and *Preiser*, 411 U.S. at 489-90).

Munaf v. Geren, 553 U.S. 674 (2008), also does not help Defendants. There, the Supreme Court held only that U.S. citizens who had voluntarily traveled to Iraq *could* bring a habeas challenge seeking to prevent their transfer from the custody of an overseas task force to that of Iraqi authorities for prosecution. 553 U.S. at 680. But the Court never suggested that petitioners were limited to habeas, much less sought to disturb the longstanding general distinction between core and non-core habeas actions. The issue was instead whether the overseas petitioners were in U.S. custody for purposes of habeas jurisdiction. *Id.* at 689.

Finally, and in any event, the government's suggestion that every individual, even those who are unrepresented (the overwhelming majority), could file an individual habeas is, at best, illusory. As demonstrated above, the government is not providing any advance notice of an individual's designation as an alien enemy, let alone providing time to file a habeas action and

obtain a stay of removal. The notice form that it may be using—which no Plaintiff has reported receiving—says there is no form of review available. Moreover, the government has complete control over where it detains and transfers people, and transfers of class members have occurred swiftly (and without notice to counsel in the few cases where there is counsel). The reality is that, if forced to pursue their claims in habeas, Plaintiffs will face insurmountable hurdles to obtaining judicial review over the lawfulness of Defendants' actions. The government has already admitted as much. *See J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *30 (D.C. Cir. Mar. 26, 2025) (Millett, J., concurring) ("The government's position at oral argument was that, the *moment* the district court TROs are lifted, it can *immediately* resume removal flights without affording Plaintiffs notice of the grounds for their removal or any opportunity to call a lawyer, let alone to file a writ of habeas corpus or obtain any review of their legal challenges to removal.") *See id.* at 29 (Millett, J., concurring) ("Only a swift class action could preserve the Plaintiffs' legal rights before the rushed removals mooted their cases and thrust them into a Salvadorean prison."); 5 U.S.C. § 704.[6]

Second, there is no question the Court can review and enjoin the agency actions implementing the Proclamation. APA review is generally available to plaintiffs absent specific preclusion by Congress. *See Robbins v. Reagan*, 780 F.2d 37, 42 (D.C. Cir. 1985); *Dep't of Homeland Sec. v. Regents of the Univ. of California*, 140 S. Ct. 1891, 1905 (2020) ("The APA establishes a 'basic presumption of judicial review [for] one suffering legal wrong because of agency action.'") (quoting *Abbott Laboratories v. Gardner*, 387 U.S. 136, 140 (1967)). Indeed,

[6] Even if Plaintiffs' challenges to the use of the AEA were required to be brought in habeas, at a minimum, Plaintiffs' claims that they should be provided notice and an opportunity to contest the government's allegations do not sound in habeas insofar as they are preconditions to any meaningful exercise of habeas. Thus, there is no "other adequate remedy in a court" for Plaintiffs.

even as to detention claims, Congress "has never manifested an intent to require those challenging an unlawful, nationwide detention policy to seek relief through habeas rather than the APA." Op. 15 (quoting *R.I.L.-R v. Johnson*, 80 F. Supp. 3d 164, 186 (D.C.C. 2015) (citation omitted)); *see also Huisha-Huisha*, 27 F.4th at 726 (APA challenge to use of public health law to expel noncitizens from the United States); *Aracely*, 319 F. Supp. 3d at 126 ("courts in this jurisdiction facing challenges to similar nation-wide immigration policies have rejected the notion that detainees must proceed through a habeas petition"). Plaintiffs can therefore seek review over Defendants' implementation of the Proclamation as it qualifies as final agency actions consummating the agency's decisionmaking process in a manner from which legal consequences flow. Op. 15 (citing *Bennett v. Spear*, 520 U.S. 154, 178 (1997)).

Lastly, there is similarly no question that this Court can review the lawfulness of presidential actions like the Proclamation and its implementation. *See, e.g.*, *Trump v. Hawaii*, 585 U.S. 667, 675–76 (2018) (reviewing President's authority under the INA to issue proclamation); *Dames & Moore v. Regan*, 453 U.S. 654 (1981) (reviewing President Carter's executive order ending the Iranian hostage crisis); *Youngstown*, 343 U.S. 579 *Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (Jackson, J., concurring) (reviewing constitutionality of President Truman's executive orders); *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935) (reviewing validity of an executive order issued by President Franklin Roosevelt under the National Industrial Recovery Act in action against officials of the Department of the Interior); *see also Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) ("The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England."); *United States v. N.Y. Tel. Co.*, 434 U.S. 159, 173 (1977) (court can avail itself of auxiliary writs "when the use of such historic aids

is calculated in its sound judgment to achieve the ends of justice entrusted to it"). As noted in *Mathis v. U.S. Parole Commission*, "by default, federal courts have 'jurisdiction in equity.'" 749 F.Supp.3d 8, 23 (D.D.C. 2024) (quoting *Porter v. Warner Holding Co.*, 328 U.S. 395, 398 (1946)). "[T]he 'full scope of [this] jurisdiction is to be recognized and applied,'" *id.* (alteration in original) (quoting *Porter*, 328 U.S. at 398), "absent only 'the clearest command' otherwise in a statute," *id.* (quoting *McQuiggin v. Perkins*, 569 U.S. 383, 397 (2013)). There is not the remotest suggestion in the AEA that equitable power is precluded.

Thus, the Court can review Plaintiffs' claims under the APA and in equity.[7]

II. The Court Can Reach the Merits of Plaintiffs' Claims.

Plaintiffs raise three statutory arguments: (1) the AEA's use of "invasion" and "predatory incursion" refer only to military action in the context of an actual or imminent war; (2) a criminal gang is not a "foreign nation or government" within the AEA; and, (3) even if the AEA applies, it requires (a) an opportunity to contest whether an individual falls within the Proclamation, (b) compliance with the INA and other later-enacted, more specific statutory protections for noncitizens, and (c) an opportunity to voluntarily depart the United States prior to any removal.

In prior filings, the government has not directly disputed that Plaintiffs' third set of statutory claims is justiciable and has instead limited its arguments to Plaintiffs' first two statutory claims. The government's justiciability arguments are wrong. The AEA cases confirm that this Court can reach the merits of Plaintiffs' claims. More generally, the political question doctrine poses no bar to judicial review of the proper interpretation of statutes that constrain the executive branch.

[7] Plaintiffs do not seek to enjoin the President but he remains a proper defendant because, at a minimum, Plaintiffs may obtain declaratory relief against him. *See, e.g.*, *Nat'l Treasury Emps. Union v. Nixon*, 492 F.2d 587, 616 (D.C. Cir. 1974) (concluding that court had jurisdiction to issue writ of mandamus against the President but "opt[ing] instead" to issue declaration).

A. The AEA Cases Confirm the Justiciability of Plaintiffs' Claims.

As this Court has already correctly held, it can "construe the terms 'nation,' 'government,' 'invasion,' and 'predatory incursion.'" Op. 22. In *Ludecke v. Watkins*, the Supreme Court emphasized that "resort to the courts" *was* available "to challenge the construction and validity of the statute," explicitly noting that the AEA does not preclude judicial review of "questions of interpretation and constitutionality." 335 U.S. 160, 163, 171 (1948). Those questions—the "construction" and "interpretation" of the AEA—are precisely what are at issue here. And not only did the *Ludecke* Court make that point twice, but *Ludecke* itself reached the merits of the statutory question presented there: whether a "declared war" no longer existed within the meaning of the Act when "actual hostilities" had ceased (the "shooting war" had ended). *Id.* at 166-70. Only after concluding, on the merits, that the statutory term "declared war" did not mean "actual hostilities," but instead referred to the point at which the President and Congress "declared" the war over, did the Court state that its review had come to an end. *Id.* at 170 & n.15. In short, the "political judgment[]" that *Ludecke* declined to revisit, *see id.* at 170, was simply the decision of Congress and the President not to choose to formally declare the war over, *see id.* at 169, and *not* a question of statutory interpretation. Indeed, four years later, the Court reversed a government World War II removal decision because "[t]he statutory power of the Attorney General to remove petitioner as an enemy alien ended when Congress terminated the war." *U.S. ex rel. Jaegeler v. Carusi*, 342 U.S. 347, 348 (1952).

Consistent with *Ludecke*'s recognition that questions about the "construction and validity" of the AEA are justiciable, 335 U.S. at 171, courts have reviewed a range of issues concerning the AEA's statutory prerequisites. *See, e.g.*, *U.S. ex rel. Kessler v. Watkins*, 163 F.2d 140, 143 (2d Cir. 1947) (interpreting the meaning of "foreign nation or government"); *U.S. ex rel. Zdunic v. Uhl*, 137 F.2d 858, 860–61 (2d Cir. 1943) ("[t]he meaning of [native, citizen, denizen, or subject]

as used in the statute . . . presents a question of law"; interpreting meaning of "denizen" and remanding for hearing on disputed facts); *U.S. ex rel. Gregoire v. Watkins*, 164 F.2d 137, 138 (2d Cir. 1947) (interpreting the meaning of "native"; discussing alternatives to attain a "logically consistent construction of the statute"); *U.S. ex rel. D'Esquiva v. Uhl*, 137 F.2d 903, 905–07 (2d Cir. 1943) (interpreting the meaning of "native" and reviewing executive branch's position on legal status of Austria); *U.S. ex rel. Schwarzkopf v. Uhl*, 137 F.2d 898, 903 (2d Cir. 1943) (interpreting the meaning of "citizen" and legal effects of Germany's annexation of Austria); *Bauer v. Watkins*, 171 F.2d 492, 493 (2d Cir. 1948) (holding that the government bears the burden of proof of establishing the citizenship of "alien enemy"); *Citizens Protective League v. Clark*, 155 F.2d 290, 292, 295 (D.C. Cir. 1946) (reviewing whether Proclamation was within "the precise terms" of the AEA, and whether AEA was impliedly repealed); *U.S. ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 653 (2d Cir. 1947) (interpreting "within the United States"; requiring executive branch to show that the petitioner "refuse[d] or neglect[ed] to depart" under Section 21); *U.S. ex rel. Ludwig v. Watkins*, 164 F.2d 456, 457 (2d Cir. 1947) (interpreting "refuse or neglect to depart" in Section 21 as creating a "right of voluntary departure" that functions as a "statutory condition precedent" to the government's right to deport enemy aliens); *U.S. ex rel. Hoehn v. Shaughnessy*, 175 F.2d 116, 117–18 (2d Cir. 1949) (interpreting "reasonable time" to depart under Section 22).

The government has leaned heavily on *Ludecke*'s recognition that the AEA vests the President with broad authority to take extraordinary measures. But that is precisely why the statutory perquisites have always been, and must be, interpreted by the courts. Otherwise, the President can employ this authority without regard to the careful limits Congress expressly established in the statute. Notably, Congress did not write that this extraordinary power can be

used when the President unilaterally *deems* there to be an invasion or incursion by a foreign government or nation, but rather, when there "is" such an event. 50 U.S.C. § 21.

The government points to language in the D.C. Circuit's (pre-*Ludecke* decision) *Citizens Protective League*, 155 F.2d at 294, stating that the Act vests "[u]nreviewable power in the President to restrain, and to provide for the removal of, *alien enemies in time of war*." Mot. to Vacate 3, 7–8, ECF No. 26 (emphasis added). But, if anything, that statement only underscores that the AEA's activation is limited to times of actual war and does not remotely suggest that courts may not review whether the statutory predicates have been satisfied. Indeed, the court stated that it could review whether the Presidential Proclamation and Attorney General's regulations came "within the precise terms" of the AEA. And the court held, on the merits, that "[t]he constitutional question raised by appellants was not substantial." 155 F.2d at 294–95.

B. The Political Question Doctrine Does Not Apply.

General political question doctrine and caselaw likewise supports this Court's ability to interpret the meaning of the statutory terms in the AEA. Particularly in recent decisions, the Supreme Court has emphasized that courts may review—and are duty-bound to interpret—statutory terms, even where they touch on national security and foreign affairs. Indeed, Plaintiffs are not aware of any Supreme Court decision that has found a statutory claim non-justiciable. *See El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 855 (D.C. Cir. 2010) (en banc) (Kavanaugh, J., concurring) ("[t]he Supreme Court has never applied the political question doctrine in cases involving statutory claims" that "the Executive Branch violated congressionally enacted statutes that purportedly constrain the Executive.").

Rather, the political question doctrine is a "narrow exception" to courts' presumptive exercise of jurisdiction. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012). The doctrine "is primarily a function of the separation of powers," *Baker v. Carr*, 369 U.S. 186, 210

(1962), and so the judiciary *must* act when the questions at issue fall within its own competence, *see, e.g.*, *U.S. Dep't of Com. v. Montana*, 503 U.S. 442, 458 (1992) ("As our previous rejection of the political question doctrine in this context should make clear, the interpretation of the apportionment provisions of the Constitution is well within the competence of the Judiciary."); *Al-Tamimi v. Adelson*, 916 F.3d 1, 11 (D.C. Cir. 2019) ("Policy choices are to be made by the political branches and purely legal issues are to be decided by the courts."); *Baker*, 369 U.S. at 216 (courts "will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power"); *see generally Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 385 (2024) (emphasizing that "the final 'interpretation of the laws' [is] 'the proper and peculiar province of the courts'") (quoting The Federalist No. 78 at 525 (A. Hamilton)).

As this Court explained in its TRO decision, the fact that a legal claim implicates (or arguably implicates) foreign affairs or national security does not make it a non-justiciable political question. *See* Op. 20; *cf. J.G.G.*, 2025 WL 914682, at *12-16 (Henderson, J., concurring); *id.* at *25-32 (Millet, J., concurring). In *Zivotofsky*, for instance, the Court held that statutory right to passport designation did not raise a political question, even though it implicated the diplomatic status of Jerusalem. 566 U.S. at 196-201. Likewise, in *Japan Whaling Association v. American Cetacean Society*, the Supreme Court rejected the idea that a "purely legal question of statutory interpretation" should be held nonjusticiable merely because it "involve[d] foreign relations," explaining that "interpreting congressional legislation is a recurring and accepted task for the federal courts" and the case "call[ed] for applying no more than the traditional rules of statutory construction, and then applying this analysis to the particular set of facts presented below." 478 U.S. 221, 229-30 (1986); *see also INS v. Chadha*, 462 U.S. 919, 940–41 (1983) (rejecting argument that Congress's plenary power over immigration renders all immigration-related arguments

political questions); *County of Oneida v. Oneida Indian Nation*, 470 U.S. 226, 249 (1985) (similar for Congress's power over Indian affairs). *Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986), *aff'd*, 484 U.S. 1 (1987) (noting that although "[t]he Executive has broad discretion over the admission and exclusion of aliens, . . . [i]t extends only as far as the statutory authority conferred by Congress, and stressing it is "the duty of the courts, in cases properly before them, to say where those statutory and constitutional boundaries lie").

In short, the political question doctrine serves to reinforce the separation of powers. And it is especially critical for the judiciary to enforce the separation of powers when inter-branch disputes arise, such as where the executive violates or exceeds its authority under a statute. *See El-Shifa Pharm. Indus. Co.*, 607 F.3d at 855 (Kavanaugh, J., concurring). Here, judicial review of Plaintiffs' challenge *preserves* the separation of powers by ensuring that the President does not exceed the specific authority Congress delegated in the AEA. *See Youngstown*, 343 U.S. at 637–38 (Jackson, J., concurring). This Court thus rightly acknowledged that it can construe the terms "nation," "government," "invasion," and "predatory incursion." Op. 22.

This Court also noted that whether courts are empowered to decide if TdA's characteristics or conduct satisfy the statutory terms presents a "harder" issue. *Id.* As shown below, however, the Proclamation, on its face, does not satisfy the AEA's statutory predicates as properly understood. *See infra* (discussing merits). Consequently, even if this Court were to accept the Proclamation's conclusory, vague findings, it could still hold that the Proclamation fails to satisfy the AEA. That would merely involve a straightforward application of law to accepted facts and would thus be a "familiar judicial exercise." *Zivotofsky*, 566 U.S. at 196; *see also Guerrero-Lasprilla v. Barr*, 589 U.S. 221 (2020); *Wilkinson v. Garland*, 601 U.S. 209, 217 (2024) ("In *Guerrero-Lasprilla*, this Court held that the statutory phrase 'questions of law' includes the

application of a legal standard to undisputed or established facts, also referred to as mixed questions of law and fact.") (internal quotation marks and citation omitted).

Moreover, even if the Court concluded that the Proclamation's findings, on their face, did establish that TdA is a "foreign government or nation" and that TdA was engaged in an "invasion or predatory incursion," it would still have an independent obligation to examine the factual record on whether those terms were satisfied. *See* Op. 21 (explaining that the *Ludecke* Court "interpreted 'declared war,' defined its termination based on that construction, and decided as a factual matter whether such termination had occurred"). If courts were to simply accept any presidential findings, no matter how conclusory or unfounded, judicial review would be rendered an empty exercise, undermining Congress's decision to place express limits on the executive branch. Thus, even during World War II, the courts examined the facts to ensure that the AEA's statutory limits on presidential power were observed. *See, e.g.*, *U.S. ex rel. Kessler*, 163 F.2d at 143 (reviewing petitioner's factual contention that the German government had ceased to exist after it surrendered and thus was no longer a "foreign nation or government" under the AEA); *U.S. ex rel. Zdunic*, 137 F.2d at 860–61 (interpreting meaning of "denizen" under the AEA and remanding for hearing on disputed facts); *United States ex rel. D'Esquiva*, 137 F.3d at 905–07 (interpreting meaning of "native" under the AEA and reviewing the U.S. government's full course of conduct to ascertain whether and when it had officially recognized Austria's annexation by Germany; remanding for additional factfinding on this question); *see also Hamdi v. Rumsfeld*, 542 U.S. 507, 521 (2004) (plurality op.) (detention of Taliban combatants authorized by the AUMF only "*[i]f the record establishes* that United States troops are still involved in active combat in Afghanistan") (plurality opinion) (emphasis added)); *Al-Alwi v. Trump*, 901 F.3d 294, 298–300 (D.C. Cir. 2018) (Henderson, J.) (evaluating whether "active hostilities" continued under the AUMF; concluding

that "[t]he record so manifests here"); *Al Warafi v Obama*, No. CV 09-2368 (RCL), 2015 WL 4600420 (D.D.C. July 30, 2015), *order vacated as moot* (Mar. 4, 2016); *Kaplan v. Cent. Bank of the Islamic Republic of Iran*, 896 F.3d 501, 514 (D.C. Cir. 2018) ("[A] court must determine whether the circumstances involve an act of war within the meaning of the statutory exception. That interpretive exercise, unlike with a non-justiciable political question, is what courts do.'").

Even if this Court grants some deference to the executive branch's determinations, that deference does not require the Court to rubber-stamp unsupported, vague, and conclusory allegations in the face of contrary evidence, such as the facts provided by Plaintiffs' experts on TdA. "The Judicial Branch appropriately exercises" review "where the question is whether Congress or the Executive is 'aggrandizing its power at the expense of another branch.'" *Zivotofsky*, 566 U.S. at 197; *cf. Youngstown*, 343 U.S. at 637 (Jackson, J., concurring). That is precisely what this case is about. And where the executive branch exceeds those boundaries, its conduct must be subject to judicial review. *See, e.g.*, *Hamdan v. Rumsfeld*, 548 U.S. 557, 591, 635 (2006) (interpreting statutes limiting executive's authority to convene military commissions; "in undertaking to try Hamdan and subject him to criminal punishment, the Executive is bound to comply with the rule of law that prevails in this jurisdiction").

III. Plaintiffs Are Likely to Succeed on the Merits.

A. The Proclamation Does Not Satisfy the AEA.

The Proclamation is unprecedented, exceeding the President's statutory authority in three critical respects: there is no invasion or predatory incursion; no foreign government or nation; and no process to contest whether an individual falls within the Proclamation. When the government asserts "an unheralded power" in a "long-extant statute," courts "greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014). That skepticism

is well warranted here.

1. There Is No "Invasion" or "Predatory Incursion" upon the United States.

The Proclamation fails on an essential statutory requirement: that there be an "invasion or predatory incursion" directed "against the territory of the United States." The text and history of the Alien Enemies Act make clear that it uses these terms to refer to military actions that are indicative of an actual or impending war. At the time of enactment, an "invasion" was a large-scale military action by an army intent on territorial conquest. *See* Webster's Dictionary, Invasion (1828) ("invasion" is a "hostile entrance into the possession of another; particularly, the entrance of a hostile army into a country for purpose of conquest or plunder, or the attack of a military force"); Johnson's Dictionary, *Invasion* (1773) ("invasion" is a "[h]ostile entrance upon the right or possession of another; hostile encroachment" such as when "William the Conqueror invaded England"); John Jay, Con't Cong., Draft of an Address of the Convention of the Representatives of the State of New York to Their Constituents (Dec. 23, 1776) (describing the goal of British invasion as "the conquest of America")[8]; *see also J.G.G.*, 2025 WL 914682, at *20 (Henderson, J., concurring) (in the Constitution, "invasion" "is used in a military sense" "*in every instance*").

And "predatory incursion" referred to smaller-scale military raids aimed to destroy military structures or supplies, or to otherwise sabotage the enemy, often as a precursor to invasion and war. *See* Webster's Dictionary, *Predatory* (1828) ("predatory" underscores that the purpose of a military party's "incursion" was "plundering" or "pillaging"); *id.*, *Incursion* (1828) ("incursion . . . applies to the expeditions of small parties or detachments of an enemy's army, entering a territory for attack, plunder, or destruction of a post or magazine"); Johnson's Dictionary, *Incursion* (1773)

[8] *Available at* https://founders.archives.gov/?q=invasion%20conquest&s=1111311111&sa=&r=17&sr=.

("[a]ttack" or "[i]nvasion without conquest"); *see also* Letter from Timothy Pickering, Sec'y of State, to Alexander Hamilton (June 9, 1798) (reporting that "predatory incursions of the French" might result in "great destruction of property" but that militia could repel them);[9] Letter from George Washington to Thomas Jefferson (Feb. 6, 1781) (describing a British raid that destroyed military supplies and infrastructure in Richmond as a "predatory incursion");[10] Letter from George Washington to Nathanael Greene (Jan. 29, 1783) ("predatory incursions" by the British could be managed with limited cavalry troops);[11] *J.G.G.*, 2025 WL 914682, at *10 (Henderson, J., concurring) (early American caselaw indicates that "predatory incursion" is "a form of hostilities against the United States by another nation-state, a form of attack short of war").

The historical context in which the AEA was passed reinforces what Congress meant by "predatory incursion" and "invasion." At the time of passage, French ships were already attacking U.S. merchant ships in U.S. *See, e.g.*, 7 Annals of Cong. 58 (May 1797) (promoting creation of a Navy to "diminish the probability of . . . predatory incursions" by French ships while recognizing that distance from Europe lessened the chance of "invasion"); Act of May 28, 1798, ch. 48, 1 Stat. 561, 561 (permitting U.S. armed vessels to seize French armed vessels that had attacked U.S. vessels or that were "hovering on the coasts of the United States" to do so); Act of July 9, 1798, ch. 68, 1 Stat. 578, 578 (authorizing US ships to seize "any armed French vessel" "found within the jurisdictional limits of the United States"). Congress worried that these attacks against the territory of the United States were the precursor to all-out war with France. *J.G.G.*, 2025 WL 914682, at *1 (Henderson, J., concurring) ("In 1798, our fledgling Republic was consumed with fear . . . of external war with France."). This "predatory violence" by a sovereign nation led, in

[9] *Available at* https://founders.archives.gov/documents/Hamilton/01-21-02-0282.
[10] *Available at* https://founders.archives.gov/documents/Jefferson/01-04-02-0673.
[11] *Available at* https://founders.archives.gov/documents/Washington/99-01-02-10525.

part, to the AEA. *See* Act of July 7, 1798, ch. 67, 1 Stat. 578, 578 ("[W]hereas, under authority of the French government, there is yet pursued against the United States, a system of predatory violence").

At the same time, the 1798 Congress was considering whether to authorize the President to raise troops to respond to impending conflict with France. It ultimately did so, authorizing him to raise troops "in the event of a declaration of war against the United States, or of an actual invasion of their territory, by a foreign power, or of imminent danger of such invasion." Act of May 28, 1798, ch. 47, 1 Stat. 558. As Judge Henderson noted, "[t]his language bears more than a passing resemblance to the language of the AEA, which the Congress enacted a mere thirty-nine days later. *J.G.G.*, 2025 WL 914682, at *9. As such, the historical context makes plain that Congress was concerned about *military* incursions by the armed forces of a foreign nation.

Tellingly, the AEA requires that the predicate invasion or predatory incursion be "against the territory of the United States." 50 U.S.C. § 21. And at the time of founding, actions "against the territory of the United States" were expressly military in nature. *See Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 131 (1807) (describing levying war against the United States as "a military enterprize . . . against any of the territories of the United States"); *Wiborg v. United States*, 163 U.S. 632, 633 (1896) (explaining that a group of seamen were charged with preparing for a "military expedition . . . against the territory and dominions of a foreign prince").

Finally, text and history make clear that the AEA's powers extended beyond an existing war only when war was imminent. *Ludecke*, 335 U.S. at 169 n.13 (explaining that "the life of [the AEA] is defined by the existence of a war"). The interpretive canon of *noscitur a sociis* confirms this. The three terms "declared war," "invasion," and "predatory incursion" appear alongside each other in a related list. Reading the latter two in light of the company they keep highlights the

express military nature of their usage here. *See Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961).

Unsurprisingly, then, the Department of Justice has explicitly stated to Congress that the AEA contemplates use by the President only "in situations where war is imminent." *See, e.g.*, Office of Legislative Affairs, Proposed Amendment to AEA, at 2 n.1 (Aug. 27, 1980)). This also comports with the common law understanding of the term "alien enemy" as subject of a foreign state at war with the United States. *See Johnson v. Eisentrager*, 339 U.S. 763, 769 n.2 (1950) (collecting cases).

An "invasion" or "predatory incursion" are thus military actions by foreign governments that constitute or imminently precede acts of war. "Mass illegal migration" or criminal activities, as described in the Proclamation, plainly do not fall within the statutory boundaries. On its face, the Proclamation makes no findings that TdA is acting as an army or military force. Nor does the Proclamation assert that TdA is acting with an intent to gain a territorial foothold in the United States for military purposes. And the Proclamation makes no suggestion that the United States will imminently be at war with Venezuela. The oblique references to the TdA's ongoing "irregular warfare" within the United States does not suffice because the Proclamation makes clear that it refers to "mass illegal migration" and "crimes"—neither of which constitute war within the Founding Era understanding. It asserts that TdA "commits brutal crimes" with the goal of "harming United States citizens, undermining public safety, and . . . destabilizing democratic nations." But these actions are simply not "against the territory" of the United States. Indeed, if mass migration or criminal activities by some members of a particular nationality could qualify as an "invasion," then virtually any group, hailing from virtually any country, could be deemed enemy aliens.

The courts' role in enforcing the bounds of congressional statutory predicates, like "predatory invasion" and "incursion" is critical. Congress passed the AEA within weeks of the Alien Friends Act ("AFA"). That second law gave the President broader discretion to deport any noncitizen who he considered "dangerous to the peace and safety of the United States," regardless of whether an invasion or war had occurred. An Act Concerning Aliens § 1, 1 Stat. 571. As such, the 1798 Congress clearly meant to grant the President two distinct powers—the power to remove the national of foreign enemy sovereign countries in times of a war or imminent war, and the power to remove particular dangerous noncitizens in times of war or peace. The government's preferred interpretation of the AEA—where the President can remove allegedly dangerous people by deciding that virtually anything qualifies as a predatory incursion or invasion, and no court can review that determination—reads the AEA's power to encompass the authorities granted by both the AEA and the AFA. But it would have made little sense for Congress to pass two laws within weeks of each other, unless those laws were meaningfully different. And the critical difference is, of course, the statutory limitations on when the President can use the AEA—it is a particular tool for a particular situation, namely the presence of nationals of a belligerent country during wartime, which simply does not apply to present circumstances. Moreover, treating the AEA like the AFA is especially untenable given that the AFA was "widely condemned as unconstitutional by Madison and many others" and quickly allowed to lapse. *Sessions v. Dimaya*, 584 U.S. 148, 185 (2018) (Gorsuch, J., concurring) (the AFA "is one of the most notorious laws in our country's history"); *see also J.G.G.*, 2025 WL 914682, at *1 (Henderson, J., concurring) (AFA was "widely derided as unconstitutional").

2. The Purported Invasion Is Not by a "Foreign Nation or Government."

The Proclamation fails to assert that any "foreign nation or government" within the

meaning of the Act is invading the United States. Put simply, the Proclamation never finds that TdA is a foreign "nation" or "government." Nor could it. At the time of enactment, the terms "nation" and "government" were defined by their possession of territory and legal authority. *See* Johnson's Dictionary, *Nation* (1773) ("A people distinguished from another people; generally by their language, original, or government."); Johnson's Dictionary, *Government* (1773) ("An established state of legal authority."). As a criminal gang, TdA possesses neither a defined territory nor any legal authority. Hanson Decl. ¶¶ 13, 16; Antillano Decl. ¶¶ 11, 13; Dudley Decl. ¶ 22.

The Proclamation asserts that "[o]ver the years," the Venezuelan government has "ceded ever-greater control over their territories to transnational criminal organizations." But the Proclamation notably does *not* say that TdA operates as a government in those regions[12] In fact, the Proclamation does not even specify that TdA currently controls *any* territory in Venezuela.

The AEA presumes that a designated nation possesses treaty-making powers. *See* 50 U.S.C. § 22 ("stipulated by any treaty . . . between the United States and the hostile nation or government"). Nations—not criminal organizations—are the entities that enter into treaties. *See, e.g.*, *Medellin v. Texas*, 552 U.S. 491, 505, 508 (2008) (treaty is "a compact between independent nations" and "agreement among sovereign powers") (internal quotation marks omitted); *Holmes v. Jennison*, 39 U.S. 540, 570-72 (1840) (similar). It should go without saying that TdA possesses no such power.

Moreover, when a "nation or government" is designated under the AEA, the statute unlocks power over that nation or government's "natives, citizens, denizens, or subjects." 50 U.S.C. § 21. *Countries* have "natives, citizens, denizens, or subjects." By contrast, criminal organizations, in

[12] Guantanamo Bay provides an analogy. There, the United States controls the naval base on the island. But the United States' control of a piece of land does not somehow render it the "government" of Cuba.

the government's own view, have "members." Proclamation § 1 ("members of TdA"). And it designates TdA "members" as subject to AEA enforcement—but "members" are not "natives, citizens, denizens, or subjects." That glaring mismatch underscores that Defendants are attempting not only to use the AEA in an unprecedented way, but in a way that Congress never permitted—as a mechanism to address, in the government's own words, a *non*-state actor. *Venezuela* has natives, citizens, and subjects, but TdA (not Venezuela) is designated under the proclamation. No amount of wordplay can avoid the obvious fact that *Venezuela* is the relevant country for statutory purposes here—and TdA is a non-state criminal organization.

Even as the Proclamation singles out certain Venezuelan nationals, it does not claim that *Venezuela* is invading the United States. And, as the President's own CIA Director recently testified, the intelligence community has no assessment that says the US is at war with or being invaded by Venezuela. Ryan Goodman, Bluesky (Mar. 26, 2025).[13] The AEA requires the President to identify a "foreign nation or government" that is invading or engaging in an invasion or incursion. Because it does not, the Proclamation fails on its face.

Instead, the Proclamation makes a half-hearted attempt to link TdA to Venezuela by suggesting that TdA is "supporting," "closely aligned with," or "has infiltrated" the Maduro regime. *See* Proclamation. To make that link, the Proclamation points to the gang's growth under Tareck El Aissami. *See id*. But the Proclamation fails to mention that El Aissami has been arrested by the Maduro government in a corruption probe, which wholly undermines the Proclamation's theory. Hanson Decl. ¶ 18; Dudley Decl. ¶ 22. And, more fundamentally, experts are in accord

[13] *Available at* https://bsky.app/profile/rgoodlaw.bsky.social/post/3llc4wzbkr22k (Q: "Does the intelligence community assess that we are currently at war or being invaded by the nation of Venezuela?" A: "We have no assessment that says that."); *also available at* https://www.c-span.org/program/house-committee/national-security-and-intelligence-officials-testify-on-global-threats/657380.

that it is "absolutely implausible that the Maduro regime controls TdA or that the Maduro government and TdA are intertwined." *id.* ¶ 17; Antillano Decl. ¶ 13; Dudley ¶¶ 2, 21. "There is no credible evidence that the Maduro regime has directed TdA to enter the United States or directed any TdA activities within the country." Hanson Decl. ¶ 20; Antillano Decl. ¶ 13; Dudley Decl. ¶ 2. As one expert who has done numerous projects for the U.S. government, including on the topic of TdA, explained, the Proclamation's characterization of the relationship between the Venezuelan state and TdA with respect to TdA's activities in the United States is "simply incorrect." Dudley Decl. ¶¶ 5, 17-18. The President's own intelligence agencies reached that same conclusion prior to his invocation of the AEA. *See* Sarabia Roman Decl., Exh. 19 ("shared judgment of the nation's spy agencies" is "that [TdA] was not controlled by the Venezuelan government").

The government has pressed this Court to read the nation/government requirement out of the statute entirely, and to accept that the AEA reaches the fullest extent of the political branches' "war powers." ECF No. 26 at 12-13; Mar. 21 Hearing Tr. at 19. But the Act does not encompass the full scope of the political branches' "war powers." It operates as a specific delegation of authority from Congress to the President, a delegation Congress specifically limited to instances where action is taken by "foreign nation[s]" or "governments." *Cf. Youngstown*, 343 U.S. at 635–38 (Jackson, J., concurring).

If Congress had intended to vest the President with broader authority, it could have said so. After all—as explained in a source that the government has itself cited—Congress has long been aware of the distinction between executive branch authority to use "military force against non-traditional actors" and "more traditional conflicts" waged against formally-recognized states. Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2066 (2005); *see also* Mot. To Vacate at 16, ECF No. 26 (citing article).

Congress knows how to delegate authority against such actors to the Executive Branch when it wants to. *See* 22 U.S.C. § 6442a ("review and identify any non-state actors operating in any such reviewed country"); 18 U.S.C. § 2339A (criminalizing providing material support to non-state actors). And here, Congress intentionally limited the AEA's scope to actions taken by "foreign nation[s]" and "government[s]." 50 U.S.C. § 21. It has never amended the statute to broaden that scope.

While the United States has, at times, asserted war-based authority to use force against non-state actors, *see* Mot. to Vacate 16, these actions were justified under separate legal frameworks, not under the AEA. And the AEA's historical record confirms that it was intended to address conflicts with foreign sovereigns, not a criminal gang like TdA. *See* 5 Annals of Cong. 1453 (Apr. 1798) ("[W]e may very shortly be involved in war . . ."); John Lord O'Brian, Special Ass't to the Att'y Gen. for War Work, N.Y. State Bar Ass'n Annual Meeting: Civil Liberty in War Time, at 8 (Jan. 17, 1919) ("The [AEA] was passed by Congress . . . at a time when it was supposed that war with France was imminent."); Jennifer K. Elsea & Matthew C. Weed, Cong. Rsch. Serv., RL3113, Declarations of War and Authorizations for the Use of Military Force 1 (2014) (Congress has never issued a declaration of war against a nonstate actor). If Defendants were allowed to designate any group with ties to officials as a foreign government, and courts were powerless to review that designation, any group could be deemed a government, leading to an untenable and overbroad application of the AEA.

Finally, Defendants' far-reaching argument that the Proclamation is supported by the President's Article II authority, and that his power is at its "maximum" under *Youngstown*, Mot. to Vacate 17, is plainly wrong. As an initial matter, the President has no authority under Article II to unilaterally *remove* people from the United States. Thus, the sole question here is whether

the executive branch's conduct conflicts with the AEA. But even assuming Justice Jackson's *Youngstown* framework applies, the President's power would be at its "lowest ebb," because the President is taking measures incompatible with the expressed will of Congress: "Courts can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject." 343 U.S. at 637–38. There is no basis for doing so here. Under Article I, Congress holds plenary power over immigration, *Chadha*, 462 U.S. at 940 , and has a broad, distinct set of war powers, *Hamdan*, 548 U.S. at 591 . Through the INA and a variety of statutory safeguards, Congress comprehensively regulated the removal of immigrants. *See infra*. And through the AEA, Congress granted a specific set of war powers to the President; he is not at liberty to exceed those statutory powers or to exercise them outside of the context of war or imminent war. There is simply no ground for ignoring the constraints that Congress has established through the AEA (and the INA, *see infra*), nor for "disabling" Congress's constitutional authority to legislate with respect to its own war powers and to immigration.

Moreover, even when the executive asserts war powers, the Supreme Court has repeatedly refused to grant the President a blank check as Commander-in-Chief. *See, e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 732 (2008) (rejecting executive's argument that noncitizens designated as "enemy combatants" outside the United States have no habeas privilege); *Hamdan*, 548 U.S. at 593, 635 (rejecting executive's convening of military commission as unlawful because it failed to satisfy statute's requirements); *Hamdi*, 542 U.S. at 530, 535–36 (rejecting executive's arguments about the process due to alleged enemy combatants); *Ex Parte Milligan*, 71 U.S. 2, 125 (1866) ("[The Founders] knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war . . . and that unlimited power, wherever

lodged at such a time, was especially hazardous to freemen.").[14]

3. Summary Removals Without Notice and a Meaningful Opportunity to Challenge "Alien Enemy" Designations Violate the AEA, Due Process, and the APA.

As this Court has already held, Defendants must provide Plaintiffs with a meaningful opportunity to challenge their designation as alien enemies before removal is permissible under the Proclamation. Op. 23-24, 30; *see also J.G.G.*, 2025 WL 914682, at *21 (Millett, J., concurring) ("the government agrees that individuals are entitled to challenge in court whether they fall within the terms of the AEA or are otherwise not lawfully removable under it."). The government's concession that there must be an opportunity to contest one's designation as an enemy alien is well taken given that *Ludecke* expressly recognized as much. 335 U.S. at 171 n.17; *see also, e.g., Ex parte Gilroy*, 257 F. 110, 114-24 (S.D.N.Y. 1919); *United States ex rel. Zdunic v. Uhl*, 137 F.2d 858, 860 (2d Cir. 1943); *Bauer*, 171 F.2d at 493-94.

Because the government is currently providing no process or opportunity to contest a designation, the precise contours of such review need not be determined here. At this stage, even assuming the Court finds that the AEA can be used at all against a "gang" during peacetime, the Court need only hold that the current Proclamation is unlawful in failing to provide any process, even sufficient notice and opportunity to file the individual habeas petitions held out by the government. At minimum, though, there must be a hearing at which evidence could be introduced and testimony heard, and judicial review. The AEA, per *Ludecke*, as well due process and the APA, require that noncitizens alleged to be alien enemies receive notice of the factual basis for

[14] *See also Hamdi*, 542 U.S. at 530 ("[A]s critical as the Government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.").

removal and a meaningful opportunity to rebut it. *See, e.g.*, *Ralls Corp. v. Comm. on Foreign Inv. in U.S.*, 758 F.3d 296, 318 (D.C. Cir. 2014) ("Both the Supreme Court and this Court have recognized that the right to know the factual basis for [government] action and the opportunity to rebut the evidence supporting that action are essential components of due process.").[15]

Finally, even if Plaintiffs were properly designated alien enemies (which they were not), this Court has previously held that the President may lawfully remove noncitizens under the AEA only when those designated noncitizens "refuse or neglect to depart" from the United States voluntarily. Op. 30 (citing 50 U.S.C. § 21). Indeed, even during World War II, courts interpreting the AEA consistently recognized that "alien enemies" retained the right to voluntary departure. *See U.S. ex rel. Ludwig*, 164 F.2d at 457 (Section 21 establishes a "right of voluntary departure" that functions as a "statutory condition precedent" to the government's right to deport enemy aliens); *U.S. ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 653 (2d Cir. 1947) ("His present restraint by the respondent is unlawful in so far as it interferes with his voluntary departure, since the enforced removal, of which his present restraint is a concomitant, is unlawful before he does 'Refuse or neglect' to depart" under Section 21); *United States ex rel. Dorfler v. Watkins*, 171 F.2d 431, 432 (2d Cir. 1948) ("An alien must be afforded the privilege of voluntary departure before the Attorney General can lawfully remove him against his will.").

Under Section 21, there is no exception to the general right of voluntary departure; it is a "statutory condition precedent" to removal. *U.S. ex rel. Ludwig*, 164 F.2d at 457. Section 22 establishes separate rights concerning the particular conditions for departure, with an exception for those "chargeable with actual hostility, or other crime against public safety." 50 U.S.C. § 22.

[15] This Court has also recognized that, even if Defendants were to implement a meaningful adjudication process, questions would remain regarding the standard of review and the level of deference a reviewing court should afford to agency determinations. Op. 28-29. But the Court need not resolve those questions at this juncture.

However, that exception cannot be invoked categorically. It instead requires individualized assessments—each noncitizen must specifically be "chargeable" with actual hostility or a crime against public safety to lose eligibility for the rights described in Section 22. Defendants have made no such individualized assessments here—much less provided any opportunity to contest such findings.

B. The Proclamation Violates the Specific Protections that Congress Established for Noncitizens Seeking Humanitarian Protection.

The Proclamation is unlawful for an additional, independent reason: it overrides statutory protections for noncitizens seeking relief from torture by subjecting them to removal without meaningful consideration of their claims. As this Court has previously recognized, Plaintiffs were not only barred from raising a torture claim but also were effectively precluded from doing so because Defendants never informed them of the country to which they would be removed—directly contravening protections enacted by Congress. *See* Op. 33.

Congress enacted the Foreign Affairs Reform and Restructuring Act ("FARRA") to codify the United Nations Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT") and to ensure that noncitizens have meaningful opportunities to seek protection from torture. *See* U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 3, Dec. 10, 1984, S. Treaty Doc. No. 100-20, at 20 (1988); Foreign Affairs Reform and Restructuring Act of 1998 § 2242(a), Pub. L. No. 105-277, Div. G. Title XXI, 112 Stat. 2681 (1998) (codified at 8 U.S.C. § 1231 notes) (implementing CAT); C.F.R. §§ 208.16 to 208.18 (FARRA procedure). CAT categorically prohibits returning a noncitizen to any country where they would more likely than not face torture. *See* 8 U.S.C. §1231 note. These protections apply regardless of the mechanism for removal.

The D.C. Circuit recently addressed a similar issue in *Huisha-Huisha v. Mayorkas*,

reconciling the Executive's authority under a public-health statute, 42 U.S.C. § 265, with CAT's anti-torture protections. 27 F.4th 718. The Court held that because § 265 was silent about where noncitizens could be expelled, and CAT explicitly addressed that question, no conflict existed. Both statutes could—and therefore must—be given effect. *Id.* at 721, 731-32 (citing *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) ("When . . . confronted with two Acts of Congress allegedly touching on the same topic," a court "must strive to give effect to both.") (cleaned up)). As this Court has already held, "[t]his case in on all fours" with *Huisha-Huisha*. Op. 32-33. Because no genuine conflict exists between the AEA and FARRA, this Court correctly harmonized these statutes by concluding that FARRA's protections apply to removals under the AEA. *See* Op. 32-33.

Despite this clear statutory framework, Defendants prevented several class members—many of whom have strong claims—from asserting their rights under CAT (and undoubtedly have done the same to other members of the class). *See* ECF No. 3-3 (J.G.G. Decl.) ¶ 2, ECF No. 3-3 (seeking asylum, withholding and CAT after experiencing arbitrary imprisonment, physical abuse and torture); Carney Decl. ¶ 3, ECF No. 44-11 (describing threats on account of sexual orientation); Smyth Decl. ¶ 5, ECF No. 44-12 (describing physical violence and harassment on account of sexual orientation); W.G.H. Decl. ¶ 8, ECF No. 3-6 (fear of mistreatment and harm); Shealy Decl. ¶ 3, ECF No. 3-5; *see also* A.V.S.O. Decl. ¶¶ 3-4; M.A.A. Decl. ¶¶ 4-5; Y.R.R. Decl. ¶ 3. Moreover, even if Plaintiffs had been permitted to apply, their opportunity would have been meaningless because Defendants deliberately withheld information about the country to which they were being removed. *See* Op. 33; *see supra*.

The AEA can similarly be harmonized with other subsequently enacted statutes specifically designed to protect noncitizens seeking asylum and withholding. *See* Refugee Act of 1980, Pub.

L. No. 96-212, 94 Stat. 102 (1980) (asylum and withholding); 8 U.S.C. §§ 1158 (asylum), 1231(b)(3) (withholding of removal). Congress has unequivocally declared that "[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum." 8 U.S.C. § 1158(a)(1). Similarly, the withholding of removal explicitly bars returning a noncitizen to a country where their "life or freedom" would be threatened based on a protected ground. *Id.* § 1231(b)(3)(A).

"In understanding this statutory text, 'a page of history is worth a volume of logic.'" *Jones v. Hendrix*, 599 U.S. 465, 472 (2023) (quoting *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921)). These humanitarian protections were enacted in the aftermath of World War II, when the United States joined other countries in committing to never again turn our backs on people fleeing persecution and torture. Sadako Ogata, U.N. High Comm'r for Refugees, Address at the Holocaust Memorial Museum (Apr. 30, 1997).[16] A President invoking the AEA cannot simply sweep away these protections.

The AEA's general removal authority must yield to the explicit humanitarian protections established by Congress in subsequent, more targeted enactments. *See NLRB v. SW Gen., Inc.*, 580 U.S. 288, 305 (2017) ("[I]t is a commonplace of statutory construction that the specific governs the general.") (internal quotation marks omitted). Defendants, however, denied Plaintiffs the opportunity to assert claims for asylum or withholding of removal. *See* (J.G.G. Decl.) ¶ 2, ECF No. 3-3; Carney Decl. ¶ 3, ECF No. 44-11; Smyth Decl. ¶ 5, ECF No. 44-12; W.G.H. Decl. ¶ 8, ECF No. 3-6; Shealy Decl. ¶ 3 ECF No. 44-9. Summary removals to the horrific conditions in Salvadoran prisons are precisely what Congress enacted protections to prevent.

C. The Proclamation Violates the Procedural Requirements of the INA.

[16] https://perma.cc/X5YF-K6EU.

Since the last invocation of the AEA more than eighty years ago, Congress has carefully specified the procedures by which noncitizens may be removed from the United States. And the INA leaves little doubt that its procedures must apply to every removal, unless otherwise specified by that statute. It directs: "Unless otherwise specified in this chapter," the INA's comprehensive scheme provides "the sole and exclusive procedure for determining whether an alien may be admitted to the United States, or if the alien has been so admitted, removed from the United States." 8 U.S.C. § 1229a(a)(3); *see also United States v. Tinoso*, 327 F.3d 864, 867 (9th Cir. 2003) ("Deportation and removal must be achieved through the procedures provided in the INA."). This language makes clear that Congress intended for the INA to "supersede all previous laws with regard to deportability." S. Rep. No. 82-1137, at 30 (Jan. 29, 1952).[17]

Congress was aware that alien enemies were subject to removal in times of war or invasion when it enacted the INA. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (courts presume Congress drafts statutes with full knowledge of existing law). Indeed, the AEA had been invoked just a few years before passage of the 1952 INA. With this awareness, Congress provided that the INA contains the "sole and exclusive" procedures for deportation or removal and declined to carve out AEA removals as an exception from standard immigration procedures, even as it expressly provided exceptions for other groups of noncitizens, including noncitizens who pose security risks. *See, e.g.*, 8 U.S.C. § 1229a(a)(3) (excepting noncitizens in expedited removal proceedings from the INA's "sole and exclusive" provision); 8 U.S.C. § 1531 et seq. (establishing fast-track

[17] One of the processes otherwise specified in the INA is the Alien Terrorist Removal Procedure at 8 U.S.C. § 1531 *et seq.* The Attorney General may opt to use these proceedings when he or she has classified information that a noncitizen is an "alien terrorist." *Id.* § 1533(a)(1). But even that process requires notice, a public hearing, provision of counsel for indigents, the opportunity to present evidence, and individualized review by an Article III judge. *Id.* § 1532(a), 1534(a)(2), (b), (c)(1)-(2). And the government bears the burden of proving, by a preponderance of the evidence, that the noncitizen is subject to removal as an "alien terrorist." *Id.* § 1534(g).

proceedings for noncitizens posing national security risks).

Ignoring the INA's role as the "sole and exclusive" procedure for determining whether a noncitizen may be removed, Defendants purport to bypass the mandated congressional scheme in order to formulate an entirely separate procedure for removal and usurp Congress's Article I power in the process. Accordingly, the Proclamation violates the INA by denying Plaintiffs the process due under that law.

IV. The Administration's Abuse of the Alien Enemies Act Has Caused and Will Continue to Cause Plaintiffs Irreparable Harm.

In the absence of preliminary relief, Plaintiffs can be summarily removed to places, such as El Salvador, where they face life-threatening conditions, persecution and torture. *See* Op. 33-35 ("Needless to say, the risk of torture, beatings, and even death clearly and unequivocally supports a finding of irreparable harm."). And while removal does not by itself ordinarily constitute irreparable harm, *Nken v. Holder*, 556 U.S. 418, 435 (2009), these are hardly run-of-the-mill removals. Plaintiffs' removals constitute grave and immediate irreparable harm because of what awaits them in a Salvadoran prison. *See generally* Bishop Decl.; Goebertus Decl. Prison conditions in El Salvador are "harsh and life threatening." Bishop Decl. ¶ 21; *see also* Goebertus Decl. ¶ 4. Prison officials there engage in widespread physical abuse, including waterboarding, electric shocks, using implements of torture on detainees' fingers, forcing detainees into ice water for hours, and hitting or kicking detainees so severely that it causes broken bones or ruptured organs. Bishop Decl. ¶¶ 21, 33, 37, 39, 41; Goebertus Decl. ¶¶ 8, 10, 17. People in detention in El Salvador also face psychological harm, including solitary confinement in pitch dark cells or being forced to stay in a cell with the body of a fellow prisoner who was recently beaten to death. Goebertus Decl. ¶ 3; Bishop Decl. ¶ 39. In fact, El Salvador creates these horrific conditions intentionally to terrify people. Bishop Decl. ¶ 22; *Huisha-Huisha*, 27 F.4th at 733 (irreparable

harm exists where petitioners "expelled to places where they will be persecuted or tortured"); *Al-Joudi v. Bush*, 406 F. Supp. 2d 13, 20 (D.D.C. 2005) (harsh conditions at Guantanamo that forced detainees to go on hunger strikes amounted to irreparable harm); *Leiva-Perez v. Holder*, 640 F.3d 962, 969 (9th Cir. 2011) (holding that removal to a country where one faces harm constitutes irreparable injury); *Demjanjuk v. Holder*, 563 F.3d 565, 565 (6th Cir. 2009) (granting stay for noncitizen who asserted removal would violate CAT). And Plaintiffs may never get out of these prisons. *See* Nayib Bukele, X.com, (Mar. 16, 2025, 5:13AM ET);[18] *see also* Goebertus Decl. ¶ 3 (quoting the Salvadorean government that people held in CECOT "will never leave"); *id.* ("Human Rights Watch is not aware of any detainees who have been released from that prison.").

And even if the government instead removes Plaintiffs to Venezuela, they face serious harm there, too. In fact, many plaintiffs fled Venezuela for the very purpose of escaping the persecution they faced in Venezuela and have pending asylum cases on that basis. For example, J.G.G. has already suffered arbitrary detention, torture and abuse by the Venezuelan police for his political views and fears being killed if returned. J.G.G. Decl. ¶ 2. And returning to Venezuela labeled as a gang member by the United States government only increases the danger, as they will face heightened scrutiny from Venezuela's security agency, and possibly even violence from rivals of TdA. Hanson Decl. ¶ 28.

Not only do Plaintiffs face grave harm, they do so without having received any due process. *See Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146, 172 (D.D.C. 2021) (finding irreparable harm where plaintiffs "face the threat of removal prior to receiving any of the protections the immigration laws provide"); *P.J.E.S. ex rel. Escobar Francisco v. Wolf*, 502 F. Supp. 3d 492, 517 (D.D.C. 2020) (irreparable injury exists where class members were "threatened with deportation

[18] *Available at*: https://perma.cc/52PT-DWMR.

prior to receiving any of the protections the immigration laws provide"); *see also supra* (discussing the lack of notice and meaningful process). In fact, at the D.C. Circuit, Defendants left no doubt that they intend to begin immediately deporting class members without notice as soon as a court permits. Oral Arg. 1:44:39-1:46-23, *J.G.G. v. Trump*, 25-5067 (D.C. Cir. 2025) ("We take the position that the AEA does not require notice . . . [and] the government believes there would not be a limitation [on removal]" absent an injunction). Critically, moreover, without meaningful process, there is an unacceptably high risk that the government will deport class members who are not in fact members of TdA.

V. The Balance of Equities and Public Interest Weigh Decidedly in Favor of a Preliminary Injunction Order.

The balance of equities and the public interest factors merge in cases against the government. *See Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (citations omitted). Here, the balance of hardships overwhelmingly favors Plaintiffs. The public has a critical interest in preventing wrongful removals to places where individuals will face persecution and torture. Conversely, the government can make no comparable claim to harm from an injunction. Op. 36-37; *Luokung Tech. Corp. v. Dep't of Def.*, 538 F. Supp. 3d 174, 195 (D.D.C. 2021); *see also Nken*, 556 U.S. at 436 (describing the "public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (describing the "substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations" (citation omitted). Defendantsm moreover, will retain the ability to prosecute criminal offenses, detain noncitizens under any authority, and remove noncitizens under existing statutory guidelines.

VI. The Court Should Not Require Plaintiffs to Provide Security Prior to the Preliminary Injunction Order.

The court should not require a bond under Federal Rule of Civil Procedure 65. The "courts in this Circuit have found the Rule 'vests broad discretion in the district court to determine the appropriate amount of an injunction bond,' including the discretion to require no bond at all." *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 107 (D.D.C. 2012) (internal quotation marks, citation, and alterations omitted). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people, and in the vindication of immigrants' rights. *See, e.g.*, *P.J.E.S. v. Wolf*, 502 F. Supp. 3d 492,at 520 (D.D.C. 2020).

CONCLUSION

The motion for a preliminary injunction should be granted.

Dated: March 28, 2025

Respectfully submitted,

/s/ *Lee Gelernt*

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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