APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

A.A.R.P., *et al.*, on their own behalf and on behalf of all others similarly situated.,

Petitioners–Plaintiffs,

v.

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

Respondents–Defendants.

Case No. 1:25-cv-0059

EMERGENCY APPLICATION FOR A TEMPORARY RESTRAINING ORDER

EMERGENCY APPLICATION FOR A TEMPORARY RESTRAINING ORDER

Petitioners-Plaintiffs ("Petitioners") and the proposed class are in imminent danger of being removed from the United States—(with 24 hours or less notice) —and this Court could potentially permanently lose jurisdiction. Upon information and belief, the government has recently transferred Venezuelan men from detention centers all over the country to this District and they are at imminent risk of summary removal. Accordingly, Petitioners respectfully requests a temporary injunction for Petitioner and the putative class to preserve the status quo, enjoining (1) any removal outside the country pursuant to the Alien Enemies Act ("AEA"), (2) any transfer out of the Northern District of Texas without notice to counsel, (3) notice to Petitioner and the putative class, as well as undersigned counsel, of any designation as an Alien Enemy under the Proclamation, with at least 30 days' notice prior to any removal under the Proclamation, and (4) notice to undersigned counsel of the transfer of any individual designated an Alien Enemy under the Proclamation into the Western District of Texas.

The request for a temporary restraining order against Respondents-Defendants ("Respondents") is made pursuant to Rule 65 of the Federal Rules of Civil Procedure, and the All Writs Act. Petitioners and the proposed class are civil immigration detainees who are at substantial risk of immediate, summary removal from the United States pursuant to the use of the AEA, 50 U.S.C. § 21 *et seq.* against a *non*-state actor for the first time in the country's history.

As set forth in the accompanying Memorandum of Law, Respondents' invocation and application of the AEA patently violates the plain text of the statute and exceeds the limited authority granted to the President by Congress. Respondents' invocation and application of the AEA also violates the Immigration and Nationality Act, statutes providing protection for people seeking humanitarian relief, and due process. In the absence of a temporary restraining order,

Petitioners and the class will suffer irreparable injury, and the balance of hardships and the public interest favor relief. Critically, moreover, if Petitioners and the class are removed to the custody of another country, the government's position is that this Court will lose jurisdiction permanently.

In support of this Motion, Petitioners rely upon the accompanying memorandum in support of a Temporary Restraining Order, motion and memorandum for class certification, and declarations in support of both motions. A proposed order is attached for the Court's convenience. Petitioners respectfully request that this Court grant this emergency application and issue a temporary restraining order as soon as possible for Petitioners and the class.

Dated: April 16, 2025

Respectfully submitted,

/s/Brian Klosterboer

Lee Gelernt*
Daniel Galindo*
Ashley Gorski*
Patrick Toomey*
Sidra Mahfooz*
Omar Jadwat*
Hina Shamsi*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 549-2660
E: lgelernt@aclu.org
E: dgalindo@aclu.org
E: agorski@aclu.org
E: ptoomey@aclu.org
E: smahfooz@aclu.org
E: ojadwat@aclu.org
E: hshamsi@aclu.org

Noelle Smith*
Oscar Sarabia Roman*
My Khanh Ngo*
Cody Wofsy*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
T: (415) 343-0770
E: nsmith@aclu.org
E: osarabia@aclu.org
E: mngo@aclu.org
E: cwofsy@aclu.org

Brian Klosterboer
TX Bar No. 24107833
Thomas Buser-Clancy*
TX Bar No. 24078344
Savannah Kumar*
TX Bar No. 24120098
Charelle Lett*
TX Bar No. 24138899
Ashley Harris*
TX Bar No. 24123238
Adriana Piñon*
TX Bar No. 24089768
ACLU FOUNDATION OF TEXAS, INC.
1018 Preston St.
Houston, TX 77002
(713) 942-8146
bklosterboer@aclutx.org
tbuser-clancy@aclutx.org
skumar@aclutx.org
clett@aclutx.org
aharris@aclutx.org
apinon@aclutx.org

Attorneys for Petitioners-Plaintiffs
**Pro hac vice applications forthcoming*

CERTIFICATE OF CONFERENCE

I certify that pursuant to LR 7.1(a), Petitioners' counsel attempted to confer with counsel for Respondents prior to filing by emailing the Chad E. Meacham, the United States Attorney for the Northern District of Texas, and seeking the government's position. Petitioners' counsel was not able to obtain a response prior to filing.

Dated: April 16, 2025

/s/Brian Klosterboer
Brian Klosterboer

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CIVIL ACTION NO. 1:25-cv-0059

PETITIONERS-PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF A TRO

INTRODUCTION

Petitioners-Plaintiffs ("Petitioners") respectfully request an immediate Temporary Restraining Order ("TRO") to avoid irreparable harm to Petitioners and the proposed class—and to ensure that this Court is not potentially deprived, permanently, of jurisdiction.

In a Proclamation signed on March 14 but not made public until March 15 (after the government had already attempted to use it), the President invoked a war power, the Alien Enemies Act of 1798 ("AEA"), to summarily remove noncitizens from the U.S. and bypass the immigration laws Congress has enacted. *See* Invocation of the Alien Enemies Act (Mar. 15, 2025) ("Proclamation").[1] The AEA permits the President to invoke the AEA only where the United States is in a "declared war" with a "foreign government or nation" or a 'foreign government or nation" is threatening to, or has engaged in, an "invasion or predatory incursion" against the "territory of the United States." The Proclamation targets Venezuelan noncitizens accused of being part of Tren de Aragua ("TdA"), a criminal gang, and claims that the gang is engaged in an "invasion and predatory incursion" within the meaning of the AEA.

On the evening of March 15, a D.C. District Court issued an order temporarily pausing removals pursuant to the Proclamation for a provisionally certified nationwide class. *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *2 (D.C. Cir. Mar. 26, 2025). The D.C. Circuit denied the government's motion to vacate that TRO. On April 7, in a 5-4 decision, the Supreme Court granted the government's application to vacate the TRO order on the basis that Plaintiffs had to proceed through habeas, without reaching the merits of whether the Proclamation exceeds the President's power under the AEA. In doing so, however, the Court emphasized that individuals who are designated under the AEA Proclamation are "entitle[d] to due process" and notice "within

[1] https://perma.cc/ZS8M-ZQHJ.

a reasonable time and in such manner as will allow them to actually seek habeas relief" before removal. *Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (U.S. Apr. 7, 2025).

To date, the government has not indicated the type of notice they intend to provide or how much time they will give individuals before seeking to remove them under the AEA. However, in a hearing in the Southern District of Texas on Friday, April 11**, the government said they had not ruled out the possibility that individuals will receive no more than 24 hours' notice; the government did not say whether it was considering providing even less than 24 hours**. **And in the last 24 to 48 hours, Venezuelan men from all over the country—including Louisiana and Minnesota—have been transferred to the Bluebonnet Detention Center in this District and are at imminent risk of summary removal.**

In light of the Supreme Court's ruling, Petitioners and a putative class have filed this habeas action. All five of the original petitioners in the D.C. litigation have likewise filed class habeas petitions in the district where they are detained, along with motions for temporary restraining orders for the putative classes. The first one was filed on April 8, 2025, in the Southern District of New York on behalf of two of the five, and the second on April 9, 2025, in the Southern District of Texas on behalf of the other three. Within hours, both district courts granted *ex parte* requests for TROs, ordering that the named petitioners and putative class members may not be removed from the United States or transferred out of their respective districts. *See G.F.F. v. Trump*, No. 25-cv-2886 (S.D.N.Y. Apr. 9, 2025), ECF No. 31, *as amended*, ECF No. 35 (S.D.N.Y. Apr. 11, 2025); *J.A.V. v. Trump*, No. 25-cv-72 (S.D. Tex Apr. 9, 2025), ECF No. 12, *as amended*, ECF No. 34 (S.D. Tex. Apr. 11, 2025). Both courts subsequently held TRO hearings, extended the TROs, and scheduled preliminary injunction hearings, S.D.N.Y on April 22 and S.D. Tex. on April 24. Within days, two other district courts in Colorado and Pennsylvania followed suit, issuing TROs

for petitioners and putative classes in the District of Colorado and Western District of Pennsylvania. *See D.B.U. v. Trump*, No. 25-cv-1163-CNS (D. Co. Apr. 14, 2025), ECF No. 10, *as amended*, ECF No. 14; *A.S.R. v. Trump*, No. 25-cv-113-SLH (W.D. Pa. Apr. 15, 2025), ECF No. 8.

Petitioners contend that the Proclamation is invalid under the AEA for several reasons. *First*, the Proclamation fails to the AEA's statutory predicates because TdA is not a "foreign nation or government," nor is TdA is engaged in an "invasion" or "predatory incursions" within the meaning of the AEA. Thus, the government's attempt to summarily remove Venezuelan noncitizens exceeds the wartime authority that Congress delegated in the AEA. *Second,* the Proclamation violates both the Act and due process by failing to provide notice and a meaningful opportunity for individuals to challenge their designation as alien enemies. *Third*, the Proclamation violates the process and protections that Congress has prescribed for the removal of noncitizens in the immigration laws, including protection against being sent to a country where they will be tortured.

Accordingly, Petitioners move the Court for a TRO for themselves and the putative class barring their summary removal under the AEA.[2] Immediate intervention by this Court is required given that the vacatur of the D.C. district court's TRO no longer protects them and the government's failure to specify how much notice they intend to provide individuals. And if there is an unlawful removal, the government has taken the position that the courts would lose jurisdiction and there would be no way to correct any erroneous removal. Indeed**,** in the government's rush to transfer individuals to El Salvador, the government has mistakenly deported

[2] Petitioners do not seek to enjoin the President but the President remains a proper respondent because, at a minimum, Petitioners 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).

at least one Salvadoran man without legal basis and claims that individual cannot be returned.[3] *See Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1077101, at *1 (U.S. Apr. 10, 2025). And declarations and news accounts suggest that many of the alleged Venezuelan TdA members sent to El Salvador pursuant to the Proclamation at issue here were not in fact TdA members. *See* Pls.' Mot. for Prelim. Inj., *J.G.G.*, No. 25-cv-766-JEB (D.D.C. Mar. 28, 2025), EF No. 67-1 at 3–7 (describing accounts and evidence of individuals without ties to TdA).[4]

The TRO sought here does *not* seek to prohibit the government from prosecuting any individual who has committed a crime. Nor does it seek release from immigration detention or to prohibit the government from removing any individual who may lawfully be removed under the immigration laws.

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, the AEA, as codified today at 50 U.S.C. § 21, 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.

[3] Petitioners do not object to a transfer out of this District to a different part of the U.S. if it is to bring them back to where they were originally detained and closer to counsel. However, Petitioners seek advance notice in the event the transfer may impede attorney access or appear to bring them closer to a removal staging facility given the mistakes the government has already made in its rush to transfer individuals to stage AEA removals. *See supra.*

[4] With this TRO, Petitioners are filing a motion for class certification.

This Act has been used only 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 also provides that individuals designated as enemy aliens will generally have time to "settle affairs" before removal and the option to voluntarily "depart."[5] *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 [AG] can lawfully remove him against his will.").

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 a comprehensive system of procedures that the government must follow before removing a noncitizen from the U.S. *See* 8 U.S.C. § 1229a(a)(3) (INA provides "sole and exclusive procedure" for determining whether noncitizen may be removed).

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); *Aliyev v. Mukasey*, 549 F.3d 111, 118 n.8 (2d Cir. 2008) ("It is no accident that many of our asylum laws sprang forth as a result of events in 1930s Europe."). First, the asylum statute, 8 U.S.C. § 1158, provides that any noncitizen in the U.S. has a right to 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

[5] 50 U.S.C. § 21 (providing for removal of only those "alien enemies" who "refuse or neglect to depart" from the U.S.); *id*. § 22 (granting time for departure in accordance with treaty stipulation or "where no such treaty exists, or is in force," a "reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality").

their "life or freedom" would be threatened based on a protected ground. *See INS v. Aguirre-Aguirre*, 526 U.S. 415, 420 (1999) (withholding is mandatory upon meeting statutory criteria). 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.

III. The AEA Proclamation and the Unlawful Removals

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, 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* Proclamation. 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. As set forth more fully in Judge Boasberg's opinion, even prior to the Proclamation's publication the government sought to remove individuals. *J.G.G. v. Trump*, No. 1:25-cv-766-JEB (D.D.C. Mar. 18, 2025), ECF No. 28-1 (Cerna Decl.) ¶ 5; *J.G.G.*, 2025 WL 890401, at *3 (D.D.C. Mar. 24, 2025) (noting that prior to publication of Proclamation, and after a lawsuit was filed against the summary removals, it appeared that "the Government . . . was nonetheless moving forward with its summary-deportation plans.")

In addition to claiming that a *criminal gang* during *peacetime* satisfies the AEA's statutory predicates, 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. The Proclamation also supplants 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 date, at least 137 Venezuelan men have been removed under the Proclamation and are now in El Salvador in one of the most notorious prisons in the world, possibly for the rest of their lives. Whether most (or perhaps all) of the class lacks ties to TdA remains to be seen, because Respondents secretly rushed the men out of the country and have provided no information about them. But evidence since these individuals were sent to El Salvador flights on March 15 increasingly shows that many were not "members" of TdA. *See J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 67-21 (Sarabia Roman Decl., Exhs. 4-20) (media reports regarding evidence contradicting gang allegations). Such false accusations are particularly devastating given Petitioner's strong claims for relief under our immigration laws. Exh. A (Gian-Grosso Decl.) ¶ 6.

The government's errors are unsurprising, given the methods it is employing to identify members of TdA. The "Alien Enemy Validation Guide" that the government has used to ascertain alien enemy status, requires ICE officers to tally points for different categories of alleged TdA membership characteristics. *J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 67-21 (Sarabia Roman Decl., Exh. 1). The guide relies on a number of dubious criteria, including physical attributes like "tattoos denoting membership/loyalty to TDA" and hand gestures, symbols, logos, graffiti, or manner of dress. But experts who study the TdA have explained how none of these physical attributes are reliable ways of identifying gang members. *Id.* at 67-3 (Hanson Decl.) ¶¶ 22-24, 27; *id.* at 67-4 (Antillano Decl.) ¶ 14; *id.* at 67-12 (Dudley Decl.) ¶ 25.

Experts on El Salvador have also explained how those removed there face grave harm and torture at the Salvadoran Terrorism Confinement Center ("CECOT"), including electric shocks, beating, waterboarding, and use of implements of torture on detainees' fingers. *See J.G.G.*, 2025

WL 1024097, at *9 (U.S. Apr. 7, 2025) (Sotomayor, J., dissenting); *see also J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 44-4 (Bishop Decl.) ¶¶ 21, 33, 37, 39, 41; *id.* at 44-3 (Goebertus Decl.) ¶¶ 8, 10, 17. These abusive conditions are life threatening, as demonstrated by the hundreds of people who have died in Salvadoran prisons. *J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 44-3 (Goebertus Decl.) ¶ 5; *id.* at 44-4 (Bishop Decl.) ¶¶ 43–50. Worse, those removed and detained at CECOT face indefinite detention. *Id.* at 44-3 (Goebertus Decl.) ¶ 3 (quoting the Salvadoran government that people held in CECOT "will never leave"); Nayib Bukele, X.com post (Mar. 16, 2025, 5:13AM ET) (detainees "were immediately transferred to CECOT . . . for a period of one year (renewable)").[6]

IV. Petitioners

Petitioner A.A.R.P. is a Venezuelan national who is detained at Bluebonnet Detention Center in Anson, Texas. *See* Ex. A, Blakeborough Decl. ¶ 2. A.A.R.P. fled Venezuela because he and his family were persecuted there in the past for their political beliefs and for publicly protesting against the current Venezuelan government. *Id*. ¶ 8. He came to the United States in 2023 with his wife and their son. *Id*. ¶ 3. He is currently seeking asylum, withholding, and protection under the Convention Against Torture. *Id*. ¶ 8. His next hearing is scheduled for April 28, 2025, at the Fort Snelling Minnesota Immigration Court. *Id.* A.A.R.P. was detained while carpooling to work with his wife on March 26, 2025. *Id*. ¶ 5. ICE has accused A.A.R.P. of having "tattoos and associates that indicate membership in the Tren de Aragua gang" in an I-213. *Id*. ¶ 6. A.A.R.P. has a number of tattoos including a clock that shows the date and time of his son's birth, a cross, and the Virgin Mary. *Id*. ¶ 7. None of these tattoos are related to TdA and A.A.R.P. vehemently denies any connection to TdA. *Id*. ¶¶ 7-8. Early on April 14, A.A.R.P. was suddenly transferred from the

[6] https://perma.cc/52PT-DWMR.

Sherburne County Jail in Minnesota to the Bluebonnet Detention Center despite his upcoming April 28 hearing in immigration court in Minnesota. *Id*. ¶ 8. A.A.R.P. is at risk of being classified as an alien enemy under the Aliens Enemy Act and summarily deported under the Proclamation to El Salvador. *Id*. ¶¶ 8, 10.

Petitioner W.M.M. is a Venezuelan national who is also detained at Bluebonnet Detention Center in Anson, Texas. Ex. B, D'Adamo Decl. ¶ 3. W.M.M. fled Venezuela after the Venezuelan military harassed and assaulted him because they believed that he did not support the Maduro regime. *Id*. ¶ 4. W.M.M. arrived in the United States in 2023, was released on his own recognizance, and filed an asylum application. *Id*. ¶ 9. Several months later, federal authorities arrested W.M.M. on a misdemeanor warrant for alleged illegal entry into the United States. *Id*. ¶ 10. At his hearing on the warrant, the government alleged that W.M.M. is affiliated with TdA based on emojis used in W.M.M.'s social media feed, and a comment left by another individual on a social media post. *Id*. ¶ 11. The government also alleged that W.M.M. was arrested at a residence where an alleged TdA associate was present. *Id*. W.M.M. denies any connection with TdA. *Id*. The magistrate judge ordered W.M.M. released from federal criminal custody because the government had not met its threshold burden to show a serious risk that W.M.M. would flee. *Id*. ¶ 12. The judge noted that the illegal entry case was W.M.M.'s only interaction with a court. *Id*. The U.S. Marshals released W.M.M. into ICE's custody on March 17 and subsequently detained for about a month at the Winn Correctional Center in Louisiana. *Id*. ¶¶ 13-14.

On April 14, W.M.M. was abruptly transferred along with several other Venezuelans to the Bluebonnet Detention Center, where he is now currently detained with Venezuelans transferred from other facilities. *Id*. ¶ 15. Even though W.M.M. has an individual hearing scheduled in immigration court for August 22, his phone access was abruptly cut off the afternoon of April 15

and he was told he would be imminently transferred again. *Id.* ¶ 18. W.M.M. is fearful that he will be classified as an alien enemy under the Aliens Enemy Act and summarily deported under the Proclamation to El Salvador. *Id.* ¶ 19.

Upon information and belief, the government has over the past 24-48 hours transferred Venezuelan men from detention centers around the country—including Louisiana, Minnesota, and California—to the Bluebonnet Detention Center in this District despite their pending removal proceedings in immigration court in other regions. Upon information and belief, people have been transferred in groups of Venezuelan men, and been told that they appear to be on a list with other Venezuelans. Thus, many individuals in this District are at imminent risk of summary removal pursuant to the Proclamation.

LEGAL STANDARD

To obtain a TRO, 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 Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987).

ARGUMENT

I. Petitioners 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. As Judge Henderson stressed in denying the government's request for a stay of a TRO, a gang's criminal activities do not constitute an "invasion or predatory incursion" under the AEA and the Act is a wartime authority meant to address "military" attacks. *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *1-13 (D.D.C. Mar. 26, 2025).

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

The Proclamation fails, on its face, to satisfy 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 AEA make clear that it uses these terms to refer to military actions 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 Dict., *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"); *see also J.G.G.*, 2025 WL 914682, at *20 (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 Dict., *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"); *J.G.G.*, 2025 WL 914682, at *10 ("predatory incursion" is "a form of hostilities against the United States by another nation-state, a form of attack short of war"). The interpretive canon of *noscitur a sociis* confirms that the AEA's powers extended beyond an existing war only when war was imminent. *Ludecke*, 335 U.S. at 169 n.13 ("the life of [the AEA] is defined by the existence of a war"). Reading "invasion" and "predatory incursion" in light of

the neighboring term, "declared war," highlights the express military nature of their usage here. *See Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961).

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 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 U.S. were the precursor to all-out war with France. *J.G.G.*, 2025 WL 914682, at *1 ("In 1798, our fledgling Republic was consumed with fear . . . of external war with France."). This "predatory violence" by a sovereign nation led, in 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").[7]

"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 U.S. for military purposes. And the Proclamation makes no suggestion that the U.S. will imminently be at war with Venezuela. The oblique references to

[7] At the same time, the 1798 Congress authorized the President to raise troops "in the event of a declaration of war against the U.S., 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 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 that constitute or imminently precede acts of war.

the TdA's ongoing "irregular warfare" within the U.S. do not suffice because the Proclamation makes clear that that term is referring 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 not "against the territory" of the U.S. 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 any country, could be deemed enemy aliens. *See J.G.G.*, 2025 WL 914682, at *10 (observing that "[m]igration alone [does] not suffice" to establish an "invasion" or "predatory incursion under the AEA).

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

The Proclamation also 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." Instead, 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. In fact, the Proclamation does not even specify that TdA currently controls *any* territory in Venezuela.

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 the Proclamation's own words, 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 Respondents are

attempting not only to use the AEA in an unprecedented way, but also 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.[8] 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 U.S. is at war with or being invaded by Venezuela. Ryan Goodman, Bluesky (Mar. 26, 2025).[9] 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.

Further, the AEA's historical record confirms that it was intended to address conflicts with foreign sovereigns, not criminal gangs 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, 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 Respondents were allowed to designate any group with ties to officials as a

[8] Moreover, 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"); *Holmes v. Jennison*, 39 U.S. 540, 570-72 (1840) (similar).

[9] 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.").

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.

The Proclamation half-heartedly attempts to link TdA to Venezuela by suggesting only that TdA is "supporting," "closely aligned with," or "has infiltrated" the Maduro regime. *See* Proclamation. But those characterizations, even if accepted, are insufficient to establish that a "foreign government or nation" is itself invading the United States. Thus, this court need not go beyond the face of the Proclamation to find that it fails to satisfy the statutory preconditions of the AEA. In any event, experts are in accord that it is "absolutely implausible that the Maduro regime controls TdA or that the Maduro government and TdA are intertwined." *J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 67-3 (Hanson Decl.) ¶17; *id.* at 67-4 (Antillano Decl.) ¶ 13; *id.* at 67-12 (Dudley Decl.) ¶¶ 2, 21. 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." *Id.* at 67-12 (Dudley Decl.) ¶¶ 5, 17-18. The President's own intelligence agencies reached that same conclusion prior to his invocation of the AEA. *See id.* at 67-21 (Sarabia Roman Decl., Exh. 19) ("shared judgment of the nation's spy agencies" is "that [TdA] was not controlled by the Venezuelan government").

B. Summary Removals Without Notice, a Meaningful Opportunity to Challenge "Alien Enemy" Designations, or the Right of Voluntary Departure Violate the AEA and Due Process.

As the Supreme Court has now made clear, the government must provide Petitioners notice "within a reasonable time and in such a manner as will allow them to actually seek" relief from summary removals under the Proclamation. *J.G.G.*, 2025 WL 102409, at *2 ("detainees subject to removal orders under the AEA are entitled to notice and an opportunity to challenge their

removal."). Because the government has not stated whether or how it will comply with the Supreme Court's recent order) a TRO is warranted to ensure that the government provides the Court with protocol for how it will provide notice. *See J.G.G.*, 2025 WL 102409, at *2 ("'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law' in the context of removal proceedings."). At a minimum, the notice must be translated into a language that individuals can understand, for Venezuelans Spanish and English. Most importantly, there must be sufficient time for individuals to seek review. As during World War II, that notice must be at least 30 days in advance of any attempted removal. And it must be provided to undersigned counsel so that no individual is mistakenly removed. *See*, *e.g.*, *Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1077101 (U.S. Apr. 10, 2025)

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

The Proclamation is unlawful for an independent reason: it overrides statutory protections for noncitizens seeking relief from torture by subjecting them to removal without meaningful consideration of their claims. Congress codified the U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT") to ensure that noncitizens have meaningful opportunities to seek protection from torture. *See* 8 U.S.C. § 1231 note; C.F.R. §§ 208.16-.18. CAT categorically prohibits returning a noncitizen to any country where they would more likely than not face torture. 8 U.S.C. §1231 note. CAT applies 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 protections. 27 F.4th 718 (D.C. Cir. 2022). Because § 265 was silent about where noncitizens could be expelled, and CAT explicitly addressed that question, the court held no conflict existed. *Id*. Both statutes could—and therefore must—be given effect. *Id.* at 721, 731-32. This case is on all

fours with *Huisha-Huisha,* because the AEA and CAT must be harmonized by applying CAT's protections to AEA removals. Despite this clear statutory framework, the Proclamation overrides all of the INA's protections and deprives those designated under the Proclamation with any opportunity to seek protection against being sent to a place where they will be tortured. *See J.G.G.*, 2025 WL 890401, at *15 ("CAT could stand as an independent obstacle" to "potential torture should Plaintiffs be removed to El Salvador and incarcerated there.")

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). Likewise, the withholding of removal statute 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). 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).[10] A President invoking the AEA cannot simply sweep away these protections.

D. The Proclamation Violates the Procedural Requirements of the INA

Since the last invocation of the AEA more than 80 years ago, Congress has carefully specified the procedures by which noncitizens may be removed. The INA leaves little doubt that its procedures must apply to every removal, unless otherwise specified by that statute. It directs:

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

"Unless otherwise specified in this chapter," the INA's comprehensive scheme provides "the sole and exclusive procedure for determining whether an alien may be . . . 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."). Indeed, Congress intended for the INA to "supersede all previous laws with regard to deportability." S. Rep. No. 82-1137, at 30 (Jan. 29, 1952).[11]

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 was 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 removal and declined to carve out AEA removals from standard immigration procedures, even as it expressly excepted other groups of noncitizens, including those who pose security risks. *See, e.g.*, 8 U.S.C. § 1531 *et seq.* (establishing fast-track proceedings for noncitizens posing national security risks). By ignoring the INA's role as the "sole and exclusive" procedure for determining whether a noncitizen may be removed, the Proclamation unlawfully bypasses the mandated congressional scheme and usurps Congress's Article I power in the process.

II. Petitioners and the Class Face Imminent Irreparable Harm.

In the absence of a TRO, Petitioners and the class are at imminent risk of summary removal to places, such as El Salvador, where they face life-threatening conditions, persecution, and torture.

[11] 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 this when 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, opportunity to present evidence, and individualized review by an Article III judge. *Id.* §§ 1532(a), 1534(a)(2), (b), (c)(1)-(2).

See supra; *J.G.G.*, 2025 WL 1024097, at *5 ("[I]nmates in Salvadoran prisons are 'highly likely to face immediate and intentional life-threatening harm at the hands of state actors.'"). That easily constitutes irreparable harm. *See Tesfamichael v. Gonzales*, 411 F.3d 169, 178 (5th Cir. 2005) (irreparable harm" where petitioners face "forced separation and likely persecution" "if deported") (; *Huisha-Huisha*, 27 F.4th at 733 (irreparable harm exists where petitioners "expelled to places where they will be persecuted or tortured"); *Patel v. Barr*, No. 20-3856, 2020 WL 4700636, at * 8 (E.D. Pa. Aug. 13, 2020); *see also J.G.G.*, 2025 WL 890401, at *16 ("[T]he risk of torture, beatings, and even death clearly and unequivocally supports a finding of irreparable harm" if Venezuelans are removed under the AEA Proclamation to El Salvador). And Petitioners and the class may never get out of these prisons. *See J.G.G.*, 2025 WL 1024097, at *5; *see also supra*.

Even if the government instead removes Petitioners or the class to Venezuela, they face serious harm there, too. Many fled Venezuela for the very purpose of escaping persecution there, and have pending asylum cases on that basis. For example, A.A.R.P. and his family were persecuted for their political beliefs and actions protesting against the current Venezuelan government, and he fears persecution if returned. Ex. A (Blackeborough Decl.) ¶ 8. Likewise, W.M.M. fled Venezuela because he was harassed and assaulted by the Venezuelan military for his perceived opposition to the Maduro regime, and he is seeking asylum on that basis. Ex. B (D'Adamo Decl.) ¶ 4. And returning to Venezuela labeled as a gang member by the U.S. government only increases the danger, as they will face heightened scrutiny from Venezuela's security agency, and possibly even violence from rivals of TdA. *J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 67-3 (Hanson Decl.) ¶ 28.

Not only do Petitioners and the class face grave harm, thus far the government has tried to execute removals without any due process. *See Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146,

172 (D.D.C. 2021) (irreparable harm where plaintiffs "face the threat of removal prior to receiving any of the protections the immigration laws provide"). Although the Supreme Court has now made clear that meaningful notice is required under the AEA, *J.G.G.*, 2025 WL 102409, at *2, Respondents have yet to concede that they will provide meaningful notice, much less any sense of when that notice will be provided to individuals or what form it will take. As such, there remains an unacceptably high risk that the government will deport class members who are not in fact members of TdA.

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

The balance of equities and public interest merge in cases against the government. *See Nken v. Holder*, 556 U.S. 418, 436 (2009). Here, the balance overwhelmingly favors Petitioners. The public has a critical interest in preventing wrongful removals, especially where it could mean a lifetime sentence in a notorious foreign prison. *See Nken*, 556 U.S. at 436; *see also Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982) (protecting 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"). That is especially so given the government's position that it will not obtain the release of individuals mistakenly sent to the notorious Salvadoran prison.

Petitioners and the class, moreover, do not contest Respondents' ability to prosecute criminal offenses, detain noncitizens, and remove noncitizens under the immigration laws. *Cf. J.G.G.*, 2025 WL 914682, at *30 ("The Executive remains free to take TdA members off the streets and keep them in detention. The Executive can also deport alleged members of TdA under the INA[.]"). Thus, Respondents cannot show how the government's interests "overcome the irreparable injury to [petitioner] absent a stay, or justify denial of a short stay *pendente lite*." *Ragbir v. United States*, No. 2:17-CV-1256-KM, 2018 WL 1446407, at *18 (D.N.J. Mar. 23, 2018),

appeal dismissed, No. 18-2142, 2018 WL 6133744 (3d Cir. Nov. 15, 2018); *see also Patel*, 2020 WL 4700636, at *9 (noting "any inconvenience to the Government from the brief delay is far outweighed by the threat of irreparable harm to [plaintiff]" and that "[t]he public interest is also better served by an orderly court process that assures that [the plaintiff's] invocation of federal court relief is considered before the removal process continues."). Conversely, the government can make no comparable claim to harm from an injunction. S*ee Wages & White Lion Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021 ("There is generally no public interest in the perpetuation of unlawful agency action.").

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

In addition to this Court's equitable powers, this is a textbook case for use of the All Writs Act ("AWA"), which provides courts a powerful tool 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); 28 U.S.C. § 1651(a); *California v. M&P Inv.*, 46 F. App'x 876, 878 (9th Cir. 2002) (finding Act should be broadly construed to "achieve all rational ends of law") (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)); *J.A.V. v. Trump*, No. 1:25-CV-072, 2025 WL 1064009, at *1 (S.D. Tex. Apr. 9, 2025) ("A federal court has the power under the All Writs Act to issue injunctive orders in a case even before the court's jurisdiction has been established."). If Petitioners and the class are illegally sent to a foreign country, and El Salvador assumes jurisdiction, the government will argue, as it already has, that this Court will no longer has jurisdiction to remedy the unlawful use of the AEA. *See* Resp. to Order to Show Cause, *J.G.G.*, No. 25-cv-766-JEB (D.D.C. Mar. 25, 2025), ECF No. 58 at 12 (government asserting "once the flights were outside the United States, the President did not need to rely on that Proclamation or Act to justify transferring members of a designated foreign terrorist group to a foreign country");

Resp. to Plfs.' Mot. for Additional Relief, *Abrego Garcia v. Noem*, No. 8:25-cv-951-PX (D. Md. Apr. 13, 2025), ECF No. 65 at 3-4 (government arguing that "[t]he federal courts have no authority to direct the Executive Branch to . . . engage with a foreign sovereign in a given manner," to facilitate return of wrongfully deported individual).

Whereas a traditional TRO 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. *See ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978) (court may enjoin "conduct which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion"); *In Re: Nat'l Football League Players Concussion Injury Litigation*, 923 F.3d 96, 109 (3d Cir. 2019) ("[U]nder the All Writs Act, action is authorized to the extent it is 'necessary or appropriate' to enforce a Court's prior orders. . . Or, as this Court has explained it, there is authority under the Act to issue an injunction where such relief is 'necessary, or perhaps merely helpful.'") (citing 28 U.S.C. § 1651 and *Pittsburgh-Des Moines Steel Co. v. United Steelworkers of Am., AFL-CIO*, 633 F.2d 302, 307 (3d Cir. 1980)). 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 Michael v. INS*, 48 F.3d 657, 664 (2d Cir. 1995) (staying 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 Petitioners to Provide Security.

The Court should not require a bond under Fed. R. Civ. P. 65. That "is a matter for the discretion of the trial court," and a district court "may elect to require no security at all." *Kaepa, Inc. v Achilles Corp*., 76 F.3d 626, 628 (5th Cir. 1996). The Fifth Circuit has approved the exercise

of this discretion to require no security in cases brought by indigent people and/or public-interest litigation. *See, e.g., City of Atlanta v. Metro. Atlanta Rapid Transit Auth*., 636 F.2d 1084, 1094 (5th Cir. 1981); *Steward v. West,* 449 F.2d 324, 325 (5th Cir. 1971). Alternatively, the Court should impose a nominal bond of $1.

CONCLUSION

The Court should grant a TRO as to the named Petitioners and the class.

Dated: April 16, 2025

Respectfully submitted,

/s/Brian Klosterboer

Brian Klosterboer
Tx Bar No. 24107833
Thomas Buser-Clancy*
TX Bar No. 24078344
Savannah Kumar*
TX Bar No. 24120098
Charelle Lett*
TX Bar No. 24138899
Ashley Harris*
TX Bar No. 24123238
Adriana Piñon*
TX Bar No. 24089768
Adriana Piñon*
TX Bar No. 24089768
ACLU FOUNDATION OF TEXAS, INC.
1018 Preston St.
Houston, TX 77002
(713) 942-8146
bklosterboer@aclutx.org
tbuser-clancy@aclutx.org
skumar@aclutx.org
clett@aclutx.org
aharris@aclutx.org
apinon@aclutx.org

Lee Gelernt*
Daniel Galindo*
Ashley Gorski*
Patrick Toomey*
Sidra Mahfooz*
Omar Jadwat*
Hina Shamsi*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 549-2660
E: lgelernt@aclu.org
E: dgalindo@aclu.org
E: agorski@aclu.org
E: ptoomey@aclu.org
E: smahfooz@aclu.org
E: ojadwat@aclu.org
E: hshamsi@aclu.org

Noelle Smith*
Oscar Sarabia Roman*
My Khanh Ngo*
Cody Wofsy*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
T: (415) 343-0770
E: nsmith@aclu.org
E: osarabia@aclu.org
E: mngo@aclu.org
E: cwofsy@aclu.org

Attorneys for Petitioners-Plaintiffs
**Pro hac vice applications forthcoming*

DECLARATION OF VICTORIA BLAKEBOROUGH
ATTORNEY FOR A.A.R.P.

I, Victoria Blakeborough, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. I am an immigration attorney at Heinz Law, PLLC, in St. Paul, Minnesota. My practice focuses on removal defense in both detained and non-detained context. I represent A.A.R.P. in his immigration proceedings.

2. A.A.R.P. is currently detained at the Immigration and Customs Enforcement ("ICE") Bluebonnet Detention Facility in Anson, TX, which is owned by Jones County, TX, and operated by MTC.

3. A.A.R.P. is a citizen of Venezuela who was born in 1987. He made an appointment to present at a port of entry using the CBP One app and presented with his wife and their son at the Paso Del Norte Port of Entry in El Paso, Texas in August 2023.

4. When A.A.R.P. was at Paso Del Norte, CBP officers asked him about his tattoos and whether he had any connection to a gang. A.A.R.P. denied any connection to a gang and explained that all his tattoos he had for personal reasons. A.A.R.P. and his family were released into the United States. They moved to Minnesota.

5. A.A.R.P. and his wife were leaving their home on March 26, 2025 to carpool to work when they noticed officers looking at the names on mailboxes in their apartment complex. ICE officers then followed them and stopped their car and arrested A.A.R.P.

6. In an I-213, ICE has accused A.A.R.P. of having "tattoos and associates that indicate membership in the Tren de Aragua gang." That statement is the only evidence provided by ICE for its allegation. A.A.R.P. strongly denies any connection to Tren de Aragua.

7. A.A.R.P. has a number of tattoos for personal reasons, including various decorative and religious tattoos, such as a cross and the Virgin Mary. CBP officers asked him specifically about a clock tattoo on his forearm—that clock appears under a tattoo of his son's face and shows the date and time of his son's birth. Because A.A.R.P.'s wife had had several miscarriages when they were trying to conceive, their son's birth was particularly important to A.A.R.P. to commemorate in a tattoo. None of his tattoos are related to Tren de Aragua.

8. Following his arrest by ICE, A.A.R.P. had been detained at the Sherburne County Jail in Minnesota. A.A.R.P. is in pending immigration removal proceedings. A.A.R.P. fears returning to Venezuela and has sought asylum, withholding of removal, and protection under the Convention Against Torture. A.A.R.P. and his family were persecuted in the past for their political beliefs and for publicly protesting against the current Venezuelan government. A.A.R.P. fears further political persecution if removed to Venezuela. He is scheduled for an immigration hearing on April 28, 2025 with the Fort Snelling, Minnesota Immigration Court. Early on April 14, 2025, he was transferred to Bluebonnet despite his upcoming hearing in Minnesota.

9. I am unaware of any criminal history for A.A.R.P. in the United States and A.A.R.P. denies that he has any criminal history here. I am unaware of any criminal history in Venezuela and A.A.R.P. denies that he has any criminal history there. The I-213 filed by ICE on April 2, 2025 states that A.A.R.P. has no known criminal record.

10. I am aware from news reports that on March 15, 2025, ICE transferred a group of Venezuelan men and flew them to the Terrorism Confinement Center ("CECOT") in El Salvador. Based on knowledge and belief, there were people in that group who were similarly situated to A.A.R.P. It appears to me that A.A.R.P. is at grave risk of ICE alleging that he is removable under the Alien Enemies Act as a member of Tren de Aragua.

I, Victoria Blakeborough, swear under penalty of perjury that the forgoing declaration is true and correct to the best of my knowledge and recollection.

_____/s/ Victoria Blakeborough

Executed this 15th day of April, 2025

DECLARATION OF KATHRYN D'ADAMO

ASSISTANT FEDERAL DEFENDER

1. My name is Kathryn D'Adamo. I am an attorney licensed in Maryland and the District of Columbia.
2. I have been employed as an Assistant Federal Defender in the Office of the Federal Defender for Maryland since May 2024. This declaration is based on my personal knowledge, review of files, and information obtained during the course of my office's legal representation of W.M.M.
3. W.M.M. is currently in Bluebonnet Detention Center in Anson, TX.
4. W.M.M. was born in Venezuela in 2002. He was a soccer player in Venezuela and played for a local soccer club. In 2023, upon leaving a soccer stadium, soldiers with the Venezuelan military harassed and assaulted him because they believed he and his team members did not support the regime of Nicolas Maduro.
5. W.M.M. fled Venezuela after this incident in September 2023. In November 2023, W.M.M. entered the United States and was detained by immigration officials.
6. In December 2023, immigration officials released W.M.M. on his own recognizance and instructed him to report one month later to the ICE Chicago Field Office.
7. Immigration officials also issued W.M.M. a Notice to Appear in the Chicago Immigration Court for a hearing on April 22, 2027.
8. W.M.M. later relocated to Maryland.
9. On June 6, 2024, W.M.M. filed an asylum application with the Chicago Immigration Court. On the same date, W.M.M. filed a change of address form with the Chicago Immigration Court, changing his residence from Chicago to Hyattsville, Maryland.

10. In March 2025, federal authorities arrested W.M.M. on a misdemeanor warrant for his alleged illegal entry into the United States under 8 U.S.C. § 1325. The warrant was issued by a judge in the U.S. District Court for the Southern District of Texas, alleging that W.M.M. entered the United States unlawfully back in November 2023. He did not know any warrant had been issued until his arrest.
11. My office was appointed to represent him for a hearing on the unlawful entry warrant on March 14, 2025. At that hearing, a Magistrate Judge in the U.S. District Court for the District of Maryland conducted a federal detention hearing under 18 U.S.C. § 3142. The Government alleged that W.M.M. was affiliated with the Venezuelan gang "Tren de Aragua" based on emojis used in W.M.M's social media feed and a comment left by another individual on a social media post. The Government also alleged that W.M.M. was arrested at a residence where an alleged Tren de Aragua associate was present. W.M.M. strongly denies any connection to TdA.
12. Magistrate Judge Charles Austin ordered W.M.M released from federal criminal custody, finding that the Government had not met its threshold burden under § 3142(f)(2) to show a "serious risk that such person will flee." The Judge noted that W.M.M. "has no other pending criminal charges and no prior failures to appear when ordered by a court," and that "[h]is only apparent interaction with a court or criminal charges appears to be this case."
13. The U.S. Marshals held W.M.M. in their custody over the weekend, from Friday, March 14 to Monday, March 17. On March 17, the U.S. Marshals transferred him into the custody of ICE. W.M.M. was held at the ICE Baltimore Field Office for approximately

24 hours before being sent to Winn Correctional Center ("Winn"), an ICE facility in Louisiana.

14. W.M.M. remained at Winn for approximately one month. On April 11, 2025, he had his first Master Calendar Hearing in the immigration court. The Immigration Court scheduled an Individual Hearing for August 22, 2025.

15. Early in the morning on April 14, 2025, correctional officers notified W.M.M. that he was on a list to be transferred out of the facility. Later that day, ICE transferred W.M.M. from Winn to Bluebonnet Detention Facility ("Bluebonnet") in Anson, Texas. W.M.M. was transferred along with several other individuals who he understood were also Venezuelan.

16. W.M.M. reported that since his arrival at Bluebonnet, several other individuals from Venezuela have arrived from other facilities.

17. As of this signing, W.M.M. remains currently detained at the Immigration and Customs Enforcement ("ICE") Bluebonnet Detention Facility in Anson, TX.

18. In the late afternoon of April 15, 2025, W.M.M. relayed that his phone access was cut off, as was that of several other individuals with whom he arrived at Bluebonnet. W.M.M. understands this to mean that he will be imminently relocated.

19. W.M.M. fears he will be summarily removed under the AEA due to the Government's previous allegations of membership in Tren de Aragua and his location at Bluebonnet.

20. I am aware that on March 15, 2025, ICE transferred a group of Venezuelan men and flew them to the Terrorism Confinement Center ("CECOT") in El Salvador. Based on information and belief, there were people in that group who were similarly situated to W.M.M. I am concerned that W.M.M. is at grave risk of ICE alleging that he is removable under the Alien Enemies Act as a member of Tred de Aragua.

I, Kathryn D'Adamo, swear under penalty of perjury that the forgoing declaration is true and correct to the best of my knowledge.

_____/s/ Kathryn D'Adamo_____

Executed this 15th day of April, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

A.A.R.P., *et al.*, on their own behalf and on behalf of all others similarly situated, *Petitioners–Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Respondents–Defendants.*	CIVIL ACTION NO. 1:25-cv-0059

[PROPOSED] TEMPORARY RESTRAINING ORDER

Upon consideration of Petitioners-Plaintiffs' Motion for a Temporary Restraining Order:

Having determined that Petitioners-Plaintiffs ("Petitioners") and the proposed class are likely to succeed on the merits of their claims that the Proclamation violates the Alien Enemies Act ("AEA"), 50 U.S.C. § 21 *et seq.*; that the AEA does not authorize Respondents-Defendants ("Respondents") to summarily remove them from the United States; that Respondents' actions implementing removals under the AEA violate due process, the Immigration and Nationality Act, and statutes providing protection for those seeking humanitarian relief; that in the absence of injunctive relief Petitioner and the proposed class will suffer irreparable injury in the form of unlawful removal that may be irreversible,; and that the balance of hardships and public interest favor temporary relief, it is, therefore,

ORDERED that Petitioners' Motion for a Temporary Restraining Order is hereby GRANTED without notice, due to the extreme speed at which removal from this District may occur and the irreparable consequences of the Court's potential loss of jurisdiction; that the proposed class is provisionally certified; and that Respondents (excluding the President with

respect to any injunctive relief), their agents, representatives, and all persons or entities acting in concert with them are hereby:

1. **ORDERED**, pending further order of this Court, not to remove Petitioners, or any members of the putative class, from the United States under the Presidential Proclamation entitled "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua";
2. **ORDERED**, pending further order of this Court, not to transfer Petitioners, or any members of the putative class, from the District without notice to counsel;
3. **ORDERED**, pending further order of this Court, to provide Petitioners and members of the putative class, as well as provisional class counsel, with notice of any designation as an Alien Enemy under the Proclamation, and at least 30 days' notice prior to any removal pursuant to the Proclamation;
4. **ORDERED**, pending further order of this Court, to provide provision class counsel with notice of the transfer of any individual designated an Alien Enemy under the Proclamation into the District.

It is further **ORDERED** that Petitioners shall not be required to furnish security for costs.

Entered on _____, of April 2025, at _____ a.m./p.m.

_____
United States District Court Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
ABILENE DIVISION

A.A.R.P., on his own behalf and on behalf of all others similarly situated, et al., Petitioners-Plaintiffs, v. DONALD J. TRUMP, in his official capacity as President of the United States, et al., Respondents-Defendants.	No. 1:25-CV-059-H

ORDER

Before the Court are the petitioners' emergency application for a temporary restraining order (Dkt. No. 2) and motion for class certification and appointment of class counsel (Dkt. No. 3). The petitioners A.A.R.P and W.M.M. assert that they "are at imminent risk of summary removal" from the United States. Dkt. No. 2 at 2. To avoid alleged irreparable harm, the petitioners ask the Court, among other things, to enjoin the government from removing them—or any similarly situated detainee in the Northern District of Texas—from the country. *Id.* The Court asked the government whether it would remove A.A.R.P or W.M.M. pending resolution of their habeas petition. Dkt. No. 8. The United States answered unequivocally, stating that "the government does not presently expect to remove A.A.R.P. or W.M.M. under the [Aliens Enemies Act] until after the pending habeas petition is resolved" and that "[i]f that changes, we will update the Court." Dkt. No. 19 at 13. As a result, the petitioners are not at "imminent risk of summary removal," and they cannot show a substantial threat of irreparable harm. Thus, the motion is denied. The Court reserves decision as to the motion for class certification (Dkt. No. 3).

1. Factual and Procedural History

On March 14, 2025, President Donald J. Trump signed a proclamation under the Alien Enemies Act of 1798 providing 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." Dkt. No. 1 at 13 (brackets in original).

A.A.R.P., a Venezuelan national, entered the United States in 2023. Dkt. No. 1 at 5–6. He sought asylum and has a hearing scheduled on April 28, 2025, at the Fort Snelling, Minnesota Immigration Court. *Id.* at 5. ICE detained A.A.R.P. on March 26, 2025. *Id.* at 5–6. On April 14, 2025, authorities transferred A.A.R.P. from a jail in Minnesota to the Bluebonnet Detention Center in Texas. *Id.* at 6. According to the petition, ICE contends that A.A.R.P. is a member of TdA. *Id.*

W.M.M., also a Venezuelan national, was detained when he entered the United States in 2023, but he was later released on his own recognizance. *Id.* at 6. He later filed an asylum application. *Id.* Subsequently, federal authorities arrested W.M.M. for illegal entry into the United States. *Id.* After his arrest, authorities released W.M.M. into ICE custody at the Winn Correctional Center in Louisiana. *Id.* Authorities transferred him to the Bluebonnet Detention Center on April 14, 2025. *Id.* at 6–7. W.M.M. has a court hearing scheduled for August 22, 2025. *Id.* at 7. The petition alleges that ICE believes W.M.M. is affiliated with TdA. *Id.* at 6.

A.A.R.P. and W.M.M. assert that they may be imminently deported to El Salvador or Venezuela. *Id.* at 6–7; Dkt. No. 2-1 at 20. They filed their joint petition for a writ of

habeas corpus on April 16, 2025. *See generally* Dkt. No. 1. Neither A.A.R.P. nor W.M.M. has been issued a notice of intent to remove them under the Act. *See* Dkt. No. 21 at 35.

Contemporaneously with their petition, the petitioners moved for an emergency, ex-parte restraining order against the respondents.[1] Dkt. No. 2; *see* Dkt. No. 1 at 1. The petitioners claim in their motion that the government may remove Venezuelan nationals, such as the petitioners, to El Salvador or Venezuela with less than 24 hours' notice in a summary proceeding without due process or the opportunity for judicial review, potentially depriving the Court of jurisdiction to hear the petitioners' habeas claims. Dkt. No. 2-1 at 3–4, 19–20. Once the Court is deprived of jurisdiction, the petitioners assert, they will risk torture, abuse, persecution, and the inability to obtain relief. *Id.* at 19–20.

The Court ordered the petitioners to provide notice to Chad Meacham, the Acting United States Attorney for the Northern District of Texas or to file a brief explaining why they did not need to provide notice to the respondents of the request for a restraining order. Dkt. No. 8. The petitioners then filed a notice of service as to Acting United States Attorney Meacham. Dkt. No. 11.

The Court further instructed the government to respond to the motion for a temporary restraining order by 4:00 p.m. CT on April 16, 2025. Dkt. No. 8 at 3. The government timely filed its response, Dkt. No. 19, and the petitioners replied, Dkt. No. 22. In addition to various substantive arguments, the government represents that the petitioners' removal is not imminent. *See* Dkt. No. 19 at 31–33. The government states that authorities

[1] The petitioners do not seek a temporary restraining order against President Donald J. Trump. Dkt. No. 2 at 4 n.2.

will not remove the petitioners during this litigation, and it will alert the Court if that changes. *Id.* at 12–13.

2. Analysis

The Court denies the motion because three points undermine the petitioners' assertion of imminent, irreparable harm. First, the Supreme Court's recent opinion in *Trump v. J.G.G.*, 2025 WL 1024097 (U.S. Apr. 7, 2025), leaves no doubt that detainees, like the petitioners, are entitled to some level of due process and judicial review. Second, the government's representations to this Court make manifest that the petitioners will not be removed pending this litigation and that the government will alert the Court if that expectation changes. And third, the petitioners' desire for more concessions or specific timetables from the government does not sufficiently show imminent, irreparable injury.

Movants seeking preliminary injunctive relief must establish (1) "a substantial likelihood that they will prevail on the merits," (2) a "substantial threat that they will suffer irreparable injury if the injunction is not granted," (3) that "their substantial injury outweighs the threatened harm to the party whom they seek to enjoin" and (4) that "granting the preliminary injunction will not disserve the public interest." *City of El Cenizo v. Texas*, 890 F.3d 164, 176 (5th Cir. 2018) (quoting *Tex. Med. Providers Performing Abortion Servs. v. Lakey*, 667 F.3d 570, 574 (5th Cir. 2012)). A temporary restraining order is "simply a highly accelerated and temporary form of preliminary injunctive relief," which requires the party seeking such relief to establish the same four elements for obtaining a preliminary injunction. *Hassani v. Napolitano*, No. 3:09-CV-1201-D, 2009 WL 2044596, at *1 (N.D. Tex. July 15, 2009). Therefore, the same criteria are applicable to temporary restraining orders.

See May v. Wells Fargo Home Mortg., No. 3:12-CV-4597-D, 2013 WL 2367769, at *1 (N.D. Tex. May 30, 2013).

Preliminary injunctive relief is "an extraordinary remedy, not available unless the plaintiff carries his burden of persuasion as to all of the four prerequisites." *Canal Auth. of Fla. v. Callaway*, 489 F.2d 567, 576 (5th Cir. 1974). "The decision to grant [such relief] 'is to be treated as the exception rather than the rule.'" *Jones v. Bush*, 122 F. Supp. 2d 713, 718 (N.D. Tex. 2000) (quoting *Miss. Power & Light Co. v. United Gas Pipe Line Co.*, 760 F.2d 618, 621 (5th Cir. 1985)) (stating that a movant must "clearly carr[y] the burden of persuasion").

The petitioners ask the Court to decide, "as soon as possible," *see* Dkt. No. 2 at 3, whether to restrain the federal government from exercising its immigration powers—a realm in which the political branches, not the judiciary, enjoy substantial power and responsibility. *See, e.g.*, *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952) (noting that "any policy toward 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" and that "[s]uch matters are so exclusively entrusted to the political branches of government as to be largely immune from judicial inquiry or interference"). And in this context especially, the Supreme Court has recently noted that the Alien Enemies Act largely precludes judicial review. *J.G.G.*, 2025 WL 1024097, at *1. The Court must tread carefully when making such a hasty decision, especially one of significant magnitude. These considerations are why preliminary relief is an exception rather than the rule. And although temporary restraining orders against the government are sometimes justified, the movant must show that there is a substantial threat of irreparable harm without such relief. *See City of El Cenizo*, 890 F.3d at 176.

The petitioners have not met this burden. First, Supreme Court precedent undermines the petitioners' assertion of imminent and summary removal without process. Just last week, the Supreme Court outlined the requirements and procedures for these cases. *See J.G.G.*, 2025 WL 1024097, at *2. The Supreme Court noted that, even under the Alien Enemies Act, "an individual subject to detention and removal . . . is entitled to judicial review as to questions of interpretation and constitutionality of the Act as well as whether he or she is in fact an alien enemy fourteen years of age or older." *Id.* at *2 (internal quotation marks omitted) (quoting *Ludecke v. Watkins*, 335 U.S. 160, 163–64 (1948)).

Moreover, the Supreme Court noted that "[t]he detainees' rights against summary removal . . . [were] not currently in dispute," as the government "expressly agree[d] that TdA members subject to removal under the Alien Enemies Act get judicial review." *Id.* (internal quotation marks omitted). And the Supreme Court further reiterated that "the detainees are entitled to notice and opportunity to be heard 'appropriate to the nature of the case.'" *Id.* (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)). "More specifically, in this context, AEA detainees must receive notice after [April 7, 2025] that they are subject to removal under the Act." *Id.* The notice must "be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Id.* Lest it not already be completely clear, the Supreme Court stated that "[f]or all the rhetoric of the dissents, . . . the detainees subject to removal orders under the AEA are entitled to notice and an opportunity to challenge their removal." *Id.*

Thus, the Supreme Court has already made clear that the alleged immediate removals prior to notice and the opportunity for judicial review, which form the basis of the

petitioners' motion, are illegal. *See id.* And the government recognized this reality in the Supreme Court. *Id.*

Second, the government's own representations in this case preclude a finding of imminent, irreparable harm. In an attempt to establish that *J.G.G.* is insufficient to safeguard the rights of the petitioners, they assert that the "[r]espondents have yet to concede that they will provide meaningful notice, much less any sense of when that notice will be provided to individuals or what form it will take." Dkt. No. 2-1 at 21. As such, the petitioners contend that "there remains an unacceptably high risk that the government will deport [putative] class members who are not in fact members of TdA." *Id.*

But the government's response confirms that it has no present plans to remove either petitioner until the habeas petition is resolved and that it will notify the Court if that changes. Dkt. No. 19 at 12–13. The government once again confirmed its continued belief that "the requirement for judicial review includes a process for affording notice and opportunity to be heard prior to being removed under AEA authority" and that once "that opportunity to be heard has been satisfied, removal may proceed unless a court orders otherwise." *Id.* at 13. The government further provided a declaration from Yousef Khan, Assistant Field Office Director for the United States Department of Homeland Security, Immigration and Customs Enforcement, who stated that "ICE does not intend to remove A.A.R.P. or W.M.M. under the AEA while their habeas petitions are pending." Dkt. No. 21 at 35. The petitioners, in contrast, have pointed to no instances of the government attempting to remove individuals under the Act without sufficient notice or process after the Supreme Court entered its order and opinion in *J.G.G.*, and neither have they pointed to affirmative representations by the government that it will do so in the immediate future.

Given this record, the Court has no basis upon which to believe that the government is going to defy the Supreme Court's clear directives in *J.G.G.* or the government's own representations to the Supreme Court and to this Court. Thus, in light of *J.G.G.* and the government's representations in its response (Dkt. No. 19), the petitioners' conjecture is too speculative to support the exceptional remedy requested.

Third, the fact that the government has "yet to concede" its obligation to provide meaningful notice is insufficient to affirmatively show that the government is going to commit the acts feared. *See* 11A Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2948.1 (3d ed. 2025) (noting that there must be a "likelihood that irreparable harm will occur" and that "[s]peculative injury is not sufficient"); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008) (noting that "[i]ssuing a preliminary injunction based on a possibility of irreparable harm is inconsistent with our characterization of injunctive relief as an extraordinary remedy"); *Morrell v. City of Shreveport*, 536 F. App'x 433, 435 (5th Cir. 2013) (noting that "speculative injury is not sufficient"); *see also* Dkt. No. 21 at 25–26. In any event, the petitioners asserted this argument before the government affirmed before this Court its agreement that it must provide notice that allows "a reasonable time to file" a habeas petition. *See* Dkt. No. 19 at 13

The petitioners' reply brief (Dkt. No. 22) likewise contends that the government's assurances are insufficient because the government is still not committing to provide substantially more than 24 hours' notice. Dkt. No. 22 at 4–5. The petitioners believe that 30 days' notice is necessary. *Id.* at 5. But the government's decision not to commit to a specific or longer period of notice does not support the petitioners' contention that they are at imminent risk of irreparable harm. The government has committed to allowing for due

process and judicial review, specifically stating that it has no intention to remove the petitioners before the Court resolves their habeas petition. Dkt. Nos. 19 at 12–13; 21 at 25–26. In addition, the Supreme Court's opinion in *J.G.G.*, along with the government's general representations about the procedures necessary in these cases, strongly suggest that the putative class is also not facing such an imminent threat as the petitioners allege. In any event, the petitioners cannot seek relief that is necessary only to class members but not to them as named petitioners. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348–49 (2011) (explaining the importance of named plaintiffs being representative of the members of the class). Moreover, despite the lack of a specific notice period, the government has agreed that it will provide meaningful notice. *See* Dkt. No. 19 at 13, 24–25. That the government has not provided a specific notice period does not mean the government will provide notice insufficient under *J.G.G.* in the immediate future to detainees.

Under these circumstances, the Court finds that the petitioners have failed to meet their "heavy burden" to show a substantial threat of irreparable harm. *Enter. Int'l, Inc. v. Corporacion Estatal Petrolera Ecuatoriana*, 762 F.2d 464, 472 (5th Cir. 1985). Irreparable harm is "[p]erhaps the single most important prerequisite for the issuance of" injunctive relief of this sort. Wright & Miller, *supra* § 2948.1. Lacking a showing of "certainly impending" future injury, the Court cannot grant the temporary restraining order. *See Aransas Project v. Shaw*, 775 F.3d 641, 664 (5th Cir. 2014) (quoting *Babbitt v. United Farm Workers Nat'l Union*, 442 U.S. 289, 298 (1979)).

3. Conclusion

The Supreme Court has already affirmed that petitioners are entitled to judicial review, including notice and a hearing, before removal. *See J.G.G.*, 2025 WL 1024097, at

*2. The government agreed with this statement of law before the Supreme Court, *see id.*, and before this Court, *see* Dkt. No. 19 at 13. The petitioners have not made a sufficient showing at this stage to convince the Court that the government will violate its representations to that effect or the instructions of the Supreme Court. The petitioners have therefore failed to meet their burden to show a substantial threat of imminent, irreparable injury. The Court denies the motion for a temporary restraining order (Dkt. No. 2). Because the Court denies the emergency motion, it need not decide at this point whether to certify a class or appoint class counsel. The Court will issue a briefing order regarding the motion for class certification and appointment of class counsel (Dkt. No. 3) in due course.

So ordered on April 17, 2025.

JAMES WESLEY HENDRIX
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

A.A.R.P., *et al.*, on their own behalf and on behalf of all others similarly situated, *Petitioners–Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al*., *Respondents–Defendants*.	Case No. 1:25-cv-59-H **PETITIONERS-PLAINTIFFS' RENEWED EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER**

PETITIONERS-PLAINTIFFS' RENEWED EMERGENCY APPLICATION FOR TEMPORARY RESTRAINING ORDER

Petitioners-Plaintiffs ("Petitioners") and the proposed class seek emergency relief in light of developing and alarming circumstances: since the Court's order denying a TRO this afternoon, Petitioners have learned that officers at Bluebonnet have distributed notices under the Alien Enemies Act, in English only, that designate Venezuelan men for removal under the AEA, and have told the men that the removals are imminent and will happen tonight or tomorrow. *See* Exh. A (Brown Decl.). These removals could therefore occur before this matter may be heard and before the government's response within 24 hours. *See* Order, ECF No. 29 (providing that if any emergency motion is filed, the opposing party shall have 24 hours to file a response).[1]

[1] Counsel for Petitioners contacted counsel for the government by email at 4:49pm CT, even before hearing about the distribution of notices at Bluebonnet, to ask if the government would make the same representations as to the putative class members as it did for the two named Petitioners. Counsel for the government did not respond to that correspondence. After then hearing that notices were being distributed at the Bluebonnet facility, we again contacted the government, at 6:23 pm CT, to ask whether it was accurate that the government had begun distributing AEA notices to Venezuelan men at the facility. At 6:36pm CT, counsel for the government said they would inquire and circle back. At 8:11pm CT, the government responded that the two named Petitioners had not been given notices. We immediately responded that we

As detailed in the Brown Declaration, in the hours after this Court's order on the TRO, Attorney Brown's client, F.G.M., was approached by ICE officers, accused of being a member of Tren de Aragua, and told to sign papers in English. Exh. A (Brown Decl.) ¶ 3. F.G.M. understands only Spanish, and he refused to sign. ICE told him the papers "were coming from the President, and that he will be deported even if he did not sign it." *Id.* Another Venezuelan man who is detained at Bluebonnet and speaks English then read the notice to Attorney Brown, and the notice tracks the language of the Alien Enemies Act: "In the notice, it classified F.G.M. as a TdA gang member" who "must be removed" from the United States. *Id.* F.G.M., like other men against whom the Alien Enemies Act has already been used, does not have a final order of removal and is therefore not removable under the immigration laws. *See id.* The notice was not provided to counsel by the government, not did the government inform Attorney Brown that her client was being designated under the AEA.

In addition to Brown's client, immigration lawyers and family members of people detained at Bluebonnet are reporting that the forms are being passed out widely to the dozens of Venezuelan men who have been brought there over the past few days. Exh. B (Brane Declaration); *see also* Exh. C (Collins Decl.); Exh. D (Siegel Decl.). There is no indication that, as with past AEA removals, lawyers were being provided with the form or told that their clients were being designated under the AEA.[2]

were inquiring about putative class members. At 8:41pm CT, the government wrote: "We are not in a position at this time to share information about unknown detainees who are not currently parties to the pending litigation."

[2] On March 15, at least 137 Venezuelans were removed under the AEA to the CECOT prison in El Salvador. Those individuals were overwhelmingly, if not exclusively, detained at facilities in the S.D. Texas. On April 11, after a hearing, Judge Rodriguez entered a class wide TRO to preserve the status quo and prevent additional individuals from being removed under the AEA.

In its opinion today denying the initial TRO request, the Court relied on the government's representation, and the Supreme Court's decision in *J.G.G.*, that the two named Petitioners would not be removed pending the outcome of the habeas petition, and that if anything changed, the government would advise the Court. The Court did not at this time act on the motion for class certification, but it did state that "the Supreme Court's opinion in *J.G.G.,* along with the government's general representations about the procedures necessary in these cases, strongly suggest that the putative class is also not facing such an imminent threat …." Op. at 9.

Given that individuals are now in imminent danger of removal, with notice that appears to be *less* than 24 hours, Petitioners respectfully request that the Court provisionally certify a class and grant a class wide TRO so that it has time to consider these important issues. If the individuals are removed before the Court can act and the putative class members are removed from the country, this Court would be permanently divested of jurisdiction under the government's position that it need not return individuals, even those mistakenly erroneously removed. *See* All Writs Act, 28 U.S.C. 1651 (court can issue writs necessary to preserve its jurisdiction). And given the brutal nature of the Salvadoran prison where other Venezuelan men were sent under the AEA last month, the irreparable harm to them is manifest.

Accordingly, Petitioners respectfully request an immediate class wide TRO, and move to add F.G.M., as a named plaintiff. *Seeee* Exh. A (Brown Decl.) [3]

He then ordered expedited preliminary injunction briefing and set a hearing on the P.I. for April 23, 2025. *J.A.V. v. Trump*, No. 25-cv-72 (S.D. Tex 2025).

[3] In addition to filing electronically, Petitioner emailed a copy of this filing to counsel for the government.

Dated: April 18, 2025

Respectfully submitted,

/s/Lee Gelernt

Lee Gelernt
Daniel Galindo
Ashley Gorski*
Patrick Toomey*
Sidra Mahfooz*
Omar Jadwat*
Hina Shamsi*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 549-2660
E: lgelernt@aclu.org
E: dgalindo@aclu.org
E: agorski@aclu.org
E: ptoomey@aclu.org
E: smahfooz@aclu.org
E: ojadwat@aclu.org
E: hshamsi@aclu.org

Noelle Smith*
Oscar Sarabia Roman*
My Khanh Ngo*
Cody Wofsy*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
T: (415) 343-0770
E: nsmith@aclu.org
E: osarabia@aclu.org
E: mngo@aclu.org
E: cwofsy@aclu.org

Brian Klosterboer
Tx Bar No. 24107833
Thomas Buser-Clancy
TX Bar No. 24078344
Savannah Kumar*
TX Bar No. 24120098
Charelle Lett
TX Bar No. 24138899
Ashley Harris
TX Bar No. 24123238
Adriana Piñon*
TX Bar No. 24089768
ACLU FOUNDATION OF TEXAS, INC.
1018 Preston St.
Houston, TX 77002
(713) 942-8146
bklosterboer@aclutx.org
tbuser-clancy@aclutx.org
skumar@aclutx.org
clett@aclutx.org
aharris@aclutx.org
apinon@aclutx.org

Attorneys for Petitioners-Plaintiffs
**Pro hac vice applications forthcoming*

CERTIFICATE OF SERVICE

I hereby certify that on April 18, 2025, a true and correct copy of the foregoing document was electronically filed via the Court's CM/ECF system which sends notice of electronic filing to all counsel of record.

Dated: April 18, 2025

/s/ Lee Gelernt
Lee Gelernt
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 549-2660
E: lgelernt@aclu.org

Attorney for Petitioners-Plaintiffs

KARENE BROWN ATTORNEY AFFIRMATION:

ATTORNEY OF RECORD FOR F.G.M.

I, Karene Brown, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. My name is Karene Brown. I am a Staff Attorney at The Legal Aid Society within the New York Immigrant Family Unity Project ("NYIFUP"). I represent F.G.M. in his removal proceeding. I first entered my appearance in his immigration case on April 29, 2024.

2. On the evening of April 17, 2025, F.G.M. called me while detained at Bluebonnet Detention Center. F.G.M. has a pending asylum application and no final removal order.

3. F.G.M. said that ICE accused him of being Tren de Aragua gang member as well as provided documentation labeling him as such. ICE told F.G.M. to sign some papers that were written in English but F.G.M., who speaks only Spanish, refused. ICE informed F.G.M. that these papers were coming from the President, and that he will be deported even if he did not sign it.

4. An English-speaking Venezuelan man then came on the phones and read the notice that ICE provided to F.G.M. In the notice, it classified F.G.M. as a TdA gang member. It stated that he is an Alien Enemy, he was determined to be over 14 years old, and that he must be removed from the US. The English-speaking Venezuelan said that ICE had informed them that they will be deported either today or tomorrow to Venezuela.

5. F.G.M. said that he observed many Venezuelans signed the documents provided by ICE.

I, Karene Brown, affirm under penalty of perjury, that the foregoing is true and correct.

April 17, 2025
New York, NY

_____/s/_____
Karene Brown

DECLARATION OF MICHELLE BRANÉ

EXECUTIVE DIRECTOR OF TOGETHER AND FREE

1. I am Michelle Brané, Executive Director of Together and Free. Together and Free is a nonprofit organization that provides emergency and ongoing support services to asylum seeking families impacted by federal immigration policies.
2. I have more than 25 years of experience working on immigration and human rights issues. Prior to my work at Together and Free, I served for three years as the Executive Director for the Department of Homeland Security's Family Reunification Task Force, and then as DHS's Ombudsman for Immigration Detention. Before that, I was the Director of the Migrant Rights and Justice program at the Women's Refugee Commission for almost 15 years, where I worked on projects related to immigration custody, family detention and separation, and access to asylum at the U.S. border. I hold a JD from Georgetown University.
3. Together and Free has been hearing from family members of individuals in immigration detention at Bluebonnet Detention Center in Anson, TX, who fear being removed to El Salvador because officers have distributed notices of designation as Alien Enemies to individuals and told them they will be removed.
4. On April 17 one of our partners received a call from the wife of a man being detained at Bluebonnet. The detainee told his wife that Venezuelans at Bluebonnet are receiving notices accusing them of being in Tren de Aragua and saying they will be deported. He sent her a tiktok with various detainees saying they were being accused of being enemies of the state and Tren de Aragua members, and that they were being asked to sign papers and were being removed but they did not know where. Several said that whether they

signed or not, they would be removed.

https://www.tiktok.com/@aviicrespo0/video/7494430422365965573?_r=1&_t=ZM-8vcgOxvfBnK

5. On April 17 at 10:36 I spoke to the sister of Luis Yoender Mercado. She informed me that she spoke to him this afternoon. Luis is detained at Bluebonnet. He has a master Calendar hearing scheduled on April 23, 2025. He told his sister that several people had received notices and were told by officers that they were being sent to El Salvador.
6. I also received messages on a listserv from several contacts indicating that people at Bluebonnet were receiving notices that they would be removed. The message says, "We just heard that it looks like more removals are being planned. We got this message from a member: "Hi, ICE moved a large group of Venezuelans to Bluebonnet earlier this week and some of them have alerted counsel that they received a notice minutes ago saying they would be removed under the AEA. The notice was in English and had a box for people to indicate they want to contest the designation. People should check on their Venezuelan clients if they've been moved to Bluebonnet and tell them to mark "I contest" in the notice."

Executed on 17th of April, 2025, in University Park, Maryland.

Michelle Brané

Michelle Brané

DECLARATION OF TRAVIS JOHN COLLINS, ATTORNEY FOR Y.S.M.

I, Travis John Collins, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. I am an immigration attorney in Arlington, Virginia. My practice focuses on removal defense. I represent Y.S.M. in his immigration proceedings.

2. Y.S.M. is currently detained at the Immigration and Customs Enforcement ("ICE") Bluebonnet Detention Facility in Anson, TX, which is owned by Jones County, TX, and operated by MTC.

3. Y.S.M. is a citizen of Venezuela who was born in 2006. He entered the United States in 2022 as an unaccompanied minor.

4. Once in the United States, Y.S.M. reunited with his father I.S.G. and other extended family. I.S.G. filed a timely asylum application and included his son Y.S.M. as a derivative.

5. On March 14, 2025, Y.S.M. was detained by immigration agents, along with other relatives. Y.S.M. was later questioned by immigration and federal agents about a photograph. The agents stated that the photograph, found on Facebook, proved the Y.S.M. was a member of Tren de Aragua and that one of the persons in the photograph had a gun. Y.S.M. pointed out to the agents that the gun in question was in fact a water pistol. I have seen and reviewed the Facebook photograph in question and have confirmed that the gun in question is a water pistol.

6. After Y.S.M. was detained, he was initially transferred to Farmville Detention Facility in Virginia. Y.S.M. was made to wear green clothing, which signified that officers alleged that he was a member of Tren de Aragua.

7. On April 11, Y.S.M. was told by staff at the detention facility that he needed to attend a medical checkup. Once Y.S.M. arrived to the checkup, he was met by agents who began interrogating him about his ties to Tren de Aragua and pressured him to admit that he was a member of Tren de Aragua. The agents asked Y.S.M. to sign a paper saying that he was a member of Tren de Aragua. Y.S.M. refused to sign any document and denied that he was a member of Tren de Aragua.

8. On the night of April 13, Y.S.M. and his father were transferred from Virginia. I was scheduled to have a video call with Y.S.M. on April 14 at 9:00 AM EST; at 7:11 AM, I received an email notifying me that the video call had been cancelled. After checking ICE Detainee Locator, I contacted the detention center and emailed ERO as an attempt to obtain his location.

9. Sometime between April 14-16, Y.S.M. was transferred to Bluebonnet Detention Facility, as was his father. On the night of April 16, I was made aware of his location and emailed a request for a video call. I received a follow-up to my request on April 17 in the afternoon.

10. During the night of April 17, I received notice through Y.S.M.'s father that Y.S.M. had been taken away by agents. Y.S.M. was taken to another room. The agents returned for Y.S.M.'s

belongings. As he passed by, Y.S.M.'s father could see through a window that Y.S.M. was crying. As Y.S.M. and the agents were passing, Y.S.M. held up a paper to the window. Another detainee who spoke English was able to read that the paper said "deportation." The country of removal was not visible. Because he has no final immigration order, the government could only be seeking to remove him under the AEA, not the immigration laws.

_____/s/ Travis John Collins_____

Executed this 17th day of April, 2025

DECLARATION OF KEVIN SIEGEL, ESQ.

I, Kevin Siegel, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. I am an attorney at Brooklyn Defender Services in Brooklyn, New York.

2. On April 17, 2025, I spoke with my client, a Venezuelan national detained at the Bluebonnet Detention Facility in Anson, Texas, and with his partner several times on the phone.

3. My client and his partner told me that Venezuelan men detained at Bluebonnet were being given a piece of paper saying that they were about to be deported regardless of their immigration status because they are a danger to the United States and that these men were asked to sign the paper notice or a document provided with it. They also told me that ICE officials refused to say where the men would be deported.

4. My client and his partner also told me that individual men were being removed from the facility without warning upon receiving the paper notice.

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

Dated: April 18, 2025

/s/ Kevin Siegel
Kevin Siegel, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS

A.A.R.P., W.M.M., and F.G.M., *et al.*,

Petitioners–Plaintiffs,

v.

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

Respondents–Defendants.

Case No. 1:25-cv-59-H

NOTICE OF APPEAL OF TRO AND CLASS CERTIFICATION

PLEASE TAKE NOTICE that Petitioners hereby appeal to the United States Court of Appeal for the Fifth Circuit from the Court's April 17, 2025 Order denying Motion for Temporary Restraining Order (ECF No. 27), as well as the constructive denials of Petitioners' Motions for Class Certification (ECF Nos. 27, 31) and Renewed Motion for Temporary Restraining Order (ECF No. 30). Petitioners intend to file Petitioners' Opposed Emergency Motion for a Temporary Administrative Injunction and an Injunction Pending Appeal or a Writ of Mandamus. Petitioners request immediate transmission of this request to the Fifth Circuit.

Dated: April 18, 2025

Respectfully submitted,

/s/Lee Gelernt

Lee Gelernt*
Daniel Galindo*
Ashley Gorski*
Patrick Toomey*
Sidra Mahfooz*
Omar Jadwat*
Hina Shamsi*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
125 Broad Street, 18th Floor
New York, NY 10004
T: (212) 549-2660
E: lgelernt@aclu.org
E: dgalindo@aclu.org
E: agorski@aclu.org
E: ptoomey@aclu.org

Noelle Smith*
Oscar Sarabia Roman*
My Khanh Ngo*
Cody Wofsy*
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
425 California Street, Suite 700
San Francisco, CA 94104
T: (415) 343-0770
E: nsmith@aclu.org
E: osarabia@aclu.org
E: mngo@aclu.org
E: cwofsy@aclu.org

Brian Klosterboer

Tx Bar No. 24107833
Thomas Buser-Clancy*
TX Bar No. 24078344
Savannah Kumar*
TX Bar No. 24120098
Charelle Lett*
TX Bar No. 24138899
Ashley Harris*
TX Bar No. 24123238
Adriana Piñon*
TX Bar No. 24089768
Adriana Piñon*
TX Bar No. 24089768
ACLU FOUNDATION OF TEXAS, INC.
1018 Preston St.
Houston, TX 77002
(713) 942-8146
bklosterboer@aclutx.org
tbuser-clancy@aclutx.org
skumar@aclutx.org
clett@aclutx.org
aharris@aclutx.org
apinon@aclutx.org
E: smahfooz@aclu.org
E: ojadwat@aclu.org
E: hshamsi@aclu.org

Attorneys for Petitioners-Plaintiffs
**Pro hac vice applications forthcoming*

NOTICE AND WARRANT OF APPREHENSION AND REMOVAL UNDER THE ALIEN ENEMIES ACT

A-File No: [redacted]

In the Matter of: [redacted] Date: 04/16/2025

Date of Birth: [redacted]1992

Sex: X Male Female

Warrant of Apprehension and Removal

To any authorized law enforcement officer:

The President has found that Tren de Aragua is perpetrating, attempting, or threatening an invasion or predatory incursion against the territory of the United States, and that Tren de Aragua members are thus Alien Enemies removable under Title 50, United States Code, Section 21.

[redacted] has been determined to be: (1) at least fourteen years of
(Full Name of Alien Enemy)
age; (2) not a citizen or lawful permanent resident of the United States; (3) a citizen of Venezuela; and (4) a member of Tren de Aragua. Accordingly, he or she has been determined to be an Alien Enemy and, under Title 50, United States Code, Section 21, he or she shall be apprehended, restrained, and removed from the United States pursuant to this Warrant of Apprehension and Removal.

Signature of Supervisory Officer: [signature]

Title of Officer: (A) FOD **Date:** 4-18-2025

Notice to Alien Enemy

I am a law enforcement officer authorized to apprehend, restrain, and remove Alien Enemies. You have been determined to be at least fourteen years of age; not a citizen or lawful permanent resident of the United States; a citizen of Venezuela; and a member of Tren de Aragua. Accordingly, under the Alien Enemies Act, you have been determined to be an Alien Enemy subject to apprehension, restraint, and removal from the United States. Until you are removed from the United States, you will be detained under Title 50, United States Code, Section 21. Any statement you make now or while you are in custody may be used against you in any administrative or criminal proceeding. This is not a removal under the Immigration and Nationality Act. If you desire to make a phone call, you will be permitted to do so.

After being removed from the United States, you must request and obtain permission from the Secretary of Homeland Security to enter or attempt to enter the United States at any time. Should you enter or attempt to enter the United States without receiving such permission, you will be subject to immediate removal and may be subject to criminal prosecution and imprisonment.

Signature of alien: REFUSED TO SIGN Date: 4/18/25

CERTIFICATE OF SERVICE

I personally served a copy of this Notice and Warrant upon the above-named person on 4/18/25 (Date) and ensured it was read to this person in a language he or she understands.

Courtlin [signature]

Name of officer/agent Signature of officer/agent

Form AEA-21B

NOTICE AND WARRANT OF APPREHENSION AND REMOVAL UNDER THE ALIEN ENEMIES ACT

A-File No: [redacted]

In the Matter of: [redacted] Date: 4/16/2025

Date of Birth: [redacted]991 Sex: Male ✓ Female

Warrant of Apprehension and Removal

To any authorized law enforcement officer:

The President has found that Tren de Aragua is perpetrating, attempting, or threatening an invasion or predatory incursion against the territory of the United States, and that Tren de Aragua members are thus Alien Enemies removable under Title 50, United States Code, Section 21.

[redacted] has been determined to be: (1) at least fourteen years of age; (2) not a citizen or lawful permanent resident of the United States; (3) a citizen of Venezuela; and (4) a member of Tren de Aragua. Accordingly, he or she has been determined to be an Alien Enemy and, under Title 50, United States Code, Section 21, he or she shall be apprehended, restrained, and removed from the United States pursuant to this Warrant of Apprehension and Removal.

(Full Name of Alien Enemy)

Signature of Supervisory Officer: [signature]

Title of Officer: (A) FOD **Date:** 4-18-2025

Notice to Alien Enemy

I am a law enforcement officer authorized to apprehend, restrain, and remove Alien Enemies. You have been determined to be at least fourteen years of age; not a citizen or lawful permanent resident of the United States; a citizen of Venezuela; and a member of Tren de Aragua. Accordingly, under the Alien Enemies Act, you have been determined to be an Alien Enemy subject to apprehension, restraint, and removal from the United States. Until you are removed from the United States, you will be detained under Title 50, United States Code, Section 21. Any statement you make now or while you are in custody may be used against you in any administrative or criminal proceeding. This is not a removal under the Immigration and Nationality Act. If you desire to make a phone call, you will be permitted to do so.

After being removed from the United States, you must request and obtain permission from the Secretary of Homeland Security to enter or attempt to enter the United States at any time. Should you enter or attempt to enter the United States without receiving such permission, you will be subject to immediate removal and may be subject to criminal prosecution and imprisonment.

Signature of alien: REFUSED TO SIGN Date: _____

CERTIFICATE OF SERVICE

I personally served a copy of this Notice and Warrant upon the above-named person on _____ (Date) and ensured it was read to this person in a language he or she understands.

[signature]

Name of officer/agent Signature of officer/agent

Form AEA-2