No. 24A931

IN THE

Supreme Court of the United States

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, *et al.*,

Applicants,

v.

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

Respondents.

ON APPLICATION TO VACATE FROM THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

OPPOSITION TO APPLICATION TO VACATE AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY

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INTRODUCTION

The government has not satisfied its exceedingly high burden to warrant the extraordinary relief it seeks: vacating unappealable Temporary Restraining Orders ("TROs") that merely preserve the status quo while a pending preliminary injunction motion is decided on an expedited basis (with a hearing on April 8). The TRO does not order anyone's release, nor does it prevent the government from carrying out regular removals under the Immigration and Nationality Act ("INA"). Indeed, the government has apparently been removing individuals it contends are members of the Tren de Aragua gang, using regular immigration procedures, since the TRO went into effect. *See* Sec'y of State Marco Rubio, X (Mar. 31, 2025, 8:25 AM ET), https://perma.cc/CE6C-ZMDM. Under the circumstances, the court of appeals correctly concluded that the government will suffer no irreparable harm in the short term. In contrast, without the TRO, Plaintiffs will suffer extraordinary and irreparable harms—being sent out of the United States to a notorious Salvadoran prison, where they will remain incommunicado, potentially for the rest of their lives, without having had *any* opportunity to contest their designation as gang members. *See* App. 27a–28a (Henderson, J., concurring) ("The Executive's burdens are comparatively modest compared to the plaintiffs'."); *id.* at 68a–70a (Millett, J., concurring) ("the injury to the Plaintiffs is great and truly irreparable"); *id.* at 129a–130a (Boasberg, J.) (plaintiffs face "a high likelihood of suffering significant harm").

The government cannot explain why the equities are in its favor, particularly since it (now) concedes that individuals *are* entitled to contest their designation (which is all the district court has thus far held). It argues only that this case should have been brought in habeas, and disputes whether venue is proper in the District of Columbia. But these questions—habeas or Administrative Procedure Act; Texas or D.C.—are procedural issues more appropriately decided

by the lower courts in the first instance, and not by this Court in the context of a stay, at the TRO stage.

Equally to the point, because the government acknowledges that review is proper *somewhere*, its dire claims about the TRO amounting to intolerable judicial interference with national security reduce, at best, to technical venue disputes, which it will have ample opportunities to air in the district court.

On the merits, the government is also unlikely to prevail, because it cannot satisfy the plain text of the statute it is invoking. The use of the Alien Enemies Act ("AEA") during peacetime against a criminal gang is unprecedented and fails to satisfy the Act's statutory predicates: that there be a "declared war" with a "foreign nation or government" or an ongoing or threatened "invasion or predatory incursion" by a "foreign nation or government" against the "territory of the United States," thereby allowing the President to detain and remove that nation's "natives, citizens, denizens, or subjects." 50 U.S.C. § 21. As Judge Henderson emphasized below, the Act was meant solely to address "military" hostilities directed at the United States, not criminal activity by a gang during peacetime. App. 17a–22a; *id.* at 23a–24a ("Like [invasion], predatory incursion referred to a form of hostilities against the United States by another nation state, a form of attack short of war. Migration alone did not suffice."). The AEA has been invoked only three times in the country's history, all in the context of declared wars: the War of 1812, World War I, and World War II. The President's effort to shoehorn a criminal gang into the AEA, on a migration-equals-invasion theory, is completely at odds with the limited delegation of wartime authority Congress chose to give him through the statute.

Perhaps because the district court did not reach the question of whether the Proclamation satisfied the AEA's statutory predicates or violated other congressional enactments (such as the Convention Against Torture), the government does not discuss the merits at length, instead arguing that there can be no judicial review of those questions. But Judge Henderson explained that the courts must be able to review whether the AEA's statutory predicates have been satisfied. App. 11a–17a (Henderson, J., concurring). And all three circuit judges below agree that individuals at least must have an opportunity to contest their designation under the AEA. *See id.* at 72a (Walker, J., dissenting). The government likewise concedes that whatever judicial review may exist to determine if the Proclamation satisfies the statutory predicates for the AEA, individuals at least have a right to contest whether they have been mistakenly designated as members of the Tren de Aragua gang. App. 17–25, 38 ("the government agrees that respondents *are* permitted judicial review under the AEA").

Indeed, the government must make that concession because the Court's principal AEA case, *Ludecke v. Watkins*, unequivocally stated that individuals are entitled to review of whether they fall within the statute's sweep. *See* 335 U.S. 160, 171 & nn. 8, 17 (1948). Indeed, during World War II, individuals were provided time to contest their designations and courts routinely reviewed whether designated individuals fell within AEA orders. *Id.* at 163. More broadly, *Ludecke* twice emphasized that the "construction and validity" of the Act were justiciable, and, in fact, decided a statutory question—whether the term "declared war" was synonymous with the existence of "actual hostilities"—on the *merits*. *Id.* at 170–71.

The government nonetheless urges this Court to vacate the TRO on the ground that habeas in the district of confinement is the exclusive means for raising all challenges to the

Proclamation. But, as already noted, Plaintiffs' claims need not be brought in habeas. App. 9a–10a (Henderson, J., concurring); 62a–64a (Millett, J., concurring); *see also* App. 106a–111a (Boasberg, J.). Moreover, as even the limited TRO record below demonstrates, the theoretical avenue for relief through habeas will be a practical impossibility for most class members. App. 70a. The government has already hurried hundreds of individuals onto planes to El Salvador without providing advance notice, let alone an opportunity to contest their deportation. The document individuals may have been asked to sign before being staged for removal expressly stated that "no hearing, appeal, or judicial review" was permitted regarding their designation. Resp.App. 302a. In fact, the government began staging noncitizens for removal under the AEA even before the Proclamation was posted on the White House website, notwithstanding the AEA's requirement that the President make a "public proclamation." 50 U.S.C. § 21; *see also* App. 99a–100a. It continues to take the position that it need not provide notice to individuals whom it has designated as falling within the Proclamation, much less provide time to file habeas petitions. App. 40a, 70a. And when asked pointedly in the court of appeals whether it plans to load more individuals onto planes without notice the minute the TRO is dissolved, the government did not hesitate to take that position. App. 32a (Millett, J., concurring). Given these representations, the district court's TRO is the only thing preventing Defendants from invoking the AEA to send individuals to a prison in El Salvador, perhaps never to be seen again, without any kind of procedural protection, much less judicial review.

The Government reportedly has already sent more than 130 Venezuelan men to El Salvador, including some whom it seemingly sent in violation of the district court's March 15 order. Resp.App. 105a. They have been confined, incommunicado, in one of most brutal prisons

in the world, where torture and other human rights abuses are rampant. And were there any doubt about how these men will be treated, the Salvadoran President released a video, re-posted by President Trump and Secretary Rubio, showing them being brutalized immediately upon departing U.S. aircraft. *See* Nayib Bukele, X (Mar. 16, 2025, 8:13 AM ET), https://x.com/nayibbukele/status/1901245427216978290 [https://perma.cc/52PT-DWMR].[1] The Salvadoran President has stated, moreover, that the men may remain imprisoned there for the remainder of their lives, without access to the outside world. Resp.App. 109a. And it is becoming increasingly clear that many (perhaps most) of the men were not actually members of Tren de Aragua, and were instead erroneously designated as such in large part because of their tattoos, a wholly unreliable means of identifying membership in that particular gang. Resp.App. 271a. The TRO is thus essential to ensure that more individuals who have no affiliation with the gang will not be sent to a notorious foreign prison.

The implications of the government's interpretation and execution of the AEA are staggering. Virtually every religious and ethnic group in this country has at one time or another been associated with a criminal organization—Irish, Jews, Italians, Russians, and so on. The Court should deny the government's extraordinary request to vacate a TRO that would allow the government to immediately begin whisking away anyone else it unilaterally declares to be a member of a criminal gang to a brutal foreign prison.

[1] The President has also sarcastically referred to the prison "becom[ing] so recently famous for such lovely conditions." *See* Donald J. Trump, Truth Social (Mar. 21, 2025, 7:43 AM ET), https://perma.cc/678L-RTRY.

STATEMENT

The AEA is a wartime authority that grants the President specific powers with respect to the regulation, detention, and removal of enemy aliens. App. 2a–4a. Passed in 1798 in anticipation of a war with France, the AEA, as codified today, provides:

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

50 U.S.C. § 21. The Act further provides that a noncitizen subject to such a proclamation who "is not chargeable with actual hostility, or other crime against the public safety, . . . *shall* be allowed" at least a "reasonable time" to settle his affairs. 50 U.S.C. § 22 (emphasis added).

A. Procedural Background

On March 14, 2025, the President signed a Proclamation under the AEA declaring that Tren de Aragua ("TdA"), a Venezuelan criminal gang, is "perpetrating, attempting, and threatening an invasion or predatory incursion against the territory of the United States." App. 177a. The Proclamation provides that "all Venezuelan citizens 14 years of age or older who are members of TdA . . . are liable to be apprehended, restrained, secured, and removed as Alien Enemies." *Id.* Although the statute calls for a "public publication," 50 U.S.C. § 21, the administration did not actually publish the Proclamation until 3:53pm EDT on March 15, thus precluding any orderly challenge. *See* Resp.App. 9a, 449a ¶ 5; App. 100a.

The Proclamation does not provide *any* process for individuals to show they are not affiliated with TdA and instead authorizes the *summary* removal of Venezuelan nationals based only on the government's allegation, bypassing federal immigration statutes, including the right to seek protection from persecution and torture, and other forms of relief. *See* App. 176a–179a.

Early in the morning on March 15, Plaintiffs filed a class action complaint and request for a TRO, alleging that the invocation of the AEA violated the express terms of the statute, unlawfully disregarded immigration processes in the Immigration and Nationality Act ("INA") and violated due process. Resp.App. 7a, 31a. That morning, the district court entered a TRO prohibiting Defendants from removing the named Plaintiffs pending a hearing. *Id.* at 1a. In the afternoon and early evening of March 15, the district court held a lengthy hearing and provisionally certified a class consisting of "[a]ll noncitizens in U.S. custody who are subject to the March 15, 2025, Presidential Proclamation . . . and its implementation." *Id.* at 2a. The district court also issued a new TRO prohibiting Defendants for fourteen days from removing members of the class pursuant to the AEA Proclamation, but permitting removals under the standard immigration laws. *Id.* The district court set a briefing schedule for Defendants' motion to vacate the TRO and set a hearing for March 21. *Id.* After briefing and oral argument, the district court denied the motion to vacate on March 24. App. 96a. The court held that, prior to removal under the Proclamation, Plaintiffs were entitled to contest their designation as alien enemies. *Id.* at 116a–123a. A few days later, the district court granted Plaintiffs' motion to extend the TROs for another fourteen days to allow the court time to consider Plaintiffs' motion for a preliminary injunction, Resp.App. 4a, which Plaintiffs filed on March 28, *id.* at 190a. The district court scheduled a preliminary injunction hearing for April 8. *Id.* at 3a.

In the interim, the government sought appellate review of the district court's initial March 15 TROs as well as an emergency stay to vacate the TROs. *Id.* at 169a. On March 24, the D.C. Circuit heard oral argument and two days later denied the government's motion for a stay, in a per curiam opinion. App. 1a–93a. Judge Henderson, concurring, found that the orders were appealable but that Defendants had failed to establish a likelihood of success on the merits. *Id.* at 2a–30a (Henderson, J., concurring). Specifically, Judge Henderson stated, in her preliminary view, that the AEA's statutory predicates of "invasion" and "predatory incursion" "referred to a form of hostilities against the United States by another nation state, a form of attack short of war. Migration alone did not suffice." *Id.* at 22a–23a; *see also id.* at 22a ("[I]nvasion is a military affair, not one of migration.").

Judge Millett, also concurring, wrote that the order was not appealable; that, if the court were to reach the merits, Defendants were unlikely to prevail on their jurisdictional argument; and that the balance of equities weighed against Defendants. *Id.* at 31a–71a. Judge Millett explained that "the government's preference for habeas proceedings would produce at least the same restriction on the President's authority to remove the Plaintiffs that the TROs impose." *Id.* at 38a–39a (Millett, J., concurring). Judge Millett additionally noted that "[t]he government's position at oral argument was that, the *moment* the district court TROs are lifted, it can *immediately* resume removal flights without affording Plaintiffs notice of the grounds for their removal or any opportunity to call a lawyer, let alone to file a writ of habeas corpus or obtain any review of their legal challenges to removal." *Id.* at 40a (Millett, J., concurring).

Judge Walker dissented. He acknowledged that Plaintiffs had a right to contest their designation as enemy aliens under the Proclamation but contended that those claims must be brought in habeas in the district of confinement. *Id.* at 72a–93a (Walker, J., dissenting).

B. Factual Background

Defendants' actions have been shrouded in secrecy. The five named Plaintiffs received no advance notice of the basis for their removal. Resp.App. 201a–202a. Nor were they ever given paperwork or informed that they were headed to El Salvador. *Id.* While available information suggests that Defendants may use a notice form that individuals are asked to sign, it asserts that they are "not entitled to a hearing, appeal, or judicial review of this notice and warrant of apprehension and removal," *Id.* at 302a.

By the time the President issued the public proclamation on the afternoon of March 15, the named Plaintiffs and other class members had been shackled and driven to an airport. Resp.App. 104a–105a. The five named plaintiffs were ultimately returned to an ICE detention center in accordance with the district court's TRO on the morning of March 15. *Id.* at 105a. But the remaining class members on the planes were summarily removed and taken to El Salvador's notorious Terrorism Confinement Center (CECOT), a prison in which they remain, and from which it appears no one has ever been released. *Id.* at 108a–109a; *see generally id.* at 248a (describing "harsh and life threatening" conditions in El Salvador's prisons); *id.* at 260a (same).[2]

[2] Class members were turned over to Salvadoran authorities after the district court issued its oral and written TRO orders to return the individuals to the United States. App. 103a–104a. The district court is still investigating the circumstances but what is clear is that at least two planes carrying 137 class members removed under the AEA landed in El Salvador and that U.S. authorities turned them over to Salvadoran authorities well after the district court's March 15 oral and written orders. Resp.App. 201a.

Because the government secretly rushed the men out of the country and has provided Plaintiffs with no information about the class, it remains to be seen whether most (or perhaps virtually all) of the class members are not in fact members of TdA. But evidence since the March 15 flights increasingly shows that many of the individuals removed to El Salvador are not members of TdA. *See id.* at 202a–204a (describing evidence of noncitizens with no ties to TdA summarily removed); *see also id.* at 309a–447a. The government itself has also admitted many individuals removed do not have criminal records in the United States. *Id.* at 95a ¶ 9. One was actually Nicaraguan, not Venezuelan; he was eventually returned to the United States after Salvadoran authorities informed the U.S. of his citizenship status, alongside eight Venezuelan women after the Salvadoran authorities informed the U.S. that the Salvadoran prison would not accept women. *Id.* at 201a.

The process that the government uses to designate individuals as members of TdA is barebones. Officials apply a points-based system that assigns values to various putative indicators of gang involvement, with weight given to tattoos, hand gestures, and social media activity. *Id.* at 299a–300a. A score of eight points generally results in an automatic designation as an "alien enemy," triggering eligibility for removal under the AEA. *Id.* at 298a. A score of six or seven requires supervisor approval to do so. *Id.*

Experts note, however, that TdA does not use consistent symbols or tattoos to identify membership, and that characteristics identified in the system are common in Venezuelan culture and do not reliably indicate gang affiliation. *Id.* at 271a–272a, 280a, 443a. For instance, among the five named plaintiffs, four have tattoos with no known connection to TdA, and the fifth has no tattoos at all. *Id.* at 206a. Experts further describe TdA as a fragmented and decentralized group

with no clear leadership structure or formal ties to the Venezuelan government, and reports indicate no evidence of coordinated activity by TdA in the United States. *Id.* at 269a–271a, 273a, 279a–280a, 289a–290a, 433a.

ARGUMENT

An applicant seeking an administrative stay or summary vacatur of a TRO must show (1) a likelihood of success on the merits, (2) a reasonable probability of obtaining certiorari, and (3) a likelihood of irreparable harm. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). Summary disposition is "unusual under any circumstances." *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 422 (1990). It is "bitter medicine," *Spears v. United States*, 555 U.S. 261, 268 (2009) (Roberts, C.J., dissenting), "usually reserved for cases where 'the law is settled and stable, the facts are not in dispute, and the decision below is clearly in error,'" *Pavan v. Smith*, 582 U.S. 563, 567–68 (2017) (Gorsuch, J., dissenting) (quoting *Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting)).

I. THE STAY SHOULD BE DENIED BECAUSE THE TRO IS NOT AN APPEALABLE ORDER AND THE GOVERNMENT IS NOT HARMED BY IT.

The TRO is not appealable, which is reason alone to deny the stay application. The "general rule is that orders granting, refusing, modifying, or dissolving temporary restraining orders are not appealable." 16 Wright & Miller, *Fed. Prac. & Proc.* § 3922.1 (3d ed. 2024). The rule allows trial courts to "preserve the relative positions of the parties" in the face of irreparable harm, and avoids the courts having to act in "haste," granting provisional relief "on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Tex. v. Camenisch*, 451 U.S. 390, 395 (1981).

Here, the TRO does just that. To ensure the government could not whisk more class members away to a Salvadoran prison before their rights could be at least preliminarily adjudicated, the district court issued a Saturday night minute order that lasts for only a short and finite period pending a hearing on Plaintiffs' preliminary injunction motion, does not conclusively resolve the issues, and does not pretermit any party's ability to air procedural and merits issues in the future. In fact, the Court has scheduled a hearing for April 8 on Plaintiffs' preliminary injunction motions, and given every indication that it will move expeditiously in resolving that motion. App. 155a; Resp.App. 3a.

The government has not cited any case where this Court has vacated a time-limited TRO, let alone one that merely preserves the status quo (including the Plaintiffs' ongoing detention in U.S. custody). In *Sampson v. Murray*, the district court entered a TRO that was set to last until a particular government official appeared before the court to testify. 415 U.S. 61, 86-87 (1974). The government declined to produce the official, raising the specter that the TRO was "potentially unlimited." *Id.* at 85, 87 (injunction "in no way limited in time"). That TRO had been in place for *years* when the case reached this Court. *Id.* at 67 n.8. And *Abbott v. Perez* is not even about TROs. 585 U.S. 579 (2018). There, a three-judge district court issued orders that amounted to an indefinite prohibition on the use of Texas's preferred districting maps after a full trial. *Id.* at 594. The Court thus held that the orders were appealable injunctions under 28 U.S.C. § 1253. *Id.*; *cf.* 28 U.S.C. § 1253 (permitting direct appeal from order of three-judge district court "granting or denying . . . an interlocutory or permanent injunction").

Here, the district court's order merely preserves the status quo as it existed before the Proclamation. The government claims irreparable harm in the form of *potentially* stymied

negotiations; but on the government's concession that Plaintiffs could proceed with habeas petitions, any litigation would entail those same harms (if they exist). The TRO also does not bar the government from prosecuting any alleged gang member for a criminal offense, require anyone's release from immigration detention, or restrain the government from removing individuals under the INA, including under provisions covering removal of terrorists. Resp.App. 2a; *see also* 8 U.S.C. § 1182(a)(3)(B) (specialized Alien Terrorist Removal Court).[3]

II. DEFENDANTS FAIL TO ESTABLISH IRREPARABLE HARM AND THE REMAINING EQUITABLE FACTORS WEIGH HEAVILY IN PLAINTIFFS' FAVOR.

Defendants fail to satisfy their burden on irreparable harm. As both Judges Henderson and Millett properly concluded, the government has not identified any credible claim to irreparable harm that would result from retaining the status quo while the district court expeditiously resolves the preliminary injunction, particularly because the TRO does not order the release of any class member or preclude their removal under the immigration laws. In contrast, the TRO ensures that, based on an unprecedented peacetime invocation of the AEA, additional individuals are not hurried off to a brutal foreign prison, potentially for the rest of their lives, without judicial process.

Defendants misinterpret the D.C. Circuit's opinions with respect to harm to Defendants. App. 14–15. Judge Henderson observed that the "government does not specify why a two-week interlude would dismantle the agreements—it notes only that 'foreign interlocutors *might* change their minds.'" *Id.* at 7a. But for purposes of jurisdiction, Judge Henderson assumed the

[3] The government also argues that it was not required to first request a stay from the district court because it was "impracticable" and "futile." App. 34 n.4. But, as Judge Millett noted, the government had more than a week to do so. *Id.* at 52a.

government's position was true. *Id.* When it came to the irreparable harm prong, however, both Judge Henderson and Judge Millett concluded that the government's purported harm was far too vague and speculative. *See id.* at 26a (Henderson, J., concurring) ("Equity will not act 'against something merely feared as liable to occur at some indefinite time."); *id.* at 50a–51a (Millett, J., concurring) ("the government has shown no such harm here, and its own arguments weigh against it"; "Given that the government agrees that removal can be delayed to allow for due process review in habeas consistent with national security, the same must be true in this courthouse."); *see also Murthy v. Missouri*, 144 S. Ct. 7, 9 (2023) (Alito, J., with Thomas and Gorsuch, JJ., dissenting from grant of application for stay) ("[S]peculation does not establish irreparable harm.").

Defendants attempt to show irreparable harm by relying on conclusory, untested allegations about Plaintiffs being dangerous gang members—while failing to account for the fact that existing authorities permit Defendants to lawfully detain and remove any truly dangerous individuals, authority the temporary restraining order does not touch. *See e.g.*, 8 U.S.C. §§ 1158(b)(2)(A)(ii)-(iii) (noncitizens barred from asylum if convicted of particularly serious crime or if there are "serious reasons for believing" they "committed a serious nonpolitical crime" outside the U.S.); *id.* § 1231(b)(3)(B)(ii)-(iii) (same for withholding); *see also id.* §§ 1226(c), 1231(a)(6). Defendants' assertions of harm are further belied by the scope of the District Court's order which applies only to individuals already in custody. Plaintiffs were already in secure custody before the President invoked the AEA and Defendants have offered only conclusory statements—rebutted by testimony from the former Assistant Director of ICE—that keeping them in custody while the district court does its work poses a risk to national security. *Compare*

Resp.App. 94a–95a, *with id.* at 453a; *see also supra* (delay caused by TRO is same as delay caused by habeas petitions, which government concedes are allowed).

Failing to demonstrate any credible claim to harm, Defendants instead rely on broad assertions that "[a]lthough removal is a serious burden for many aliens, it is not categorically irreparable." App. 39 (quoting *Nken v. Holder*, 556 U.S. at 435). But in *Nken*, the lack of irreparable injury from removal was predicated on the noncitizen being able to return. *Id.* at 436 (2009) (noting noncitizens "may continue to pursue a petition for review, and . . . relief by facilitation of their return, along with restoration of the immigration status"). Here, however, the government has taken the position that the judiciary loses authority once an aircraft departs. Resp.App. 457a. As the district court properly noted, these AEA removals to El Salvador are hardly the run-of-the-mine deportations.

In short, Defendants offer no serious argument that Plaintiffs will not face grave harm. *Cf.* Resp.App. 248a–258a, 260a–265a (explaining the brutality and torture that routinely occurs in El Salvador's prison).

III. DEFENDANTS ARE WRONG TO ASSERT THAT PLAINTIFFS' CLAIMS MUST BE BROUGHT EXCLUSIVELY THROUGH HABEAS PETITIONS IN TEXAS.

Defendants' chief arguments in favor of stay boil down to disputes about whether Plaintiffs' claims should be brought through habeas corpus or the APA and equity, and in which district. This Court should not wade into those technical venue and procedural issues on an application to stay a TRO. And, in any event, Defendants are wrong in asserting that Plaintiffs'

claims, which do not seek release from detention, may only be brought through habeas petitions in Texas.[4]

This Court has long held that only "core" habeas claims—that is, claims seeking release from custody—must be brought exclusively in habeas. *See Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117 (2020); *see also Skinner v. Switzer*, 562 U.S. 521, 534 (2011) (the Court has never "recognized habeas as the sole remedy . . . where the relief sought would 'neither terminat[e] custody, accelerat[e] the future date of release from custody, nor reduc[e] the level of custody'") (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 86 (2005) (Scalia, J., concurring)). But Plaintiffs are not seeking their release from custody and claims that do not fall within the "core" of the writ need not be brought exclusively through habeas corpus; the full array of statutory and constitutional vehicles remain available to vindicate non-core rights. App. 64a–65a; *id.* at 63a (Millett, J., concurring) ("The Supreme Court has been crystal clear on this point: 'The writ simply provide[s] a means of contesting the lawfulness of restraint and securing release' from detention") (quoting *Thuraissigiam*, 591 U.S. at 117).[5]

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[4] Plaintiffs originally included a habeas count with their complaint and only dismissed it without prejudice to allow the district court to move expeditiously in light of the exigent circumstances. App. 169a.

[5] Notably, it was the government who argued in *Thuraissigiam* that the type of claim raised by Plaintiffs here falls outside the "historical core" of the writ, because it seeks to block a transfer rather than obtain release: "[R]espondent seeks to invoke habeas both to protect a purported interest (the ability to seek admission to the United States) and to pursue a type of remedy (additional proceedings concerning relief or protection from removal) that would have been unknown at the time of the Founding." Br. for the United States at 35, *Dep't of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103 (2020) (No. 19-161), 2019 WL 6727092. This Court adopted that position, holding that respondent's requested "relief might fit an injunction or writ of mandamus" because he "does not want 'simple release' but, ultimately, the opportunity to remain lawfully in the United States." *Thuraissigiam*, 591 U.S. at 118–19.

The common law defines those "core" claims that require vindication through habeas: (1) "the essence of habeas corpus is an attack by a person in custody upon the legality of that custody," and (2) "the traditional function of the writ is to secure release from illegal custody." *Preiser v. Rodriguez*, 411 U.S. 475, 484 (1973); *Dotson*, 544 U.S. at 79 (similar); *Munaf v. Geren*, 553 U.S. 674, 693 (2008) (similar). Any challenge to "the fact or duration of [the individual's] confinement" gets to the "core of habeas corpus" and not only *must* be pursued through a habeas petition, *Preiser*, 411 U.S. at 489–90, but also generally in the district of confinement, *see Rumsfeld v. Padilla*, 542 U.S. 426, 441 (2004), though there are exceptions to whether it must be brought in the district of confinement, *id.* at 542 U.S. at 433–36 & n.9, 449–50 & n.18. *See Braden v. 30th Judicial Circuit Court of Kentucky*, 410 U.S. 484, 495 (1973).

Here, Plaintiffs' claims fall well outside the "core" of habeas corpus, because "[s]uccess . . . does not mean immediate release from confinement or a shorter stay in prison." *Dotson*, 544 U.S. at 82; *compare Preiser*, 411 U.S. at 487 (challenge to deprivation of good-time credits had to be brought in habeas because it sought injunctive relief leading to immediate release), *with Wolff v. McDonnell*, 418 U.S. 539, 554 (1974) (distinguishing *Preiser* because plaintiff sought declaratory judgment about good-time credits, not restoration of those credits, and thus success would not require release), *and Heck v. Humphrey*, 512 U.S. 477, 481 (1994) (where plaintiff sought monetary damages and not release from custody, habeas was not exclusive remedy). Regardless of the outcome of this case, Plaintiffs will remain in ICE custody, and thus habeas corpus is not the exclusive remedy for Plaintiffs' claims. And the immediate custodian rule likewise does not apply to claims that fall outside the core of habeas. *See Padilla*, 542 U.S. at 444–45; *Davis v. U.S. Sent'g Comm'n*, 716 F.3d 660, 666 (D.C. Cir. 2013); *see also* Ilya Somin, *Lee*

Kovarsky on the Venue Issue in the Alien Enemies Act Case, Reason (Mar. 30, 2025), https://perma.cc/26B9-ZAW2 (explaining why Plaintiffs' AEA challenges in this case need not be brought in habeas).[6]

Detained noncitizens have consistently been allowed to raise various APA, statutory, and constitutional claims, even concurrently with habeas. *See Reno v. Flores*, 507 U.S. 292, 299–301 (1993); *Jean v. Nelson*, 472 U.S. 846, 849–50 (1985); *Nielsen v. Preap*, 586 U.S. 392, 401 (2019); *Jennings v. Rodriguez*, 583 U.S. 281, 324 (2018) (Thomas, J., concurring in part) (complaint seeking injunctive and corresponding declaratory relief in the form of bond hearings for class "looks nothing like a typical writ. It is not styled in the form of a conditional or unconditional release order."); *see also, e.g.*, *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 726 (D.C. Cir. 2022); *Al Otro Lado v. Exec. Off. for Immigr. Rev.*, 120 F.4th 606, 614 (9th Cir. 2024).[7]

The government's citations all ignore this key distinction between core habeas claims, which *must* be brought in habeas, and claims falling outside that core, which need not be. The government points to *Kiyemba v. Obama*, 561 F.3d 509 (D.C. Cir. 2009), but it does not help because *Kiyemba*, like the Court in *Munaf*, recognized only that core claims seeking release must be brought in habeas. 561 F.3d at 513. And *Munaf* held only that a non-core claim seeking to bar an overseas transfer (but not obtain release) *could* be brought in habeas, 553 U.S. at 693,

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[6] The government's reliance on *Boudin v. Thomas*, 732 F.2d 1107 (2d Cir. 1984), a case that neither binds this Court nor the district court currently adjudicating Plaintiffs' claims, is inapt, as the court relied on a question left open in *Preiser* to hold that a challenge to conditions of confinement was in substance a habeas petition. *Id.* at 1111. That has no relevance here where Plaintiffs are not asking for transfer to a better detention center or release.

[7] *Franklin v. Massachusetts*, 505 U.S. 788 (1992), is irrelevant as Plaintiffs are no longer seeking to enjoin the President. Resp.App. 213a n.7. The President is, however, a proper defendant because, at a minimum, Plaintiffs may obtain declaratory relief against him. *See, e.g., Powell v. McCormack*, 395 U.S. 486, 499 (1969).

but failed on the merits, *id.* at 705. The government sought to rely on *Munaf* below, Oral Arg. at 47:08-49:22, but now unsuccessfully tries to distinguish it. As Judge Millett noted, Plaintiffs are like those in *Thuraissigiam* and *Munaf* because they "do not seek release from detention; they want to stay in detention in the United States." App. 64a (Millett, J., concurring).

And while the government places great weight on the fact that *Ludecke* was a habeas case, App. 19, nothing in *Ludecke* or any other case states that an AEA challenge *must* be brought in habeas. In fact, although the government relies in other parts of its brief on *Citizens Protective League v. Clark*, 155 F.2d 290 (D.C. Cir. 1946), App. 19, it fails to acknowledge that *Citizens Protective League* was itself not brought in habeas. *Citizens Protective League*, 155 F.2d at 291–92 (addressing three separate "civil actions" on behalf of a nonprofit and 159 detained German nationals seeking "injunction, mandatory injunction and ancillary relief"); *see also Citizens Protective League v. Byrnes*, 64 F. Supp. 233, 233 (D.D.C. 1946) (AEA case not in habeas). As the district court observed, the fact that most prior AEA cases were brought in habeas is "largely a relic of historical happenstance," as the AEA has not been invoked since World War II. App. 106a.

Insofar as the government suggests that a special habeas rule should exist for the AEA, it has pointed to no statutory text that would preclude review of Plaintiffs' challenges under the APA. *See Abbott Lab'ys v. Gardner*, 387 U.S. 136, 141 (1967) (requiring clear and convincing evidence of congressional intent); *Shaughnessy v. Pedreiro*, 349 U.S. 48, 49–52 (1955) (APA's "generous review" provisions applied in immigration challenges); *Brownell v. We Shung*, 352 U.S. 180, 181 (1956) (habeas and APA both available); *Robbins v. Reagan*, 780 F.2d 37, 42 (D.C.

Cir. 1985) ("[J]urisdiction over APA challenges to federal agency action is vested in district courts unless a preclusion of review statute . . . specifically bars judicial review in the district court.").[8]

Nor does the government cite any statute that displaces the district court's equity jurisdiction to issue a TRO to preserve the status quo and its ability to hear the parties in an orderly fashion. *See Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327 (2015) ("The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England."); *see also Trump v. Hawaii*, 585 U.S. 667, 675–76 (2018); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579 (1952) (Jackson, J., concurring).

The government relies heavily on *LoBue v. Christopher*, 82 F.3d 1081 (D.C. Cir. 1996), but *LoBue* was an extradition case. *Id.* at 1082. Extradition historically has had its own specialized body of law and "extension of the APA to *extradition* orders is impossible" as extradition is carried out by *courts*, which are not agencies for purposes of the APA. *Id.* at 1083 (citing *United States v. Doherty*, 786 F.2d 491 (2d Cir. 1986) (Friendly, J.)). Additionally, *LoBue* rested on the unique circumstances in which the plaintiffs, in addition to their declaratory judgment action in D.C., also had a separate pending habeas petition in their district of confinement that *did* seek their release. *Id.* at 1082. The Court thus noted that because success in plaintiffs' declaratory suit would have "preclusive effect" on their pending habeas petition, it would secure release from

[8] While certain types of challenges to individual immigration removal orders under the INA have been channeled into the petitions for review process following the INA of 1961, APA review remains available where not specifically precluded by statute. *See Dep't of Homeland Sec. v. Regents of the Univ. of Calif.*, 591 U.S. 1, 16–17 (2020) ("The APA establishes a 'basic presumption of judicial review [for] one suffering legal wrong because of agency action.'") (quoting *Abbott Lab'ys*, 387 U.S. at 140).

confinement, thereby precluding the availability of other remedies. *Id.* at 1083–84 (citing *Chatman-Bey v. Thornburgh*, 864 F.2d 804 (D.C. Cir. 1988), and *Preiser*, 411 U.S. at 489–90).[9]

The government's reliance on Section 704 of the APA is also misplaced. Section 704 displaces APA review only where Congress has "provided special and adequate review procedures" for "reviewing a particular agency's action," and thus designated an "adequate remedy." *Bowen v. Massachusetts*, 487 U.S. 879, 903–04 (1988); *see also id.* at 904 ("A restrictive interpretation of § 704 would unquestionably . . . 'run counter to . . . the [APA.]") (quoting *Pedreiro*, 349 U.S. at 51). Here, the government has completely failed to provide a process for review of designations under the AEA and, as set forth above, *supra*, individuals subjected to AEA removal have no practical ability to seek relief through habeas in any event—meaning it is neither special nor adequate under the circumstances.

In short, Plaintiffs are not seeking release from detention but rather an order prohibiting the federal government from removing them without complying with the limits of the AEA, INA and due process. Their claims can properly be brought under the APA and in equity.

IV. DEFENDANTS ARE NOT SUBSTANTIALLY LIKELY TO PREVAIL ON THE MERITS.

A. Plaintiffs' Claims Are Justiciable.

Defendants vaguely contest that Plaintiffs' claims are subject to judicial review. App. 4 (asserting AEA cases are "barely amenable" to review); *id.* at 19 (asserting without explanation

[9] The Tenth Circuit's unpublished decision in *O'Banion v. Matevousian*, 835 F. App'x 347 (10th Cir. 2020), is inapplicable as it rests on the idea that challenges to the prison's application of the Inmate Financial Responsibility Program to regulate restitution payment schedules are effectively an attack on the execution of the prisoner's sentence, and hence, must be raised in habeas. *See Stern v. Fed. Bureau of Prisons*, 601 F. Supp. 2d 303, 305 (D.D.C. 2009) (discussing cases).

that statutory review is "narrow"). But they do not, and cannot, say that no review is available. As noted, Defendants ultimately concede that, at a minimum, Plaintiffs can contest whether they in fact fall within the Proclamation. Insofar as Defendants contend that the courts may not review Plaintiffs' statutory claims that the Proclamation fails to satisfy the AEA's predicates or is inconsistent with other congressional enactments, they are incorrect.[10]

Plaintiffs raise three principal statutory arguments: (1) the AEA's use of "invasion" and "predatory incursion" refer only to military action in the context of an actual or imminent war; (2) a criminal gang is not a "foreign government or nation"; (3) even if the AEA applies, it still requires compliance with the INA and other later-enacted, more specific statutory protections for noncitizens, especially those seeking humanitarian protections, as well as an opportunity to show that one does not fall under the Proclamation. Under both AEA case law and subsequent developments in political question doctrine, courts can and must review each of Plaintiffs' claims.

Defendants rely almost exclusively on *Ludecke* to cabin the scope of judicial review. App. 4, 18–19, 21, 24.[11] But in addition to recognizing that review of whether an individual falls within the relevant category of "enemy alien"—namely whether the person "'is in fact an alien enemy fourteen years of age or older,'" *Ludecke*, 335 U.S. at 171 n.17, *Ludecke* twice emphasized that "resort to the courts" *was* available "to challenge the construction and validity of the

[10] The government has not been clear throughout the litigation whether they believe Plaintiffs' due process claims are justiciable. *Compare* Resp.App. 144a, *with* App. 21.

[11] The government selectively quotes from a law review article to assert that habeas review is only available to determine whether a noncitizen is covered under the AEA, when in fact that article notes that "courts can review whether war has been declared" and "[r]eview extends to 'the construction and validity of the statute.'" Gerald L. Neuman, *Habeas Corpus, Executive Detention, and the Removal of Aliens,* 98 Colum. L. Rev. 961, 994 (1998) (quoting *Ludecke*, 335 U.S. at 171).

statute," explicitly noting that the AEA does not preclude judicial review of "questions of interpretation and constitutionality." 335 U.S. at 163, 171. Those questions—the "construction" and "interpretation" of the AEA—are precisely what are at issue here.

In *Ludecke* itself, the Court reached the merits of the statutory question presented there: whether a "declared war" no longer existed within the meaning of the Act when "actual hostilities" had ceased (the "shooting war" had ended). *Id.* at 166–71. Only after concluding, on the merits, that the statutory term "declared war" did not mean "actual hostilities," but instead referred to the point at which the President and Congress chose to declare the war over. did the Court state that its review had come to an end. *Id.* at 170 & n.15. In fact, four years later, the Court reversed a government World War II removal decision because "[t]he statutory power of the Attorney General to remove petitioner as an enemy alien ended wh[en] Congress terminated the war." *U.S. ex rel. Jaegeler v. Carusi*, 342 U.S. 347, 348 (1952); *see generally Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012) (emphasizing that courts can and should decide statutory questions even where they implicate foreign affairs).[12]

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[12] Consistent with *Ludecke*'s recognition that questions about the "construction and validity" of the AEA are justiciable, 335 U.S. at 171, lower courts have reviewed a range of issues concerning the AEA's statutory prerequisites. *See, e.g.*, *U.S. ex rel. Kessler v. Watkins*, 163 F.2d 140, 143 (2d Cir. 1947) (interpreting the meaning of "foreign nation or government"); *U.S. ex rel. Zdunic v. Uhl*, 137 F.2d 858, 860–61 (2d Cir. 1943) ("[t]he meaning of [native, citizen, denizen, or subject] as used in the statute . . . presents a question of law"; interpreting meaning of "denizen" and remanding for hearing on disputed facts); *U.S. ex rel. Gregoire v. Watkins*, 164 F.2d 137, 138 (2d Cir. 1947) (interpreting the meaning of "native"; discussing alternatives to attain a "logically consistent construction of the statute"); *U.S. ex rel. D'Esquiva v. Uhl*, 137 F.2d 903, 905–07 (2d Cir. 1943) (interpreting the meaning of "native" and reviewing executive branch's position on legal status of Austria); *U.S. ex rel. Schwarzkopf v. Uhl*, 137 F.2d 898, 903 (2d Cir. 1943) (interpreting the meaning of "citizen" and legal effects of Germany's annexation of Austria); *Bauer v. Watkins*, 171 F.2d 492, 493 (2d Cir. 1948) (holding that the government bears the burden of proof of establishing the citizenship of "alien enemy"); *Citizens Protective League*, 155 F.2d at 292, 295 (reviewing whether Proclamation was within "the precise terms"

B. Defendants Are Not Substantially Likely to Prevail on Their Interpretation of the Statute.

Defendants do not seriously address the factor of likelihood of success on the statutory merits claims, likely because the district court did not reach them and only issued the TRO to preserve the status quo until the issues can be litigated on a fuller, preliminary-injunction record. That is all the more reason for this Court to permit the lower courts to address the statutory interpretation questions in the first instance, rather than short circuiting the appeals process by taking the extraordinary step of vacating a TRO. In any event, Defendants are not substantially likely to prevail on their merits argument that the Proclamation satisfies the terms of the AEA.

The AEA has only ever been invoked in times of declared war. Defendants now seek to invoke this limited wartime authority to execute summary removals wholly untethered to any actual or imminent war or to the specific conditions Congress placed in the statute. 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.

First, as Judge Henderson explained on a preliminary view of the merits, App. 17a–24a, there is no "invasion" or "predatory incursion" upon the United States. Starting with

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of the AEA, and whether AEA was impliedly repealed); *U.S. ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 653 (2d Cir. 1947) (interpreting "within the United States"; requiring executive branch to show that the petitioner "refuse[d] or neglect[ed] to depart" under Section 21); *U.S. ex rel. Ludwig v. Watkins*, 164 F.2d 456, 457 (2d Cir. 1947) (interpreting "refuse or neglect to depart" in Section 21 as creating a "right of voluntary departure" that functions as a "statutory condition precedent" to the government's right to deport enemy aliens); *U.S. ex rel. Hoehn v. Shaughnessy*, 175 F.2d 116, 117–18 (2d Cir. 1949) (interpreting "reasonable time" to depart under Section 22).

contemporaneous dictionary definitions, as Judge Henderson did below, *id.* at 17a–18a, it is clear that Congress understood those terms to mean a military intrusion into the territory of the United States. *See Bartenwerfer v. Buckley*, 598 U.S. 69, 74 (2023) ("We start where we always do: with the text of the statute."); *see also* Webster's Dictionary, Invasion (1828) (underscoring that "invasion" is "particularly, the entrance of a hostile army into a country for purpose of conquest or plunder, or the attack of a military force"); Johnson's Dictionary, *Invasion* (1773) ("invasion" is a "[h]ostile entrance upon the right or possession of another; hostile encroachment" such as when "William the Conqueror invaded England"); Webster's Dictionary, *Predatory* (1828) ("predatory" underscores that the purpose of a military party's "incursion" was "plundering" or "pillaging"); Johnson's Dictionary, *Incursion* (1773) ("[a]ttack" or "[i]nvasion without conquest").

Other contemporary founding era usages of the terms are in accord. The Founders frequently used both "invasion" and "predatory incursion" in the military sense. *See, e.g.*, Letter from Timothy Pickering to Alexander Hamilton (June 9, 1798) (reporting that "predatory incursions of the French" might result in "great destruction of property" but that militia could repel them);[13] Letter from George Washington to Thomas Jefferson (Feb. 6, 1781) (describing a British raid that destroyed military supplies and infrastructure in Richmond as a "predatory incursion");[14] Letter from George Washington to Nathanael Greene (Jan. 29, 1783) ("predatory incursions" by the British could be managed with limited cavalry troops);[15] John Jay, Con't Cong., Draft of an Address of the Convention of the Representatives of the State of New York to Their

[13] https://perma.cc/H2UY-XTTK.
[14] https://perma.cc/6UBY-6PRB.
[15] https://perma.cc/TY8Y-MTMA.

Constituents (Dec. 23, 1776) (describing the goal of British invasion as "the conquest of America").[16] Courts did the same. *Huidekoper's Lessee v. Douglass*, 7 U.S. (3 Cranch) 1, 11 (1805) ("predatory incursions" by Native American nation led to "an Indian war"); *Cherokee Nation v. Georgia*, 30 U.S. (5 Pet.) 1, 10 (1831) ("incursions" by Native American nations led to retaliatory "war of extermination"); *Worcester v. Georgia*, 31 U.S. (6 Pet.) 515, 545 (1832) (explaining that Pennsylvania's royal charter included "the power of war" to repel "incursions" by "barbarous nations"). And in every instance that the term "invasion" or "invade" appears in the Constitution, it is used in the military sense. *See* U.S. Const., art. I, § 8 (enumerated Congressional powers); *id.*, art. I, § 9, cl. 2 (Suspension Clause); *id.*, art. I, § 10, cl.3 (Invasion Clause); *id.*, art. IV, § 4 (Guarantee Clause).

Reaching for a contrary example, Defendants cite a 1945 case from a district court in Texas. App. at 32 (citing *Amaya v. Stanolind Oil & Gas Co.*, 62 F. Supp. 181, 189–90 (S.D. Tex. 1945)). But that case uses the term "predatory incursion" to describe military actions by a sovereign nation, Mexico, into Texas. *Amaya*, 62 F. Supp. at 189–90. Defendants offer not a single example of these terms being used in a *non*-military sense.

The interpretive canon of *noscitur a sociis* confirms Plaintiffs' interpretation. That canon "avoid[s] ascribing to one word a meaning so broad that it is inconsistent with its accompanying words, thus giving unintended breadth to the Acts of Congress." *Yates v. United States*, 574 U.S. 528, 543 (2015) (internal quotation marks omitted). Courts thus look to "[t]he words immediately surrounding" the language to be interpreted to ascertain the "more precise content" of that language. *Id.* (internal quotation marks omitted). Accordingly, in this case, "invasion" and

[16] https://perma.cc/K4SX-4KYB.

"predatory incursion" should be read in light of the immediately neighboring term, "declared war." *See Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961). Doing so highlights the express military nature of their usage here—they are more specific than just any hostile entrance. *Cf.* Office of Legislative Affairs, Proposed Amendment to AEA, at 2 n.1 (Aug. 27, 1980)) (AEA contemplates use by the President only "in situations where war is imminent").

Indeed, the same Congress that passed the AEA also passed another law with strikingly similar statutory bounds. In response to concerns about impending war with France, the 1798 Congress authorized the President to raise troops "in the event of a declaration of war against the United States, or of an actual invasion of their territory, by a foreign power, or of imminent danger of such invasion." Act of May 28, 1798, ch. 47, 1 Stat. 558. This language, which "bears more than a passing resemblance to the language of the AEA," App. 20a, makes plain that Congress was concerned about military incursions by the armed forces of a foreign nation.

Employing the whole-text canon leads to the same conclusion. *See Mont v. United States*, 587 U.S. 514, 524 (2019) (citing Antonin Scalia & Bryan Garner, Reading Law 167 (2012) ("whole-text canon" requires consideration of "the entire text")). The AEA requires that the predicate invasion or predatory incursion be "against the territory of the United States." 50 U.S.C. § 21. And at the time of founding, actions "against the territory of the United States" were expressly understood to be military in nature. *See Ex parte Bollman*, 8 U.S. (4 Cranch) 75, 131 (1807) (describing levying war against the United States as "a military enterprize [sic] . . . against any of the territories of the United States"); *Wiborg v. United States*, 163 U.S. 632, 633 (1896) (explaining that a group of seamen were charged with preparing for a "military expedition . . . against the territory and dominions of a foreign prince").

If any doubt were left about the military nature of the terms, the historical context dispels it. *See Truck Ins. Exch. v. Kaiser Gypsum Co., Inc.*, 602 U.S. 268, 279 (2024) (considering the "historical context" of statute for purposes of interpretation). At the time of passage, the United States was preparing for possible war with France and already under attack in naval skirmishes. French ships were already attacking U.S. merchant ships in United States waters. *See, e.g.*, 7 Annals of Cong. 58 (May 1797) (promoting creation of a Navy to "diminish the probability of . . . predatory incursions" by France while recognizing that distance from Europe lessened the chance of "invasion"). Congress worried that these attacks against the territory of the United States were the precursor to all-out 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").

Under the statutory text, canons of construction, and historical context, then, "invasion" or "predatory incursion" are military actions by foreign governments that constitute or imminently precede acts of war. "Mass illegal migration" or criminal activities, as described in the Proclamation, plainly do not fall within the statutory boundaries. On its face, the Proclamation makes no findings that TdA is acting as an army or military force. Nor does the Proclamation assert that TdA is acting with an intent to gain a territorial foothold in the United States for military purposes. And the Proclamation makes no suggestion that the United States will imminently be at war with Venezuela. The oblique references to the TdA's ongoing "irregular warfare" within the United States do not suffice because the Proclamation makes clear that it refers to "mass illegal migration" and "crimes"—neither of which constitute war within the

founding era understanding. The Proclamation asserts that TdA "commits brutal crimes" with the goal of "harming United States citizens, undermining public safety, and . . . destabilizing democratic nations." But these actions are simply not "against the territory" of the United States. Indeed, if mass migration or criminal activities by some members of a particular nationality could qualify as an "invasion," then virtually any group, hailing from virtually any country, could be deemed enemy aliens.

Second, by no stretch of the statutory language can TdA be deemed a "foreign nation or government." Those terms refer to an entity that is defined by its possession of territory and legal authority. *See* Johnson's Dictionary, *Nation* (1773) ("A people distinguished from another people; generally by their language, original, or government."); Webster's Dictionary, *Nation* (1828) ("A body of people inhabiting the same country or united under the same sovereign government; as the English nation"); Johnson's Dictionary, *Government* (1773) ("An established state of legal authority."). Applying the whole-text canon again, *see supra*, confirms that Congress had in mind state actors. First, the AEA presumes that a designated nation possesses treaty-making powers. *See* 50 U.S.C. § 22 ("stipulated by any treaty . . . between the United States and the hostile nation or government"). Nations—not criminal organizations—are the entities that enter into treaties. *See, e.g.*, *Medellin v. Texas*, 552 U.S. 491, 505, 508 (2008) (treaty is "a compact between independent nations" and "agreement among sovereign powers") (internal quotation marks omitted); *Holmes v. Jennison*, 39 U.S. 540, 570-72 (1840) (similar). Second, 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 government's own view, have "members." Proclamation § 1 ("members of TdA").

Historical context also reflects Congress's intent to address conflicts with foreign sovereigns, not criminal gangs. *See* 5 Annals of Cong. 1453 (Apr. 1798) ("[W]e may very shortly be involved in war . . ."); John Lord O'Brian, Special Ass't to the Att'y Gen. for War Work, N.Y. State Bar Ass'n Annual Meeting: Civil Liberty in War Time, at 8 (Jan. 17, 1919) ("The [AEA] was passed by Congress . . . at a time when it was supposed that war with France was imminent."). This comports with the founding-era, common law understanding of the term "alien enemy" as subject of a foreign state at war with the United States. *See Johnson v. Eisentrager*, 339 U.S. 763, 769 n.2 (1950) (collecting cases).

On this statutory element, the Proclamation again fails *on its face*. It never asserts that TdA is a foreign "nation" or "government." For good reason. As a criminal gang, TdA possesses neither a defined territory nor any legal authority. Resp.App. 269a–270a, 279a–280a, 289a. 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.[17] In fact, the Proclamation does not even specify that TdA currently controls *any* territory in Venezuela. And even as the Proclamation singles out certain Venezuelan nationals, it does not claim that *Venezuela* is invading the United States.[18]

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

[18] And, as the President's own CIA Director recently testified, the intelligence community has no assessment that says the US is at war with or being invaded by Venezuela. *See National*

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

Not only does the Proclamation fail on its face, but it is simply incorrect as a factual matter. Experts who have spent years studying TdA are in accord that Venezuela is not directing, controlling, or otherwise influencing TdA's actions in the United States. Resp.App. 270a–271a ("absolutely implausible" that Maduro regime controls TdA or that the two are intertwined); *id.* at 280a (no evidence that TdA "maintains stable connections with the Venezuelan state or that the Maduro regime directs its actions toward the United States"); *id.* at 283a, 288a–289a (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"). The President's own intelligence agencies reached that same conclusion prior to his invocation of the AEA. *See id.* at

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Security and Intelligence Officials Testify on Global Threats at 57:59–58:10, C-SPAN (Mar. 26, 2025), https://www.cspan.org/program/house-committee/national-security-and-intelligence-officials-testify-on-globalthreats/657380 (Q: "Does the intelligence community assess that we are currently at war or being invaded by the nation of Venezuela?" A: "We have no assessment that says that."); *also available at* https://www.cspan.org/program/house-committee/national-security-and-intelligence-officials-testify-on-globalthreats/657380.

433a ("shared judgment of the nation's spy agencies" is "that [TdA] was not controlled by the Venezuelan government").

Finally, Congress passed the AEA within weeks of the Alien Friends Act ("AFA"). That second law gave the President broader discretion to deport any noncitizen whom he considered "dangerous to the peace and safety of the United States," regardless of whether a sovereign invasion or war had occurred. An Act Concerning Aliens § 1, 1 Stat. 571. As such, the 1798 Congress clearly meant to grant the President two distinct powers—the power to remove the nationals of foreign enemy sovereign countries in times of a war or imminent war, and the power to remove particularly dangerous noncitizens in times of war or peace. The government's preferred interpretation of the AEA—where the President can remove allegedly dangerous people by deciding that virtually anything qualifies as a predatory incursion or invasion and anyone qualifies as a foreign nation or government, and no court can review those determinations—countertextually conflates the different statutory powers Congress conferred separately in the AEA and the AFA. But it would have made little sense for Congress to pass two laws within weeks of each other, unless those laws were meaningfully different. And the critical difference is, of course, the statutory limitations on when the President can use the AEA—it is a particular tool for a particular situation, namely the presence of nationals of a belligerent country during wartime, which simply does not apply to present circumstances.[19]

[19] Treating the AEA like the AFA is particularly untenable given that the AFA was "widely condemned as unconstitutional by Madison and many others" and quickly allowed to lapse. *Sessions v. Dimaya*, 584 U.S. 148, 185 (2018) (Gorsuch, J., concurring) (the AFA "is one of the most notorious laws in our country's history").

The government cannot elide these statutory bounds by pointing to the President's inherent Article II power. The President has no constitutional power to unilaterally remove people. Under Article I, Congress holds plenary power over immigration. *INS v. Chadha*, 462 U.S. 919, 940 (1983). The AEA operates as a specific delegation of authority from Congress to the President, a delegation that Congress specifically limited to instances of war or imminent war by a foreign nation or government. *Cf. Youngstown*, 343 U.S. at 635–38. The President is not at liberty to exceed those statutory powers or to exercise them outside of the context of war or imminent war. Thus, the sole question here is whether the executive's conduct conflicts with the constraints that Congress has imposed.

If Congress had intended to vest the President with broader authority, it could have said so. For instance, Congress knows how to delegate authority against nonstate actors to the Executive Branch when it wants to. *See* 22 U.S.C. § 6442a ("review and identify any non-state actors operating in any such reviewed country"); 18 U.S.C. § 2339A (criminalizing providing material support to non-state actors). And here, Congress intentionally limited the AEA's scope to certain actions taken by a "foreign nation" or "government." 50 U.S.C. § 21. It has never amended the statute to broaden that scope.

Under Justice Jackson's *Youngstown* framework, the President is taking measures incompatible with the expressed will of Congress, and accordingly, he is acting as his "lowest ebb" of power. *Youngstown*, 343 U.S. at 637–38. Because he has no inherent constitutional power to unilaterally remove people, Congress's powers prevail. Courts "can sustain exclusive Presidential control in such a case only by disabling the Congress from acting upon the subject." 343 U.S. at 637–38. But there is simply no ground for ignoring the statutory constraints that

Congress has established, nor for disabling Congress's constitutional authority to legislate with respect to immigration and its own war powers. *See Chadha*, 462 U.S. at 940; *Hamdan v. Rumsfeld*, 548 U.S. 557, 591 (2006).

Moreover, even when the executive asserts war powers, this Court has repeatedly refused to grant the President a blank check as Commander-in-Chief. *See, e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 732 (2008) (rejecting executive's argument that noncitizens designated as "enemy combatants" outside the United States have no habeas privilege); *Hamdan*, 548 U.S. at 593, 635 (rejecting executive's convening of military commission as unlawful because it failed to satisfy statute's requirements); *Hamdi*, 542 U.S. at 530, 535–36 (rejecting executive's arguments about the process due to alleged enemy combatants); *Ex Parte Milligan*, 71 U.S. 2, 125 (1866) ("[The Founders] knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war . . . and that unlimited power, wherever lodged at such a time, was especially hazardous to freemen."); *see also Hamdi*, 542 U.S. at 530 ("[A]s critical as the Government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.").

If Defendants were allowed to designate any group with ties to officials as a foreign government, and courts were powerless to review that designation, any group could be deemed a government, leading to an untenable and overbroad application of the AEA. The same is true of an invasion or predatory incursion. If the President were to have unreviewable authority to

designate migration or criminal acts "invasions" or "predatory incursions," the Act would quickly become a limitless source of power.

In short, the government has failed to carry its burden on likelihood of success on the merits.

V. PROVISIONAL CLASS CERTIFICATION WAS PROPER.

In a last-ditch effort, the government argues that the Court can preserve the TRO as to the individual plaintiffs but vacate the TRO granted to the class. But the government did not properly petition the Circuit for review of its arguments against class certification, Fed. R. Civ. P. 23(f). *See Nutraceutical Corp. v. Lambert*, 586 U.S. 188, 193 (2019) (explaining that "the Federal Rules of Appellate Procedure single out Civil Rule 23(f) for inflexible treatment"). At the court of appeals, its only mention of the class relief was to criticize the district court for its "highly truncated class procedures" as "an excuse for the [c]ourt to issue a universal injunction," Resp.App. 163a, 185a, but the government did not raise any arguments about why the certified class does not satisfy Rule 23's requirements. That alone is reason not to address the argument now. *See F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 175 (2004) ("The Court of Appeals . . . did not address this argument, . . . and, for that reason, neither shall we").

Defendants ignore the posture of the district court's *provisional* class certification order in the context of granting a TRO; the two orders work together to preserve the status quo and the district court's ability to manage the preliminary injunction litigation to come. Given this limited purpose, and given the haste that is often necessary if those positions are to be preserved, "a preliminary injunction is customarily granted on the basis of procedures that are less formal and evidence that is less complete than in a trial on the merits." *Univ. of Texas v.*

Camenisch, 451 U.S. 390, 395 (1981) (on preliminary injunctions). Class certification was proper under Rule 23's requirements. *See Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51 (2011). The government asserts that the district court did not engage in a "rigorous analysis," App. 25, but it was plainly evident—and the government did not argue to the contrary—that Plaintiffs could show numerosity, commonality, typicality, and adequacy where the government was about to deport at least two planes full of similarly-situated noncitizens who did not have final orders of removal yet were being summarily removed on the basis of the government's proclaimed AEA authority. Although Rule 23 does not require a class certification hearing, *Hartman v. Duffey*, 19 F.3d 1459, 1473 (D.C. Cir. 1994) ("We emphasize that there is no requirement in this circuit that a trial court conduct an evidentiary hearing or make specific factual findings on the issue of class certification in every case."), the government had an opportunity to brief the issue during the motion to vacate phase of this litigation, and said very little. Resp.App. 73a n.1. This is consistent with how district courts routinely handle class certification requests in conjunction with motions for interim relief,[20] especially on the understanding that an order provisionally certifying a class (as this one was) can be altered or amended before a final decision on the merits. Fed. R. Civ. P. 23(c)(1)(C); App. 169a (Boasberg, J.) (provisionally certifying the class under Fed. R. Civ. P. 23(a) and 23(b)(2)). This is also consistent with the well-established principle that

[20] *See, e.g.*, *Afghan & Iraqi Allies Under Serious Threat Because of Their Faithful Serv. to the U.S. v. Pompeo*, 334 F.R.D. 449, 452 n.1 (D.D.C. 2020) (certifying class on provisional basis for sole purpose of resolving, *inter alia*, plaintiffs' motion for preliminary injunction); *Kirwa v. U.S. Dep't of Def.*, 285 F. Supp. 3d 21, 44 (D.D.C. 2017) (provisionally certifying class for the sole purpose of resolving plaintiffs' motion for preliminary injunction); *cf. Betschart v. Oregon*, 103 F.4th 607, 615 (9th Cir. 2024) (defendant did not challenge class certification on appeal, and court declined to so for it, where district court certified a class in conjunction with issuing a classwide TRO in a five-paragraph decision).

preliminary relief is typically appropriate where, as here, failing to act would extinguish the parties' rights before full adjudication is possible.

Indeed, the concerns underpinning Rule 23(a)(4) are vindicated—not undermined—by provisional certification in this context. Rule 23(a)(4) ensures that "the representative parties will fairly and adequately protect the interests of the class." Because the certification sought here serves solely to preserve the rights of absent class members, the typical concerns about adequacy are not just inapplicable—they are affirmatively avoided. *Cf., e.g.*, *Frank v. Gaos*, 586 U.S. 485, 495 (2019) (Thomas, J., dissenting) (raising concerns about class actions that "serve[] only as a vehicle through which to extinguish the absent class members' claims without providing them any relief").

Further, the district court's oral findings to provisionally certify the class were sufficient in light of the exigent circumstances of the initial hearing, the government's opportunity to contest those findings at both the March 15 and the March 21 hearings, and their provisional nature. App. 165a, 169a; *cf. United States v. Ruiz-Terrazas*, 477 F.3d 1196, 1202 (10th Cir. 2007) (Gorsuch, J.) (courts do not need "'ritualistic incantation to establish consideration of a legal issue, nor [must] . . . the district court recite any magic words to prove that it considered the various factors Congress instructed it to consider") (internal quotation marks and citation omitted). Nor did the district court fail to satisfy other procedural requirements of Rule 23: the court clearly defined the class, worked with parties to identify the specific claims at issue (for instance, removing the habeas claims), and heard arguments from the government.[21] App. 165a, 168a–

[21] The government alludes to Rule 23's requirement that a court "direct appropriate notice [of the class certification decision] to the class," App. 26 (quoting Fed. R. Civ. P. 23(c)(1)(B), (2)), but that provision does not apply to Rule 23(b)(2) classes like the one here.

170a. The government does not offer a single case where a court reversed a district court's order certifying a class for purposes of emergency preliminary relief on the basis that it failed expressly to define the class claims in the provisional certification order. The cases the government cites where lower courts reversed class certification for purportedly superficial analyses, App. 26–27, are irrelevant as they did not address class certification decisions undertaken in conjunction with emergency relief as at issue here.[22]

The gist of the government's substantive argument is that the class lacks the cohesiveness necessary for classwide proceedings—but its argument is premised on a misunderstanding of Plaintiffs' claims. As demonstrated above, Plaintiffs can and are bringing a systemic challenge to the government's authority to invoke the AEA and remove anyone whom the government designates to be a TdA member without compliance with the AEA, INA, APA, and due process. Classwide proceedings as to any one of those issues will generate a common answer to at least one common question, which suffices to satisfy commonality. *See Dukes*, 564 U.S. at 359. The named Plaintiffs' claims are also typical and they adequately represent the class because the class is defined as those who are "subject to" the Proclamation, regardless of whether they choose to contest TdA membership.[23] *See* Merriam Webster Dictionary, *Subject To* (2025) (defining "subject to" as, *inter alia*, "affected by or possibly affected by," "likely to do, have, or suffer

[22] The government makes a passing suggestion that the class is not "ascertainable," App. 25, an implicit requirement for certification in some circuits. But the class definition here clearly references a specific set of persons identifiable by objective criteria and accordingly easily meets the ascertainability requirement. Indeed, the government has identified the number of people it has removed based on the Proclamation and who are currently in detention subject to the Proclamation. Resp.App. 449a.

[23] There also is no conflict of interest between Plaintiffs and the class as there was in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997), App. 28, given that Plaintiffs have just as much of an interest in challenging the Proclamation as other members of the class.

from"). They also seek the same relief, including an injunction and declaration against implementation of the Proclamation, as well as a fair process for those "subject to" the Proclamation. Regardless of each class member's individual facts and defenses to an accusation of TdA membership, Plaintiffs need to show only that their proposed *class* claims can be litigated on a classwide basis by rising or falling together. *See Amgen Inc. v. Connecticut Ret. Plans & Tr. Funds*, 568 U.S. 455, 459 (2013). Class counsel's agreement to forestall consideration of the habeas claims also raises no adequacy concerns as these claims were dismissed without prejudice, so could be realleged; and regardless, any class member claims that are individualized in nature do not merge into a class judgment and are not barred thereafter. *Cooper v. Fed. Rsrv. Bank of Richmond*, 467 U.S. 867, 880 (1984); *see generally*, William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 18:17 (6th ed. 2022).

Provisional class certification here is especially crucial considering the government's express admission that it is *not* providing individuals notice that they will be subject to the Proclamation, and hence will not provide them the opportunity to challenge their designations prior to removal. Absent a classwide TRO, the government can—and has already stated it will—immediately remove individuals pursuant to the Proclamation. And nothing precludes Defendants from seeking relief from or changes to the provisional class certification order in the district court as litigation proceeds there.

CONCLUSION

The Court should deny the government's application to vacate the district court's orders and its request for a stay.

Respectfully submitted,

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Dated: April 1, 2025

APPENDIX

RESPONDENTS' APPENDIX

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

District of Columbia District Court

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

Docket text:

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

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

District of Columbia District Court

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

Docket text:

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

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

District of Columbia District Court

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

Docket text:

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

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

ORDER

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

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

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

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

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

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

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

Date: March 28, 2025

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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

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

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

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

Plaintiffs–Petitioners,

v.

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

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

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

Case No. _____

CLASS ACTION COMPLAINT AND PETITION FOR WRIT OF HABEAS CORPUS

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

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

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

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

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

Defendants–Respondents.

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

INTRODUCTION

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

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

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

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

JURISDICTION AND VENUE

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

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

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

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

PARTIES

A. Plaintiffs

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

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

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

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

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

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

B. Defendants

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

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

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

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

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

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

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

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

BACKGROUND

The Alien Enemies Act

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

23. The AEA, as codified today, provides that "[w]henever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies." 50 U.S.C. § 21.

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

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

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

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

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

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

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

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

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

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

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

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

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

Systemic Overhaul of Immigration Law in 1952

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

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

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

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

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

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

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

President Trump's Proclamation Invoking the AEA

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

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

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

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

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

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

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

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

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

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

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

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

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

CLASS ALLEGATIONS

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

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

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

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

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

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

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

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

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

HARM TO PLAINTIFFS

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

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

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

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

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

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

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

CAUSES OF ACTION

FIRST CLAIM FOR RELIEF

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

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

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

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

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

SECOND CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

THIRD CLAIM FOR RELIEF

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

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

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

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

FOURTH CLAIM FOR RELIEF

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

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

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

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

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

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

FIFTH CLAIM FOR RELIEF

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

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

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

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

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

SIXTH CLAIM FOR RELIEF

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

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

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

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

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

SEVENTH CLAIM FOR RELIEF

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

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

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

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

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

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

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

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

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

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

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

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

NINTH CLAIM FOR RELIEF

Violation of Habeas Corpus
(All Defendants)

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

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully pray this Court to:

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

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

c. Declare unlawful the AEA Process;

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

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

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

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

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

Dated: March 15, 2025

Respectfully submitted,

/s/ *Lee Gelernt*

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

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs–Petitioners,

v.

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

Defendants–Respondents.

Case No: 1-25-00766

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

INTRODUCTION

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

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

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

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

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

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

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

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

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

LEGAL AND FACTUAL BACKGROUND

I. The Alien Enemies Act

The AEA is a wartime authority that grants the President specific powers with respect to the regulation, detention, and deportation of enemy aliens. Passed in 1798 in anticipation of a war with France, the AEA, as codified today, provides that "[w]henever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and

removed as alien enemies." 50 U.S.C. § 21.

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

II. Congress's Comprehensive Reform of Immigration Law

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

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

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

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

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

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

III. The AEA Proclamation and the Impending Unlawful Removals

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

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

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

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

IV. Plaintiffs

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

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

under the President's AEA Proclamation.

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

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

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

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

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

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

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

LEGAL STANDARD

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

ARGUMENT

I. Plaintiffs Are Likely to Succeed on the Merits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Proclamation Violates the INA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

CONCLUSION

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

Dated: March 15, 2025

Respectfully submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

DEFENDANTS' MOTION TO VACATE TEMPORARY RESTRAINING ORDER

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INTRODUCTION

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

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

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

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

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

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

BACKGROUND

I. The Alien Enemies Act

The AEA provides that:

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

50 U.S.C. § 21.

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

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

II. The President's Proclamation

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

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

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

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

Based on these findings, the President proclaimed that "all Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies." *Id.* § 1. The President further directed that all such alien enemies "are subject to immediate apprehension, detention, and removal." *Id.* § 3. The Attorney General and Secretary of Homeland Security have been tasked with executing these directives, in addition to any separate authority that may exist to apprehend and remove such persons. *Id.* §§ 4, 6.

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

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

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

III. This Suit

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

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

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

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

ARGUMENT

I. This Court Has No Jurisdiction Over Plaintiffs' Claims

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

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

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

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

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

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

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

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

injunction).[1]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

C. Plaintiffs' remaining arguments lack merit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Plaintiffs have not established irreparable harm.

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

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

B. The balance of equities requires dissolving the injunction.

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

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

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

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

IV. The Universal TRO Is Overbroad and Unconstitutional.

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

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

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

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

CONCLUSION

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

March 17, 2025

Respectfully Submitted,

PAMELA J. BONDI
U.S. Attorney General

TODD BLANCHE
Deputy Attorney General

EMIL BOVE
Principal Associate Deputy Attorney General

CHAD MIZELLE

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

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CERTIFICATE OF SERVICE

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

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

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

Declaration Of Acting Field Office Director Robert L. Cerna

DECLARATION OF ROBERT L. CERNA

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

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

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

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

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

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

5. On March 15, 2025, President Trump announced the Proclamation *Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua* stating that, "Evidence irrefutably demonstrates that TdA has invaded the United States and continues to invade, attempt to invade, and threaten to invade the country; perpetrated irregular warfare within the country; and used drug trafficking as a weapon against our citizens" (the Proclamation) (https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/). In the same Proclamation, President Trump announced that, pursuant to 50 U.S.C. § 21, "all Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies."

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

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

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

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

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

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

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

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

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

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

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

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

Executed this 17th day of March 2025.

ROBERT L CERNA II

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

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

DECLARATION OF MICHAEL G. KOZAK

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

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

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

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

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

MICHAEL G. KOZAK

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Plaintiffs–Petitioners,

v.

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

Defendants–Respondents.

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

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

INTRODUCTION

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

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

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

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

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

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

STATEMENT OF FACTS

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

> Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies." 50 U.S.C. § 21.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

profile." *Id.*

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

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

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

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

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

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

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

PROCEDURAL HISTORY

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

B. The Political Question Doctrine Does Not Apply.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

II. Plaintiffs Are Likely to Succeed on the Merits.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

hazardous to freemen.").

iii. The Proclamation violates the INA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Equitable Factors Weigh In Favor of Plaintiffs.

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

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

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

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

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

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

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

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

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

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

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

III. The TRO Is Not Overbroad.

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

CONCLUSION

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

Dated: March 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Dated: March 19, 2025

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Oral Argument Not Yet Scheduled

Nos. 25-5067 & 25-5068

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

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

v.

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

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

EMERGENCY MOTION FOR A STAY PENDING APPEAL

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INTRODUCTION

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

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

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

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

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

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

BACKGROUND

I. The Alien Enemies Act

The AEA provides that:

> Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by

> any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies.

50 U.S.C. § 21.

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

II. The President's Proclamation

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

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

Based on these findings, the President proclaimed that "all Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies." *Id.* § 1. The President further directed that all such alien enemies "are subject to immediate apprehension, detention, and removal." *Id.* § 3. The Attorney General and the Secretary of Homeland Security have been tasked with executing these directives, in addition to any separate authority to DHS has apprehend and remove such persons. *Id.* §§ 4, 6.

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

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

III. This Suit

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

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

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

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

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

ARGUMENT

I. The TRO Is an Appealable Order.

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

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

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

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

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

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

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

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

II. The District Court Erred in Issuing the TRO

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

IV. The Universal TRO is Overbroad and Unconstitutional.

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

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

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

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

CONCLUSION

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

Dated: March 16, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

/s/ Christina P. Greer
CHRISTINA P. GREER

CERTIFICATE OF SERVICE

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

/s/ Christina P. Greer
CHRISTINA P. GREER

DECLARATION OF MICHAEL G. KOZAK

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

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

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

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

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

MICHAEL G. KOZAK

Oral Argument Not Yet Scheduled

Nos. 25-5067 & 25-5068

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

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

v.

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

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

REPLY IN SUPORT OF EMERGENCY MOTION FOR A STAY PENDING APPEAL

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INTRODUCTION

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

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

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

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

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

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

ARGUMENT

I. The Orders Below Are Appealable

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

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

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

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

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

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

II. Plaintiffs Have No Viable Claim.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

III. The Proclamation Is Lawful

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

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

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

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

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

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

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

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

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

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

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

IV. The Equities Favor the Government

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

Therefore, they must be stayed.

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

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

at 6–7.

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

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

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

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

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

CONCLUSION

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

Dated: March 19, 2025

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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

/s/ August E. Flentje
AUGUST E. FLENTJE

CERTIFICATE OF SERVICE

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

/s/ August E. Flentje
AUGUST E. FLENTJE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

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INTRODUCTION

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

LEGAL AND FACTUAL BACKGROUND

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LEGAL STANDARD

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

ARGUMENT

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

interest fall decisively in Plaintiffs' favor.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

B. The Political Question Doctrine Does Not Apply.

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

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

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

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

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

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

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

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

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

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

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

III. Plaintiffs Are Likely to Succeed on the Merits.

A. The Proclamation Does Not Satisfy the AEA.

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

is well warranted here.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

proceedings for noncitizens posing national security risks).

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

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

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

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

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

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

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

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

V. The Balance of Equities and Public Interest Weigh Decidedly in Favor of a Preliminary Injunction Order.

The balance of equities and the public interest factors merge in cases against the government. *See Pursuing Am.'s Greatness v. FEC*, 831 F.3d 500, 511 (D.C. Cir. 2016) (citations omitted). Here, the balance of hardships overwhelmingly favors Plaintiffs. The public has a critical interest in preventing wrongful removals to places where individuals will face persecution and torture. Conversely, the government can make no comparable claim to harm from an injunction. Op. 36-37; *Luokung Tech. Corp. v. Dep't of Def.*, 538 F. Supp. 3d 174, 195 (D.D.C. 2021); *see also Nken*, 556 U.S. at 436 (describing the "public interest in preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm"); *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (describing the "substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations" (citation omitted). Defendantsm moreover, will retain the ability to prosecute criminal offenses, detain noncitizens under any authority, and remove noncitizens under existing statutory guidelines.

VI. The Court Should Not Require Plaintiffs to Provide Security Prior to the Preliminary Injunction Order.

The court should not require a bond under Federal Rule of Civil Procedure 65. The "courts in this Circuit have found the Rule 'vests broad discretion in the district court to determine the appropriate amount of an injunction bond,' including the discretion to require no bond at all." *Simms v. District of Columbia*, 872 F. Supp. 2d 90, 107 (D.D.C. 2012) (internal quotation marks, citation, and alterations omitted). District courts routinely exercise this discretion to require no security in cases brought by indigent and/or incarcerated people, and in the vindication of immigrants' rights. *See, e.g.*, *P.J.E.S. v. Wolf*, 502 F. Supp. 3d 492,at 520 (D.D.C. 2020).

CONCLUSION

The motion for a preliminary injunction should be granted.

Dated: March 28, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: March 28, 2025

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EXHIBIT C

Declaration of Dr. Sarah C. Bishop
Risks for Non-Salvadoran Actors Facing Third Country Removal to El Salvador

Introduction

1. I am writing this expert witness report to address human rights abuses in Salvadoran prisons. I am a full professor with tenure at Baruch College, the City University of New York. I was the 2020-2021 Fulbright Scholar to El Salvador during which time I lived and conducted fieldwork in the country; I have since returned to El Salvador each year for fieldwork related to both published and in-process projects about the State of Exception, human rights abuses by state actors, gang activity, and prison conditions.

2. Deportees who are imprisoned in El Salvador are highly likely to face immediate and intentional life-threatening harm at the hands of state actors and a secondary threat of violence from incarcerated gang members.

Expert Qualifications

3. I was the 2020/2021 Fulbright scholar to El Salvador, during which time I lived and worked in the Department of La Libertad consulting with local academics and non-profit personnel to develop a project that chronicles the experiences of individuals affected by gang-, government-, and domestic-based violence, as well as the professional and psychological outcomes for deportees. I have interviewed multiple people who have been deported back to El Salvador after failed asylum claims and have also interviewed personnel from non-profit organizations working to support individuals who had been deported by the United States or by another government.

4. I have published three books on the experiences of refugees and undocumented immigrants in the United States. In 2022, Columbia University Press published my book *A Story to Save Your Life: Communication and Culture in Migrants' Search for Asylum*. The book won the Abraham Brilloff Prize in Ethics and the Oral History Association's Best Book Award in 2023. My book *Undocumented Storytellers: Narrating the Immigrant Rights Movement* was published by Oxford University Press in 2019 and was the winner of the Best Book Award from the American Studies Division of the National Communication Association. *U.S. Media and Migration: Refugee Oral Histories* was published by Routledge in 2016 and won the Sue DeWine Distinguished Scholarly Book Award.

5. I am a migration scholar with a Ph.D. in Intercultural Communication from the University of Pittsburgh (2014). My dissertation was an oral history project analyzing the push factors and migration experiences of 74 refugees living in the United States. I received an M.A. from New York University in 2009 in Media, Culture, and Communication during which I took classes such as "Refugees and IDPs: Protection and Practice." I received a B.A. from the University of Akron in 2008.

6. I have published numerous articles in peer-reviewed academic journals on the experiences of forced migrants from Central America, including most recently "Hidden in Plain Sight: The In/Visbility of Human Rights in El Salvador's Prisons Under the State of Exception" coauthored with Salvadoran expert Dr. Mneesha Gellmen and forthcoming in *Latin American Research*

Review in 2025; "Beyond the Glowing Headlines: Social Science Analysis of the State of Exception in El Salvador," *Columbia Regional Expert Series,* coauthored with Salvadoran experts Dr. Tom Boerman and Dr. Tommie Sue Montgomery in 2023; "An Illusion of Control: How El Salvador's President Rhetorically Inflates His Ability to Quell Violence," published in *Journalism and Media* in 2023; "'What Does a Torture Survivor Look Like?': Nonverbal Communication in Asylum Interviews and Hearings," published in the *Journal of International & Intercultural Communication* in 2021; "Intercultural Communication, the Influence of Trauma, and the Pursuit of Asylum in the United States," published in the *Journal of Ethnic and Cultural Studies* in 2021; "An International Analysis of Governmental Media Campaigns to Deter Asylum Seekers," published in the *International Journal of Communication* in 2020. All of my books and the articles I have published in academic journals have been subject to peer review by other experts.

7. I regularly give talks about country conditions in El Salvador and the root causes of forced migration, including "Violence for Peace: Authoritarian Justifications of Human Rights Abuses in Central America," to be presented at the Anthropology of Peace, Conflict, and Security Conference in June 2025; "Intergovernmental Criminal History Information Sharing: Justice on Paper, Violence in Practice for Forced Migrants," presented at the Marxe School for International Affairs in March 2025; "Populism, Rhetorical Strategy, and the Regression of Democracy in Central America," presented at Cristosal in San Salvador in February 2023; "Addressing Misinformation and Distortion of Statistics in Country Conditions Research," presented at the International Studies Association in November 2024; "An Illusion of Control: How El Salvador's President Rhetorically Inflates His Ability to Quell Violence," presented at the annual meeting of the American Sociological Association in August 2022; "Health and Safety in El Salvador," presented at the Fulbright Pre-departure Orientations in June 2022, June 2023, and June 2024; and "The Returned: Communication and Culture in the Post-Deportation Lives of Former Asylum Seekers from El Salvador," presented at the annual meeting of the International Association for the Study of Forced Migration in July 2021.

8. I have received several competitive grants for my research on El Salvador, including a 2025 grant from the American Council of Learned Societies (ACLS) and a 2024 grant from the Waterhouse Family Institute to study post-deportation experiences in El Salvador through a family communication approach; a 2022-2023 PSC CUNY Grant for research that documents post-deportation harm in El Salvador; a 2022 grant from the Robert Bosch Stiftung Foundation to travel to El Salvador and meet with investigative journalists and human rights activists for a project about President Nayib Bukele's recent actions against independent media; and a 2018 fellowship from the Institute for the Study of Human Rights at Columbia University to study obstacles to human rights and efforts to promote peace in post-conflict societies including El Salvador.

9. I remain current on events in El Salvador through regularly reading local, national, and international sources including academic and government studies and investigative journalism studies, through frequent conversations with colleagues in the U.S. and El Salvador, and by presenting my research on El Salvador at national and international academic conferences.

10. At Baruch College, I teach classes on migration to the United States and global communication in the Department of Communication Studies, the Macaulay Honors College, and the Masters in International Affairs. I am affiliate faculty in the Department of Black and Latino Studies.

11. My migration research has been recognized for being ethical and applied to real-world contexts: I won the Abraham J. Briloff Prize in Ethics in 2017 and 2023, and the Stanley L. Saxton Applied Research Award in 2018. Moreover, in keeping with the New York State Ethics Commission Reform Act of 2022, I undergo annual ethics training at CUNY.

12. Methodologically, I rely on oral history, ethnography, critical-cultural analysis of governmental communication, and qualitative comparative analysis to conduct my research about country conditions in El Salvador. These are standard and widely used social science methodologies. At Baruch, I am responsible for teaching a graduate level required course on qualitative methods in which I train master's level students in these methods.

13. In 2025 I received $75,000 from the Russell Sage Foundation to continue the project "Recovering the Visibility of Post-Deportation Experiences in El Salvador: A Family Communication Approach" for the years 2025-2027 to involve additional participants who have family members who have been deported under the State of Exception.

Democratic Erosion and Governmental Corruption in El Salvador

14. El Salvador is experiencing a severe democratic decline that threatens the human rights and general safety of the whole population. The 2023 U.S. State Department's Human Rights Reports on El Salvador cites "credible reports of: unlawful or arbitrary killings; enforced disappearance; torture or cruel, inhuman, or degrading treatment or punishment by security forces; harsh and life-threatening prison conditions; arbitrary arrest or detention; serious problems with the independence of the judiciary; arbitrary or unlawful interference with privacy; extensive gender-based violence, including domestic and sexual violence, and femicide; substantial barriers to sexual and reproductive health services access; trafficking in persons, including forced labor; and crimes involving violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons."[1]

15. President Bukele was discovered through meticulously documented reporting by investigative journalists working for *El Faro* in 2020 to have been negotiating with imprisoned gang leaders who reportedly agreed to a reduction in homicides and electoral support in exchange for additional prison privileges and other benefits for incarcerated gang members.[2] During the weekend of March 25, 2022 there was a record-setting string of around eighty-seven gang-committed homicides across El Salvador that resulted from the unraveling of that secret pact between Bukele and the gangs in what MS-13 called a "betrayal" of Bukele's loyalty. The Monday following the homicides, Bukele successfully called on the Salvadoran Legislative Assembly to pass a State of Exception, which suspends many constitutional protections including due process, drastically increases police and military powers to arrest and imprison suspected gang members, and curtails the right to legal defense.

[1] "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 1.
[2] Carlos Martínez, Óscar Martínez, Sergio Arauz, and Efren Lemus. "Bukele has been negotiating with MS-13 for a reduction in homicides and electoral support." *El Faro.* 6 September 2020. https://elfaro.net/en/202009/el_salvador/24785/Bukele-Has-Been-Negotiating-with-MS-13-for-a-Reduction-in-Homicides-and-Electoral-Support.htm

16. As a result of the government's actions under the current State of Exception, El Salvador currently has the highest incarceration rate in the world.[3]

17. Salvadoran Vice President Félix Ulloa revealed plainly to the *New York Times*, "To these people who say democracy is being dismantled, my answer is yes — we are not dismantling it, we are eliminating it, we are replacing it with something new."[4] The politicized use of all three branches of government to enact and extend the power of the State of Exception disallows any guarantee of justice for Salvadorans against whom the State has acted.

18. The government of El Salvador claims that it has been effective at establishing peace in the country. Americas director at Amnesty International Ana Piquer explained in December 2024, "What the government calls 'peace' is actually an illusion intended to hide a repressive system, a structure of control and oppression that abuses its power and disregards the rights of those who were already invisible—people living in poverty, under state stigma, and marginalization—all in the name of a supposed security defined in a very narrow way."[5]

19. Bukele's director of prisons, Osiris Luna Meza, was indicted by the United States Federal Government for arranging meetings in prison for negotiations with MS-13.[6] As the U.S. Treasury Department reveals, "Osiris Luna Meza (Luna) and Carlos Amilcar Marroquin Chica (Marroquin) [chairman of Bukele's Social Fabric Reconstruction Unit] led, facilitated, and organized a number of secret meetings involving incarcerated gang leaders, in which known gang members were allowed to enter the prison facilities and meet with senior gang leadership. These meetings were part of the Government of El Salvador's efforts to negotiate a secret truce with gang leadership."[7] Luna has also been deemed corrupt by the U.S. Department of Treasury for developing a scheme with another senior Bukele official to embezzle millions of dollars from the prison commissary system.[8]

[3] "El Salvador Opens 40,000-Person Prison as Arrests Soar in Gang Crackdown." *Reuters*. 1 February 2023. https://www.reuters.com/world/americas/el-salvador-opens-40000-person-prison-arrests-soar-gang-crackdown-2023-02-01/#:~:text=SAN%20SALVADOR%2C%20Feb%201%20(Reuters,the%20prison%20population%20to%20soar.
[4] Natalie Kitroeff. "He Cracked Down on Gangs and Rights. Now He's Set to Win a Landslide." New York Times. 2 February 2024. https://www.nytimes.com/2024/02/02/world/americas/el-salvador-bukele-election.html
[5] "El Salvador: A thousand days into the state of emergency. 'Security' at the expense of human rights." Amnesty International. 20 December 2024. https://www.amnesty.org/en/latest/news/2024/12/el-salvador-mil-dias-regimen-excepcion-modelo-seguridad-a-costa-derechos-humanos/
[6] United States District Court. Eastern District of New York. Paragraph 35. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.justice.gov/usao-edny/press-release/file/1569726/download
[7] "Treasury Targets Corruption Networks Linked to Transnational Organized Crime." U.S. Treasury Department. 8 December 2021. https://home.treasury.gov/news/press-releases/jy0519
[8] "Treasury Targets Corruption Networks Linked to Transnational Organized Crime." U.S. Department of the Treasury. 8 December 2021. https://home.treasury.gov/news/press-releases/jy0519

20. In multiple recent documented cases, the Salvadoran government has falsified records, ignored international human rights laws, and detained and prosecuted individuals without evidence to support the ongoing expansion of the State of Exception and indiscriminately punish those who resist or oppose it. As described by Human Rights Watch, "In many cases, detentions appear to be based on the appearance and social background of the detainees, or on questionable evidence, such as anonymous calls and uncorroborated allegations on social media. In these cases, police and soldiers did not show people a search or arrest warrant, and rarely informed them or their families of the reasons for their arrest. A mother who witnessed the detention of her son said that police officers told her, 'We can arrest anyone we want.'"[9]

General Living Conditions in Prison

21. The 2023 U.S. State Department Human Rights Report on El Salvador emphasizes that "Prison conditions *before* the state of exception were harsh and life threatening …The addition of 72,000 detainees under the state of exception exacerbated the problem."[10] Rather than merely being a result of overcrowding, the same U.S. State Department report cites testimonies from released prisoners that show that the life threatening nature of the prison is a result of "systemic abuse in the prison system, including beatings by guards and the use of electric shocks."[11]

22. Salvadoran government officials have directly stated that the dangerous and unsanitary conditions for prisoners taken into custody during the State of Exception are being created intentionally: for example, the U.S. State Department notes that "From the start of the state of exception, the government frequently advertised on social media the overcrowded conditions and lack of adequate food in the prisons as appropriate treatment for gang members."[12] The Directorate General of Penal Centers advertised: "All the suffering these bastards have inflicted on the population, we will make happen to them in the prisons, and we will be very forceful with this. They live without the light of the sun, the food is rationed… they sleep on the floor because that is what they deserve."[13] Paradoxically, this was the same director who was indicted by the United States Federal Government for arranging meetings in prison for negotiations with MS-13,[14] and who has been deemed corrupt by the U.S. Department of Treasury for developing a scheme with another senior Bukele official to embezzle millions of dollars from the prison commissary system, emphasizing the scope of corruption common in prison leadership.[15]

23. In response to international human rights organizations that have raised the alarm about current conditions in El Salvador, President Bukele tweeted "Let all the 'human rights' NGOs know that we are going to destroy these damn murderers and their collaborators, we will throw them in

[9] Human Rights Watch and Cristosal. "We Can Arrest Anyone We Want": Widespread Human Rights Violations Under El Salvador's "State of Emergency." 7 December 2022, https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el

[10] "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 7, emphasis added

[11] Ibid., p 5.

[12] "El Salvador 2022 Human Rights Report." https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 6.

[13] Cited in Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/ p 34.

[14] United States District Court. Eastern District of New York. Paragraph 35. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.justice.gov/usao-edny/press-release/file/1569726/download

[15] "Treasury Targets Corruption Networks Linked to Transnational Organized Crime." U.S. Department of the Treasury. 8 December 2021. https://home.treasury.gov/news/press-releases/jy0519

prison and they will never get out. We don't care about their pitying reports, their prepaid journalists, their puppet politicians, nor their famous 'international community' that never cared about our people."[16]

24. El Salvador's Public Security Minister has confirmed the plan not to release prisoners and claimed that there are 40,000 serial killers in El Salvador. He stated in an interview with CNN in 2024: "Someone who every day killed people, every day raped our girls, how can you change their minds? We are not stupid…In the US, imagine a serial killer in your state, in your community being released by a judge … how would you feel as a citizen? We don't have facts that someone can change a mind from a serial killer … and we have more than 40,000 serial killers in El Salvador."[17]

25. In October 2021 the Salvadoran government declared that information relating to all detained persons would be considered confidential; over 325 complains to the Interamerican Commission on Human Rights show that when family members have requested information about their detained loved ones, "authorities either refused or provided false information about their whereabouts."[18] In a sample of 131 cases, Cristosal found that 115 family members of detainees have not received any information about the whereabouts or wellbeing of their detained family members since the day of their capture.[19]

26. During my January 2024 visit to El Salvador, I visited Mariona prison where many informal vendors were set up outside the prison gates selling packets of food, medicine, soap, and clothing to individuals with detained family members. Family members can seek to protect their detained relatives from illness or starvation in prison if their family is able to purchase these expensive packets, which cost $100-$300 per month although the national minimum monthly wage is only $365.[20] However, even families who can afford these packets have no assurance that the resources they try to send will ever reach their loved ones inside the prison; there are reports of prison officials deliberately withholding medicine and food even when it is available,[21] and reports of guards forcing women to do sexual acts in exchange for food and medicine.[22]

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[16] Nayib Bukele. 16 May 2023. https://x.com/nayibbukele/status/1658608915683201030?s=20
[17] David Culver, Abel Alvarado, and Evelio Contreras. "Exclusive: Locking eyes with mass murderers in El Salvador." 13 November 2024 https://www.cnn.com/2024/11/06/americas/el-salvador-inside-cecot-prison/index.html
[18] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/ p 29.
[19] Noah Bullock. "The State of Exception in El Salvador: Taking Stock." Testimony before the United States Congress, Tom Lantos Human Rights Commission. 10 December 2024. https://www.youtube.com/watch?v=ChTW-gm-5SI
[20] Mneesha Gellman. "El Salvador voters set to trade democracy for promise of security in presidential election." *The Conversation.* 29 January 2024. https://theconversation.com/el-salvador-voters-set-to-trade-democracy-for-promise-of-security-in-presidential-election-221092
[21] "Testimonios: Sobrevivientes de las Cárceles del Régimen." A weekly series from *El Faro.* https://especiales.elfaro.net/es/testimonios/
[22] "El Silencio no es opción: Investigación sobre las practices de tortura, muerte, y justicia fallida el el regimen de excepción." 10 July 2024. Cristosal Foundation. https://cristosal.org/ES/presentacion-informe-el-silencio-no-es-opcion/

27. A 2024 Report on the Violation of the Right to Health in the Country's Penal Centers from the Human and Community Rights Defense Unit (UNIDEHC) found that upon arrival in prison, detainees under the State of Exception "were received by guards, where many of them were beaten to pressure them to declare which 'gang they belonged to,' and if they refused to say so, they were beaten and tortured more, some convulsed from the beatings they received and others died in these practices, on the first day of transfer."[23] In February 2025, the spokesperson for the organization who produced this report was arbitrarily detained during a raid on the organization's headquarters; Amnesty International concluded his detention was "particularly concerning, as he has been both a witness to and a denouncer of torture in penitentiary centers."[24]

28. The Human and Community Rights Defense Unit (UNIDEHC) also reported in 2024 after a round of interviews with a health professional who worked in a clinic that served some inmates from Mariona prison that inmates were "not provided with medication to treat their diseases that they already suffered from; for example: people with hypertension, diabetes, kidney failure, respiratory problems, among others. They did not receive medication, which caused decompensation and death in some cases. Guards were repeatedly asked for help when someone convulsed or felt ill, but they did not arrive until the following day, or the person's health became more complicated or they died, waiting for help from the prison authorities."[25]

29. Both the 2022 and 2023 U.S. State Department's Human Rights Report on El Salvador state that prison officials repeatedly denied access to the Salvadoran Human Rights Ombudsman's Office, the entity responsible for investigating accusations of human rights abuses in prison.[26]

30. In 2023, Bukele announced the opening of the new "mega-prison" called the *Centro de Confinamiento del Terrorismo* or CECOT. An analysis of the CECOT's design using satellite footage found that if the prison were to reach full supposed capacity of forty thousand, each prisoner would have less than two feet of space in shared cells—an amount the authors point out is less than half the space required for transporting midsized cattle under EU law.[27]

31. The U.S. State Department confirms that prisoners have been held in grossly overcrowded prisons with as many as 80 prisoners held in cells designed for just 12 so that they must sleep standing up.[28]

Systemic Torture as State Policy in Salvadoran Prisons

32. Although El Salvador is a signatory to both the Convention Against Torture and the International Covenant on Civil and Political Rights, Amnesty International has concluded that there is a

[23] Human and Community Rights Defense Unit (UNIDEHC). Violation of the Right to Health in the Country's Penal Centers. 2024. https://heyzine.com/flip-book/9849749093.html#page/1 p 17.
[24] "El Salvador: Repression against human rights defenders and community leaders." Amnesty International 5 March 2025. https://www.amnesty.org/en/documents/amr29/9100/2025/en/
[25]Human and Community Rights Defense Unit (UNIDEHC). Violation of the Right to Health in the Country's Penal Centers. 2024. https://heyzine.com/flip-book/9849749093.html#page/1
[26] "El Salvador 2022 Human Rights Report." U.S. Department of State. https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 4.
[27] Christine Murray, and Alan Smith.. "Inside El Salvador's mega-prison: the jail giving inmates less space than livestock." Financial Times, 6 March 2023. https://www.ft.com/content/d05a1b0a-f444-4337-99d2-84d9f0b59f95.
[28] "El Salvador 2022 Human Rights Report." U.S. Department of State. https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 6.

"systemic use of torture in Salvadoran prisons."[29] The organization notes with concern the three primary characteristics of the crisis: "1) the massive number of human rights violations being committed; 2) the high degree of state coordination in the design and implementation of this measure; and 3) a state response that tends to conceal and minimize these actions, refusing to recognize and diligently investigate the abuses."[30] They confirm that "torture and cruel, inhuman, and degrading treatment have become habitual practice rather than isolated incidents in the prisons."[31]

33. The range of violence occurring inside prisons in El Salvador at the hands of gangs and prison guards is acknowledged in the 2022 and 2023 U.S. State Department's Human Rights Reports on El Salvador; detainees are subject to beatings, waterboarding, and use implements of torture on detainees' fingers to try to force confessions of gang affiliation.[32] Likewise, family members of the detained have been threatened with arrest by security forces to "stop asking questions."[33]

34. A July 2024 report from Cristosal—compiled from 3,643 reports of abuses or rights violations, 110 interviews, case-by-case analyses of 7,742 detainees' experiences—concluded that "Torture has become a state policy, with cruel and inhuman treatment regularly practices in prisons and places of detention."[34]

35. Human Rights Watch conducted 90 interviews about human rights abuses under the State of Exception and published in July 2023 evidence of torture including suffocation, burning, and mock executions against children.[35] The report also found that authorities use abusive language and death threats when making arrests of children who are subjected to human rights violations before, during, and even after their release, and that "In many cases, authorities coerced children into making false confessions to crimes through a combination of abusive plea deals and sometimes mistreatment or torture."[36]

36. An extensive December 2022 investigative report by Human Rights Watch and Cristosal about the State of Exception found that "human rights violations were not isolated incidents by rogue agents. Rather, similar violations were carried out repeatedly and across the country, throughout a period of several months, by both the military and the police."[37]

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[29] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/
[30] Ibid.
[31] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/ p 33.
[32] "El Salvador 2022 Human Rights Report." U.S. Department of State. https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 5; "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 2, 15.
[33] Ibid.
[34] "El Silencio no es opción: Investigación sobre las practices de tortura, muerte, y justicia fallida el el regimen de excepción." 10 July 2024. Cristosal Foundation. https://cristosal.org/ES/presentacion-informe-el-silencio-no-es-opcion/
[35] Human Rights Watch. "Your Child Does Not Exist Here: Human Rights Abuses Against Children Under El Salvador's 'State of Emergency.'" 16 July 2024. https://www.hrw.org/report/2024/07/16/your-child-does-not-exist-here/human-rights-abuses-against-children-under-el
[36] Ibid. p 2.
[37] Human Rights Watch and Cristosal. "We Can Arrest Anyone We Want": Widespread Human Rights Violations Under El Salvador's "State of Emergency." 7 December 2022, https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el; The Minister of Security is determined to see the number of arrests rise. See: Mario Gonzalez. "Security Minister wants to imprison 80,000 gang members." *El Diario de Hoy.* 17 June 2022. https://www.elsalvador.com/noticias/nacional/regimen-de-excepcion-ministro-gustavo-villatoro/968181/2022/

37. In some cases, many inmates are punished if one does not obey the guards' orders. UNIDEHC found in an interview with a health professional who had worked at Mariona prison, "In some cells, when an order of the guards or person was not obeyed, they were punished, some examples are: wetting all the people in the cell including their belongings with high-pressure hoses with ice cold water, invading the cell with tear gas; electric shocks, beatings with objects, confinement in the 'punishment cell,' where there were insects and animals (cockroaches, scorpions and mice)…[and] to deprive the right to food, use of the bathroom, and going out in the sunlight, for many days."[38]

38. Amnesty International confirms that "the grave human rights violations being committed under the state of emergency are systematic in nature due to the widespread and sustained manner in which they are occurring; the level of state organization and planning involving the convergence of the three branches of the state; the impunity and lack of accountability; the lack of transparency and access to information; and the widespread criminalization of poverty, as an aspect of discrimination."[39] This is not a matter of isolated acts of violence and torture but rather a coordinated dismantling of the rule of law and widespread practice of grave violations of human rights as the current norm.

39. A team of investigative journalists working to produce a report of human rights abuses under the State of Exception for an *Al Jazeera* documentary shared with me during my visit to El Salvador in early 2023 their preliminary findings, including an interview with an adolescent who had been released from Izalco prison who reported that there were daily beatings in prison, that "the guards would ignore people's requests for medical attention," that "guards would beat someone [un]til they were dead and then bring the body back into the cells and leave it there until the body started stinking," that food rations were so meager that they sometimes had to split one hard-boiled egg between two people for a meal, and that "usually the gang members in the cells would bully weaker people for their food." Former inmates revealed that tear gassing in the overcrowded prisons were so frequent that detainees would reserve one of the three small cups of water they usually received each day to flush their eyes after being gassed.[40]

40. Because the Salvadoran government has been actively attempting to conceal the human rights abuses occurring in prison, a team of investigative journalists at *El Faro* has been recording and publish weekly testimonies of individuals who survived incarceration under the State of Exception. These testimonies corroborate the reports cited above by confirming widespread torture including public beatings to death in front of other inmates, the deliberate withholding of medicine from sick inmates that has resulted in the need for appendages to be amputated, officials throwing prisoners' food on the ground so that inmates must lick the floor to survive, and guards knowing about but failing to take action to prevent some inmates from raping other inmates.[41]

41. Further testimonies gathered and published by the newspaper *El Pais* reveal practices such as prison officials in Izalco prison hosing down the floor of an overcrowded cell with water then

[38] Human and Community Rights Defense Unit (UNIDEHC). Violation of the Right to Health in the Country's Penal Centers. 2024. https://heyzine.com/flip-book/9849749093.html#page/1 p 18.
[39] "El Salvador: One year into state of emergency, authorities are systematically committing human rights violations." Amnesty International. 3 April 2023. https://www.amnesty.org/en/latest/news/2023/04/el-salvador-state-emergency-systematic-human-rights-violations/
[40] Mark Scialla, Salvadoran-based investigative journalist and director of documentary on human rights abuses under the State of Exception for *Al Jazeera* "Fault Lines." 28 February 2023, via message to Sarah Bishop.
[41] "Testimonios: Sobrevivientes de las Cárceles del Régimen." A weekly series from *El Faro.* https://especiales.elfaro.net/es/testimonios/

sending an electric current through the water to shock everyone inside, guards responding to inmates' pleas for medicine or food with beatings (sometimes to the point of death), and state officials' explicit threats to murder inmates and fabricate justifications, such as "I can shoot you right now and say you wanted to escape."[42]

42. El Salvador's government has repeatedly been accused of committing crimes against humanity. Zaria Navas, former Inspector General for the Salvadoran National Police and now head of Cristosal's Law and Security program, declared in June 2023 that due to the systemic and widespread human rights abuses committed during the State of Exception: "There is enough evidence for El Salvador to be tried for crimes against humanity."[43] Likewise, in July 2023, former Salvadoran Human Rights Ombudsman David Morales equated the abuses occurring in the prisons under the State of Exception with the 1932 genocide against the country's indigenous population and the atrocities committed during El Salvador's 1980-1992 civil war; like Navas, he described the government's actions as crimes against humanity.[44] More recently, in December 2024, Leonor Arteaga from the Due Process of Law Foundation concluded, "it is also likely that some of the torture enforced disappearances and extrajudicial executions that have been documented may constitute crimes against humanity which implies the existence of a plan or a policy to commit them involving a chain of command of government actors in El Salvador."[45]

Deaths in Prison

43. The deaths of around 375 incarcerated individuals since the start of the State of Exception have been recorded so far, but the human rights nongovernmental organization (NGO) Socorro Jurídico Humanitario that the actual number of deaths may exceed 1000 because of an estimated minimum of fifteen deaths per month that are not reported.[46]

44. In a sample of 100 cases of prison deaths that occurred during the first year of the State of Exception and for which a cause of death could be determined, Cristosal found through photographic, forensic, and testimonial evidence that 75% of the deaths were violent, probably violent, or with suspicions of criminality on account of a common pattern of hematomas caused by beatings, sharp object wounds, and signs of strangulation on the cadavers examined.[47] Others have died due to being denied medical care.[48]

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[42] David Marcial Pérez. "The rampant abuse in El Salvador's prisons: 'They beat him to death in the cell and dragged him out like an animal'." *El Pais.* 26 March 2023. https://english.elpais.com/international/2023-03-26/the-rampant-abuse-in-el-salvadors-prisons-they-beat-him-to-death-in-the-cell-and-dragged-him-out-like-an-animal.html

[43] Julia Gavarrete. "There is Enough Evidence for El Salvador to be Tried for Crimes Against Humanity." *El Faro*. 7 June 2023. https://elfaro.net/en/202306/el_salvador/26881/there-is-enough-evidence-for-el-salvador-to-be-tried-for-crimes-against-humanity#

[44] Lissette Lemus. "David Morales: Los Crímenes que está Cometiendo el Gobierno Actual son de Lesa Humanidad." *El Salvador.com*. 16 July 2023. https://www.elsalvador.com/noticias/nacional/capturados-cristosal-regimen-de-excepcion-breaking-news/1076092/2023/

[45] Leonor Arteaga. "The State of Exception in El Salvador: Taking Stock." Testimony before the United States Congress, Tom Lantos Human Rights Commission. 10 December 2024. https://www.youtube.com/watch?v=ChTW-gm-5SI

[46] Socorro Jurídico Humanitario (Humanitarian Legal Aid). 16 March 2025. https://x.com/SJHumanitario/status/1901454047162372257

[47] Cristosal (2023). One Year Under State of Exception: A Permanent Measure of Repression and Human Rights Violations. https://cristosal.org/EN/wp-content/uploads/2023/08/One-year-under-the-state-of-exception-1.pdf. Page 29.

[48] David Bernal. "Socorro Jurídico ya contabiliza 235 reos muertos bajo régimen de excepción en El Salvador." 24 February 2024. *La Prensa Grafica*. https://www.laprensagrafica.com/elsalvador/Socorro-Juridico-ya-contabiliza-235-reos-muertos-en-regimen-20240223-0089.html

45. The actual number of deaths is impossible to confirm because of the government's opacity on the matter.[49] Noah Bullock, the director of Cristosal, explains, "Our investigations demonstrate a clear pattern of torture within the prisons and so we don't discount that the number of people who have died in the State of Emergency could be much higher."[50] The Salvadoran state maintains that all prison deaths have been the result of natural causes despite forensic evidence to the contrary.[51]

46. The known death rate in Salvadoran prisons is around 70 times greater than the international violent death according to the United Nations' 2024 Global Prison Population report.[52]

47. The organization MOVIR (Movimiento de Victimas del Régimen de Excepción, or Movement of Victims of the Regimen of Exception) has corroborated that a considerable number of the deaths evaluated so far have been a result of physical attacks of various kinds carried out by state agents, in addition to "beatings inflicted by other prisoners with acquiescence of the prison authorities."[53]

48. The testimony of Professor Mario Alberto Martínez, who was arrested and detained after making a public statement denouncing the arbitrary detention of his daughter, includes the account of his being in a highly overcrowded cell where inmates were not allowed to speak or even to pray. When three boys were caught talking, the guards removed them from the cell and beat them until they appeared to be dead. Martinez reports that "people died every day" while he was in prison.[54]

49. Even the deaths described by medical legal obituaries as nonviolent have in some cases involved cadavers that show forensic evidence of torture. One 45-year-old man with an intellectual disability died in prison and was buried by the state in a mass grave with a legal obituary that showed he died from a "pulmonary edema." However, photographic evidence of the cadaver showed edemas of his face, and interviews with individuals detained in the same prison reveal that he was beaten so severely that he lost mobility including the ability to eat.[55] Others have been released from prison in such severe physical states that they have died within days of release because of injuries they sustained in prison; they are not counted among the numbers of deaths in prison.[56]

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[49] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/. p 33.
[50] "El Salvador's Prison State." *Fault Lines, Al Jazeera English*. May 24, 2023. https://www.aljazeera.com/program/fault-lines/2023/5/24/el-salvadors-prison-state
[51] Bryan Avelar. "Inmates in El Salvador tortured and strangled: A report denounces hellish conditions in Bukele's prisons." *El Pais*. 29 May 2023. https://english.elpais.com/international/2023-05-29/inmates-in-el-salvador-tortured-and-strangled-a-report-denounces-hellish-conditions-in-bukeles-prisons.html
[52] United Nations Office on Drugs and Crime (UNODC). "Global prison population and trends. A focus on rehabilitation." 15 August 2024. https://www.cdeunodc.inegi.org.mx/index.php/2024/08/15/global-prison-population-and-trends-a-focus-on-rehabilitation/; The figure of 366 deaths among an inmate population of 83,000 translates to a ratio of 404.82 deaths per 100,000, a rate 69.8 times greater than the international violent death rate of 5.8 per 100,000.
[53] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/. P 33.
[54] Williams Sandoval. ""Vi cuando llevaban gente tiesa; todos los días moría gente": así narra un profesor su paso por las cárceles del régimen de excepción." *La Prensa Grafica.* 14 June 2024. https://www.laprensagrafica.com/elsalvador/Vi-cuando-llevaban-gente-tiesa-todos-los-dias-moria-gente-asi-narra-un-profesor-su-paso-por-las-carceles-del-regimen-de-excepcion-20240614-0056.html
[55] Bryan Avelar. "Inmates in El Salvador tortured and strangled: A report denounces hellish conditions in Bukele's prisons." *El Pais*. 29 May 2023. https://english.elpais.com/international/2023-05-29/inmates-in-el-salvador-tortured-and-strangled-a-report-denounces-hellish-conditions-in-bukeles-prisons.html
[56] Cristosal. "One Year Under the State of Exception." May 2023. https://cristosal.org/EN/2023/08/17/report-one-year-under-the-state-of-exception/ p 53.

50. It sometimes takes several months for family members to learn of the death of a loved one in prison, as was the case for a 76-year-old woman who was arrested in April 2022, died while in custody the following November, and was buried in a mass grave. Her children were not advised of her death and continued to send care packages to the prison until February 2023 when a lawyer told them their mother would be released on bail if they paid $3,000. When they arrived at the prison to deliver one last care package before their mother's release, guards told them she had been dead for months.[57]

Governmental Attempts to Obscure the Visibility of Human Rights Violations

51. Public access to national data is a central tenet of democracy that has been severely curtailed under Bukele as a means of maintaining popularity while allowing widespread human rights abuses to be committed out of public view. The government of El Salvador is intentionally restricting access to previously publicly available information especially as related to the police and military, prisoners, and the judiciary. As a result, it is becoming increasingly difficult for academics, NGOs, and other governments to access the information and statistics that would reveal the full scope of the disregard for human rights taking place in El Salvador. To produce evidence that is statistically significant instead of just anecdotal in this repressive context requires a coordinated approach to identify patterns and fidelity among pockets of available data in the rapidly unfolding human rights crisis.

52. As I and my coauthors in a 2023 report in Columbia University's *Regional Expert Series* explain, President Bukele's government has attempted to prevent public knowledge of continuing and widespread human rights abuses through strategies that include (1) denying outsiders access to the prisons, including the Salvadoran Human Rights Ombudsman's Office; (2) criminalizing the media and threatening journalists; (3) subjecting family members of the detained to threats of arrest if they speak publicly of their loved ones' experiences; and (4) routinely charging that individuals and groups who expose the abuses associated with the State of Exception are supporters of gang members and terrorists, in some cases leading to their imprisonment.[58]

53. Though international NGOs have been working for all three years of the State of Exception to document and corroborate widespread claims of human rights abuses taking place in El Salvador, this work is made highly difficult and sometimes impossible by the government's resistance. As described by Amnesty International in December 2023, "It is not possible to obtain official statistics such as the number of prisoners, overcrowding rate at detention centres, deaths of prisoners, number of crimes, [and] whether abuses of force by public security agents are being recorded and disciplined, among other citizen security variables used to monitor and assess the security situation and state of emergency."[59] Likewise, clandestine graves discovered in El Salvador are deemed by Bukele's government as matters of national security and the identities of their contents classified.

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[57] "Relato: Las mentiras de un abogado y el deterioro en el penal le costaron la vida a Rosa." La Prensa Grafica. 11 February 2023. https://www.laprensagrafica.com/elsalvador/Relato-Las-mentiras-de-un-abogado-y-el-deterioro-en-el-penal-le-costaron-la-vida-a-rosa-20230210-0095.html

[58] Sarah Bishop, Tommie Sue Montgomery, and Tom Boermann. "Behind the Glowing Headlines: Social Science Analysis of the State of Exception in El Salvador" CeMeCA's Regional Expert Series No. 9, 2023.

[59] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/ p 64.

54. The State Department's 2023 Human Rights Report on El Salvador explicitly remarks on the invisibility of and lack of access to national data: "Human rights groups observed that the government increasingly declined to make public data for monitoring and analysis purposes. *Gato Encerrado,* an investigative newspaper, noted the government continued to expand the types of information it classified as confidential and not subject to public disclosure requirements."[60] Without reliable access to national data, neither the State Department nor any other concerned party can provide a more exhaustive view of country conditions that would be possible in more democratic contexts.

55. There are increasing instances of the government blatantly obscuring evidence of state violence. For example, the Attorney General of El Salvador claims to have investigated 143 deaths in prison during the State of Exception and found that every one of the 143 was due to pre-existing conditions or natural causes. However, the U.S. State Department Human Rights report released in 2024 offers evidence from sources including Socorro Jurídico Humanitario, Cristosal, and *El Pais* determining through forensic evidence dozens of violent deaths in prison including those where prison guards beat inmates to death.[61] What the U.S. State Department calls "systemic abuse in the prison system" is effectively denied by the Salvadoran State.

56. The government's clampdown on information related to human rights appears to be devolving. Whereas the 2022 U.S. State Department Human Rights report on El Salvador revealed that "The government reported varying numbers of disappearances and sporadically declined to provide media with numbers and additional data on disappearances, often claiming the statistics were classified,"[62] the report from the following year explains that the Minister of Justice and Public Security had announced the total suspension of investigations into disappearances.[63] These kinds of data would be more readily available in more democratic contexts and offer evidence of El Salvador's sharp democratic decline.

57. To create an illusion of improving country conditions with respect to gang violence, Bukele relies on rhetorical strategies that include selectively revealing and concealing national data.[64] The Inter-American Commission on Human Rights (IACHR) has criticized the Salvadoran State for "a lack of access to statistical data and official records on violence and crime from the Attorney General's Office and the Institute of Forensic Medicine, as well as other data from the PNC [National Civil Police], making it difficult to verify, contrast, and analyze information on citizen security."[65] IACHR notes the "absence of updated official data on incidents of injured or dead persons related to police or Armed Force officers that could be construed as human rights violations."[66] In other

[60] "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 27.
[61] Ibid, p 2.
[62] "El Salvador 2022 Human Rights Report." US Department of State https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 3.
[63] "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 4.
[64] Parker Asmann. "El Salvador to Omit Key Data from Official Homicide Tally." *Insight Crime*. 18 July 2019. https://insightcrime.org/news/brief/el-salvador-omit-key-data-homicides/; Sarah C. Bishop. "An Illusion of Control: How El Salvador's President Rhetorically Inflates His Ability to Quell Violence." *Journalism and Media*, *4*, no. 1 (2023): 16-29.
[65]Inter-American Commission on Human Rights. "Follow-up of Recommendations Issued by the IACHR in its Country or Thematic Reports: El Salvador." 2022. https://www.oas.org/en/iachr/docs/annual/2022/Chapters/12-IA2022_Cap_5_El_Salvador_EN.pdf. p 874.
[66] Ibid., p 876.

words, the state has repeatedly refused to provide the information that would be necessary to know the full scope of and prosecute instances of police and military violence.

58. Americas Director for Amnesty International Ana Piquer reported in March 2024 that "the denial, minimization and concealment of reported serious human rights violations reflect the government's unwillingness to fulfil its duty to respect and promote human rights in the country."[67] By strategically concealing both the nature and scope of human rights abuses taking place, the government of El Salvador has managed to mitigate international awareness.

Gang Activity During the State of Exception

59. Publicly visible gang activity outside the prisons has quieted during the State of Exception, though gang violence inside the prisons subsists.[68] Since 2004, a practice had been in place to hold members of the two most powerful gangs in El Salvador, MS-13 and Barrio 18, in separate prisons in a measure designed to prevent both rival inter-gang violence and violence between gang members and civilians. Former Salvadoran Security Minister Bertrand Galindo explained, "The point was that if we left them in the same facilities, with the level of violence that was occurring and the weakness of the infrastructure, the state was not going to be able to prevent them from killing each other."[69] Bukele changed this policy in 2020 and reaffirmed on Twitter during the opening of his new 2023 mega-prison that gang members would be mixed together and held for decades[70]—a change certain to result in violence between the gangs and indicative of the Salvadoran state's determination not to protect its detained citizens from harm at the hands of the gangs.

60. The high probability of violent gang activity in prisons during the State of Exception in El Salvador since the policy changed has been confirmed by a range of instances such as a January 2025 riot in Izalco prison in which active gang members mixed together in a cell with retired gang members reportedly attacked each other using iron bars they had removed from their beds, resulting in at least three deaths.[71] Two weeks after the riot, three inmates from Izalco prison died in hospitals; the families of the deceased were informed that the cause of their deaths was "illness." [72]

[67] Amnesty International. "El Salvador: The institutionalization of human rights violations after two years of emergency rule." 27 March 2024. https://www.amnesty.org/en/latest/news/2024/03/el-salvador-two-years-emergency-rule/
[68] "El Salvador 2022 Human Rights Report." U.S. Department of State. https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 5.
[69] Roberto Valencia. "How El Salvador Handed its Prisons to the Mara Street Gangs." *InsightCrime* 3 September 2014. https://insightcrime.org/news/analysis/how-el-salvador-handed-its-prisons-to-the-gangs/#:~:text=On%20September%202%2C%202004%20the,active%20gang%20members%20call%20pesetas.
[70] Bukele, Nayib (@NayibBukele). 2023. Twitter, February 24, 2023. Translated from Spanish by Sarah C. Bishop. https://twitter.com/nayibbukele/status/1629165213600849920.
[71] David Bernal, Cindy Castillo y Claudia Espinoza. "Pedirán una investigación por motín en penal de Izalco." *La Presna Grafica.* 10 January 2025. https://www.laprensagrafica.com/elsalvador/Pediran-una-investigacion-por-motin-en-penal-de-Izalco-20250110-0063.html
[72] Oscar Reyes. "Reos de penal de Izalco mueren en hospitals." 28 January 2025. *La Prensa Grafica.* https://www.laprensagrafica.com/elsalvador/Reos-de-penal-de-Izalco-mueren-en-hospitales-20250128-0083.html

61. Bukele's failure to protect detainees from gang violence has been widely criticized by human rights organizations. Director for the Americas at Human Rights Watch José Miguel Vivanco stated that not separating gang-affiliated detainees from each other or from other detainees showed the government's "wickedness and cruelty;"[73] the Human Rights Commission of El Salvador stated that the practice "carries a total risk of mutinies or selective or collective murders."[74] Still, much of the news reporting on Bukele's change in procedure referenced the country's general prison overcrowding, as though the move was an inevitable reality in a national context where the prison population was already double its stated capacity. The fact that Bukele reiterated his intention to mix gang members together in the announcement of the opening of the new mega-prison that was promised to solve the issue of overcrowding reveals this practice as a deliberate strategy in knowing acquiescence to the violence likely to result rather than an unfortunate necessity.

62. In practice, this means that Salvadoran citizens, many of whom have been arrested arbitrarily, continue to be victim to gang control and authority even while detained. In some prisons, MS-13 and Barrio 18 are designating leaders of crowded cells to set cell rules and determine who receives food and water. Breaking the gang's rules may result in physical beatings.[75]

Conclusion

63. Deportees who are imprisoned in El Salvador are highly likely to face immediate and intentional life-threatening harm at the hands of state actors and a secondary threat of violence from incarcerated gang members.

Signature

I declare under penalty of perjury that the foregoing is true and correct to best of my knowledge.

Signature

March 19, 2025

Date

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[74] Marcos González Díaz. "Bukele contra las maras: las impactantes imágenes con las que El Salvador anunció que juntó a presos de diferentes pandillas en las celdas para combatir la violencia." *BBC News Mundo.* 28 April 2020. https://www.bbc.com/mundo/noticias-america-latina-52450557

[75] Stephen Dudley et al. "El Salvador's (Perpetual) State of Emergency: How Bukele's Government Overpowered Gangs." December 2023. https://insightcrime.org/investigations/el-salvador-perpetual-state-emergency-how-bukele-government-overpowered-gangs/#:~:text=In%20March%202022%2C%20the%20government,suspected%20gang%20members%20and%20collaborators p 6.

EXHIBIT B

DECLARATION OF JUANITA GOEBERTUS,
DIRECTOR, AMERICAS DIVISION, HUMAN RIGHTS WATCH

I, Juanita Goebertus, declare the following under 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am the Director of the Americas Division of Human Rights Watch and have worked with the organization since 2022. I hold BAs in Law and Political Science from the Universidad de los Andes (Colombia) and an LLM from Harvard Law School. I oversee Human Rights Watch's work on El Salvador and have traveled to the country several times, most recently in 2024. I provide this declaration based on my personal knowledge and experience.
2. Individuals deported pursuant to the 1789 Alien Enemies Act have been sent to the Center for Terrorism Confinement, the Centro de Confinamiento del Terrorismo (CECOT) in Tecoluca, El Salvador. The prison was first announced for a capacity of 20,000 detainees. The Salvadoran government later doubled its reported capacity, to 40,000. As Human Rights Watch explained to the UN Human Rights Committee in July 2024, the population size raises concerns that prison authorities will not be able to provide individualized treatment to detainees, thereby contravening the UN Standard Minimum Rules for the Treatment of Prisoners.
3. People held in CECOT, as well as in other prisons in El Salvador, are denied communication with their relatives and lawyers, and only appear before courts in online hearings, often in groups of several hundred detainees at the same time. The Salvadoran government has described people held in CECOT as "terrorists," and has said that they "will never leave." Human Rights Watch is not aware of any detainees who have been released from that prison. The government of El Salvador denies human rights groups

access to its prisons and has only allowed journalists and social media influencers to visit CECOT under highly controlled circumstances. In videos produced during these visits, Salvadoran authorities are seen saying that prisoners only "leave the cell for 30 minutes a day" and that some are held in solitary confinement cells, which are completely dark.

4. While CECOT is likely to have more modern technology and infrastructure than other prisons in El Salvador, I understand the mistreatment of detainees there to be in large part similar to what Human Rights Watch has documented in other prisons in El Salvador, including Izalco, La Esperanza (Mariona) and Santa Ana prisons. This includes cases of torture, ill-treatment, incommunicado detention, severe violations of due process and inhumane conditions, such as lack of access to adequate healthcare and food.

5. Prison conditions in El Salvador should be understood within the context of the country's three-year-long state of emergency, which has suspended constitutional due process rights. Since the state of emergency was instituted in March 2022, security forces report detaining 85,000 people (the equivalent of 1.4% of the country's population). Although the government has denied Human Rights Watch information on the number of detainees it holds and its prison capacity, Human Rights Watch estimates based on official data that there are 109,000 people held in prisons with an official capacity for 70,000. Since the state of emergency was instituted, over 350 people have died in El Salvador's prisons according to Salvadoran human rights groups, including the organization Cristosal, which jointly authored our December 7, 2022 report on El Salvador's prisons titled, "We Can Arrest Anyone We Want" (hereinafter "We Can Arrest Anyone").[1]

[1] Human Rights Watch, *"We Can Arrest Anyone We Want": Widespread Human Rights Violations Under El Salvador's "State of Emergency"*, WWW.HRW.ORG, Dec. 7, 2022, https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el#3683 (last visited Mar. 19, 2025).

6. In July 2024, Human Rights Watch published a report on abuses committed against children during the state of emergency, titled "Your Child Does Not Exist Here." Over 3,300 children have been detained, many without any ties to gang activity or criminal organizations. Human Rights Watch documented 66 cases of children subjected to torture, ill-treatment and appalling conditions, including at times extreme overcrowding, unhygienic conditions, and inadequate access to food and medical care while in custody. In February, the Legislative Assembly approved a law ordering the transfer of children detained for organized crime offenses to the country's adult prison system, exposing them to a heightened risk of abuse and violating international juvenile justice standards.
7. For "We Can Arrest Anyone," and in "Your Child Does Not Exist Here," Human Rights Watch has interviewed more than 30 people released from El Salvador's prisons, including children, and dozens of people who have relatives in jail.[2] These interviews were conducted in person in several states in El Salvador or by telephone and corroborated by additional research and media reports.
8. One of the people we spoke with was an 18-year-old construction worker who said that police beat prison newcomers with batons for an hour. He said that when he denied being a gang member, they sent him to a dark basement cell with 320 detainees, where prison guards and other detainees beat him every day. On one occasion, one guard beat him so severely that it broke a rib.

[2] Human Rights Watch, "*Your Child Does Not Exist Here": Human Rights Abuses Against Children Under El Salvador's "State of Emergency"* , WWW.HRW.ORG, Jul. 16, 2024, https://www.hrw.org/report/2024/07/16/your-child-does-not-exist-here/human-rights-abuses-against-children-under-el (last visited Mar. 19, 2025).

9. The construction worker said the cell he was imprisoned in was so crowded that detainees had to sleep on the floor or standing, a description often repeated by people who have been imprisoned in El Salvador.

10. Another detainee we interviewed was held for two days in a police lock-up with capacity for 25 people, but he said that when he arrived, there were over 75 prisoners. He slept on the floor next to "the bathroom," a hole in the ground that smelled "terrible." He was sent in a group of other prisoners to Izalco prison on the third day, where they were ordered the group to take off their clothes. They were forced to kneel on the ground naked looking downwards for four hours in front of the prison's gate. Guards took the group to a room with five barrels full of water with ice, he said. Fifteen guards forced him and others to go into the barrels for around two hours in total, as they questioned them. The detainee was forced into a barrel "around 30 times," and was kept there for about a minute each time. Guards forced his head under water so he could not breathe. "I felt I was drowning," he said. Guards repeatedly insulted them, calling them "dogs" and "scum" and saying they would "pay for what [they] had done."

11. A third detainee held in prison in June 2022 described being sent to what he described as a "punishment cell." He said officers moved him and others there to "make room for other detainees." The new cell was constantly dark, detainees had to sleep standing due to overcrowding, and there was no regular access to drinking water.

12. For "We Can Arrest Anyone," Human Rights Watch and Cristosal gathered evidence of over 240 cases of people detained in prisons in El Salvador with underlying health conditions, including diabetes, recent history of stroke, and meningitis. Former detainees often describe filthy and disease-ridden prisons. Doctors who visited detention sites told

us that tuberculosis, fungal infections, scabies, severe malnutrition and chronic digestive issues were common.

13. Out of the estimated 350 detainees who have died in El Salvador's prisons, we documented 11 of these cases in detail in "We Can Arrest Anyone", based on interviews with victims' relatives, medical records, analysis by forensic experts, and other evidence.
14. In one case, a person who died in custody was buried in a mass grave, without the family's knowledge. This practice could amount to an enforced disappearance if authorities intentionally concealed the fate or whereabouts of the detainee.
15. In at least two other cases, officials appear to have failed to provide detainees the daily medication they required to manage underlying health conditions such as diabetes.
16. In at least four of the eleven cases, photographs of the bodies show bruises. Members of the Independent Forensic Expert Group (IFEG) of the International Rehabilitation Council for Torture Victims (IRCT), who reviewed the photos and other evidence in two of the cases, told Human Rights Watch and Cristosal that the deaths were "suspicious" given that the bodies "present multiple lesions that show trauma that could have been caused by torture or ill-treatment that might have contributed to their deaths while in custody."
17. In a separate Human Rights Watch report from February 2020, titled "Deported to Danger," Human Rights Watch investigated and reported on the conditions in Salvadoran prisons experienced by Salvadoran nationals deported by the United States.[3] In interviews with deportees and their relatives or friends, we collected accounts of three

[3] Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse*, WWW.HRW.ORG, Feb. 5, 2020, https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and (last visited Mar. 19, 2025).

male deportees from the United States who said they were beaten by police or soldiers during arrest, followed by beatings during their time in custody, which lasted between three days to over a year. During their time in prison, two of these individuals reported being kicked in the face and testicles. A third man described being kicked by guards in his neck and abdomen, after which he sustained injuries requiring an operation for a ruptured pancreas and spleen, month-long hospitalization, and 60 days of post-release treatment.

Executed on this 19th day of March, 2025 in Villa de Leyva, Colombia.

Signed by:
Juanita Goebertus
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JUANITA GOEBERTUS

EXHIBIT A

DECLARATION OF REBECCA HANSON,

ASSSISTANT PROFESSOR OF SOCIOLOGY AND CRIMINOLOGY AT THE UNIVERSITY OF FLORIDA

I, Rebecca Hanson, declare the following under 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

Summary

1. The Venezuelan gang Tren de Aragua ("TdA") is a loose, disorganized group. There is no evidence that the Maduro regime controls TdA or that the Maduro government and TdA are intertwined. Nor is there evidence that the Maduro regime has directed the TdA to enter the United States or directed any TdA activities within the country. Moreover, it has no structured presence in the United States, and its members cannot be identified using indicia like tattoos or hand gestures.

Qualifications

2. I received my Ph.D in Sociology from the University of Georgia in 2017. My doctoral dissertation was entitled "Civilian Policing, Sociality Revolution, and Violent Pluralism in Venezuela."

3. Currently, I am an Assistant Professor at the University of Florida. I have a joint appointment in the Departments of Sociology & Criminology and Law, and the Center for Latin American Studies. I am also the Director of the University of Florida's International Ethnography Lab. I am currently a visiting fellow at Harvard's David Rockefeller Center for Latin American Studies and Notre Dame's Kellogg Institute for International Studies.

4. I have received various grants and other funding related to my work on Venezuela, including from the Fulbright Association and Development Bank of Latin America. Through these grants, I have studied topics such as policing, gangs, politics, and incarceration in Venezuela.

5. I have published numerous peer reviewed articles covering topics from militarized policing, gangs and other armed actors in Venezuela, and the security policies of the governments of Hugo Chávez and Nicolás Maduro. My work has been published in the *Journal of Latin American Studies*; *Crime, Law, and Social Change*; and *Latin American Research Review*, among others. My newest book, Policing the Revolution: The Transformation of Coercive Power and Venezuela's Security Landscape During Chavismo, was published by the Oxford University Press in 2025.

6. I teach courses on Criminological Theory, Crime and Violence in Latin America, Gangs and Society, and Law and Order in Latin America.

7. My opinions derive from over a decade of studies that I have carried out specific to the topics of policing, violence, and gangs in Venezuela. Since 2010, I have conducted extensive, long-term ethnographic research and interviews with over 200 Venezuelan police officers as well as dozens of interviews with gang members and residents of communities where these gangs operate. I regularly collaborate with Venezuelan scholars who develop rigorous and reliable empirical research in that country.

8. Based on my experience, I have been asked to assess the government's description of the TdA and how it is identifying potential TdA members. My conclusions are set out below.

9. I have read the Proclamation and the Cerna Declaration (ECF No. 26) submitted in this case.

10. I provide this declaration based on my personal and professional knowledge.

Findings and Opinions

11. I have been closely following reporting and politicians' statements regarding recent deportations of Venezuelan migrants and claims about deportees being members of TdA. Most of the claims about Tren de Aragua, its relationship to the Maduro government, and its supposed presence within the United States lack credible evidence to substantiate them or completely contradict what empirical research has demonstrated.

12. The TdA is a relatively new gang that emerged in Tocorón prison around 2014. While there are no reliable estimates of current TdA membership, between 2014 and 2017 the gang most likely had at most 200 to 300 members. Given a current lack of rigorous research and verifiable data I am skeptical of the U.S. government's ability to correctly estimate current membership.

13. TdA does not act as the de facto government in any region of Venezuela.

14. TdA does not have political objectives, and is not an arm of the Maduro government.

15. The gang's established and existing revenue streams and criminal work is largely outside the United States. There is no evidence to suggest that drug or arms trafficking or transnational extortion are core sources of income for the group. The TdA is a relatively new gang with limited resources and therefore relatively limited capacity as compared to peer gangs.

16. The gang has become increasingly fragmented and decentralized since 2023, further limiting its capacity. That year the Venezuelan government began cracking down on TdA, including when they sent 11,000 soldiers to raid the Tocorón prison that had been a hub of TdA activity. Ultimately, the TdA is of modest prominence and is nowhere near as established as other gangs in Central and South America.

17. It is absolutely implausible that the Maduro regime controls TdA or that the Maduro government and TdA are intertwined. The relationship between the Maduro government and TdA is largely antagonistic. The relationship is best characterized as conflictive and competitive, with brief moments of coordination when the government and TDA benefit economically and politically from this coordination. For example, the government has, in the past, sometimes turned a blind eye to illicit activities in exchange for a reduction in visible criminal activity. But there are no clear, direct, and stable links between TdA and the Maduro government.

18. The government's proclamation mentions Tareck El Aissami. Mr. El Aissami has not been an important figure in the Maduro regime for the past several years. Maduro's government arrested Mr. El Aissami in April 2024 on charges that he was part of a scheme through which hundreds of millions of dollars in state oil proceeds seemingly disappeared. He remains incarcerated. At present, the relationship between Mr. El Aissami and the Maduro regime is conflictual and antagonistic.

19. There is no credible evidence that TdA has a foothold as a criminal organization within the United States. TdA activities are neither widespread nor coordinated within the United States. The profile of suspected TdA crimes in the United States do not indicate a systemic

criminal enterprise. Rather, the vast majority of arrests of suspected TdA members in the United States have been for crimes like shoplifting and cell phone robbery—crimes commonly handled by police departments.

20. Nor is there any credible evidence to establish that the Maduro regime has directed the TdA to enter the United States or directed any TdA activities within the country. Maduro simply does not control the gangs in Venezuela, TdA included. Moreover, there is no credible evidence that the migration of young Venezuelan men, with or without criminal records, to the United States has been directed by the Maduro government. Instead, research has found that this migration is the result of the horrific economic and humanitarian crisis that began in 2014 and left many families in the country without access to food, healthcare, water, and electricity. Human rights organizations have also found that police abuse and repression and human rights violations have played a role in some Venezuelans' decisions to migrate.

21. There is currently no credible way to link Venezuelan migrants in the United States to TdA. The methods identified by the government are not reliable.

22. Tattoos are not a reliable way to identify members of the group. The TdA, and gangs more generally in Venezuela, do not have a history of using tattoos to indicate membership. Indeed, no credible scholarship or studies of gangs in Venezuela indicate tattooing as a shared common practice among gang members. TdA members may, of course, have tattoos, but this is not part of a collective identity. In fact, many young Venezuelans who have no association with the TdA individually opt for personal tattoos based on personally meaningful symbols or popular culture iconography. The government's reliance on tattoos appears to result from an incorrect conflation of gang practices in Central America and Venezuela. In countries

like El Salvador and Honduras, gangs have long used tattoos to indicate membership and identity.

23. Hand gestures are also not a credible way to identify the TdA. There are no formal hand gestures associated with the group. Overall, I am aware of no iconography or unifying cultural motifs, such as symbols, insignias, logos, notations, graffiti tags, music, or drawings associated with it. Nor does the gang have a typical manner of dress. Other gangs in Central and South America might have certain hand gestures, symbols, or dress associated with them, but not the TdA.

24. I have reviewed law enforcement bulletins provided to me through a Freedom of Information Act request by the nonprofit Property of the People. These documents indicate various tattoos that law enforcement agencies believe to be associated with TdA. Far from being indicative of TdA members, the tattoos identified were merely representative of the cultural milieu of poor and working-class neighborhoods in Venezuela. For example, the government highlighted tattoos with the phrase "Real Hasta la Muerte." That is an album by a Puerto Rican rapper that is popular in Venezuela. The bulletin from the Chicago Homeland Security Investigations Office also said that wearing a Chicago Bulls basketball jersey, especially a Michael Jordan jersey, was an identifier of TdA. But NBA basketball—and Michael Jordan in particular—are very popular in Venezuelan culture. Venezuelans also take great pride when their fellow Venezuelans are on U.S. professional sports teams, especially baseball and basketball teams. Using sports attire from U.S. professional sports teams with Venezuelan nationals on them to identify TdA membership is simply not credible.

25. The government has also stated it uses previous criminal records to identify TdA members in the United States. However, the U.S. government has no reliable access to criminal records within Venezuela. Given the current contentious relationship between the U.S. and Venezuelan governments, it is implausible that Venezuelan security institutions would share these records with ICE or other police departments in the United States.

26. Indeed, statements made by ICE demonstrate an alarming unfamiliarity with the TdA. For example, on March 21, 2025, ICE agents announced they had arrested two TdA gang members from Venezuela that had been hiding in the U.S. since 2003.[1] However, the assertion that TdA gang members have been in hiding in the U.S. since 2003 is illogical given that TdA did not exist until 2014.

27. At bottom, the TdA is a loose, disorganized group that has weakened significantly since 2023. It is not acting at the direction of the Maduro regime, it has no structured presence in the United States, and its members cannot be identified using indicia like tattoos or hand gestures.

28. Finally, individuals who are erroneously labeled as TdA members face enormous risk if they are returned to Venezuela. Being labeled as a TdA associate puts that person in grave danger because they may be targeted by police and other gang members.

Executed on 27th of March, 2025, in Notre Dame, Indiana.

DocuSigned by:
Rebecca Hanson
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Rebecca Hanson

[1] *See* ICE, X.com (Mar. 21, 2025), *available at* https://x.com/ICEgov/status/1903250363332903128.

EXHIBIT B

DECLARACION DE ANDRES ANTILLANO,

PROFESOR ASISTENTE Y JEFE DE CATEDRA DE CRIMINOLOGIA,
UNIVERSIDAD CENTRAL DE VENEZUELA

Yo, Andrés Antillano, declaro lo siguiente de conformidad con 28 U.S.C. § 1746, and declaro bajo pena de perjurio que lo siguiente es verdadero y correcto según mi leal saber y entender:

Calificaciones:

1. Soy psicólogo social con posgrado en Criminología de la Universidad de Barcelona. Nací y vivo en Caracas, Venezuela.

2. Actualmente, soy profesor asistente de la Universidad Central de Venezuela en la Facultad de Derecho y Ciencias Políticas. También soy Jefe de Cátedra de Criminología en la Escuela de Derecho de la UCV. He trabajado como profesor desde 2002.

3. Enseño diversos cursos que tienen que ver con temas de pandillas, encarcelamiento y criminología en Venezuela. También he impartido un seminario destinado a gerentes y oficiales superiores del Consejo General de Policía, Policía Nacional Bolivariana y Universidad Nacional de la Seguridad.

4. Al mismo tiempo, también trabajo como investigador del Instituto de Ciencias Penales y Jefe de la Sección de Criminología, y soy coordinador del Grupo de Trabajo de Fuerzas de Seguridad, Agencias de Control y Mercados Ilegales del Consejo Latinoamericano de Ciencias Sociales.

5. He recibido financiación de numerosas fuentes, entre ellas Open Society, Colectivo de Estudios Drogas y Derecho del Washington Office on Latin America, Corporación Andina de Fomento, Fundación Rosa de Luxemburgo-Región Andina, Fundación Paz y Reconciliación Proyecto.

6. He publicado más de 50 artículos y capítulos de libros sobre sobre pandillas, crimen organizado, migración y prisiones, incluso en la *Revista Venezolana de Economía y Ciencias Sociales* y *Political Geography*. Mi libro más reciente, titulado *Carceral Communities in Latin America*, recoge investigaciones sobre pandillas carcelarias y gobiernos criminales en distintos países de América Latina.

7. La mayor parte de mi trabajo ha sido en Venezuela. Pero también me desempeñé como investigador invitado en Rice University, profesor invitado o presentador para seminarios y conferencias en Harvard University, New York University, Pomona College, and Tulane University.

8. He leído la Proclamación y la Declaración de Cerna (ECF No. 26) presentadas en este caso. Proporciono esta declaración basada en mis conocimientos personales y profesionales, y mi revisión de estos documentos.

9. Mis opiniones de derivan de más de una década de estudios que he realizado sobre pandillas, crimen organizado, migración y prisiones. He realizado más de 100 entrevistas con miembros de pandillas en Venezuela, con informantes claves sobre dinámicas de pandillas y con miembros con el régimen de Maduro, así como trabajo etnográfico en prisiones y en zonas bajo control de pandillas tanto en Venezuela como en países vecinos. Con base en mi experiencia, se me ha pedido que evalúe la descripción que el gobierno hace del Tren de Aragua y cómo identifica a sus posibles miembros. Mis conclusiones se exponen a continuación.

Opiniones

10. El Tren de Aragua no es una organización altamente estructurada, centralizada, con líneas de mando y membresía claramente definidas. Los niveles mayores de estructuración se dieron durante la última década en el estado Aragua, donde las bandas que operaban en distintas localidades se coordinaban con la prison gang que controlaba el penal de Tocorón.

11. Sin embargo, en septiembre de 2023 este penal es intervenido por fuerzas militares venezolanas. Desde ese momento, el papel de coordinación de este grupo parece haberse debilitado, en la medida en que deben preocuparse por su sobrevivencia frente a la persecución y golpes de los cuerpos de seguridad de toda la región y han perdido uno de sus instrumentos principales para coordinar e imponer acciones, la prisión, por lo que los grupos locales actúan con aún mayor autonomía e independencia.

12. No hay evidencia de que el Tren tenga una gran presencia en los EEUU.

13. Como mencioné, actualmente el Tren es un grupo descentralizado y descoordinado. No hay evidencia de que el Tren mantenga conexiones estables con el estado venezolano ni de que el régimen de Maduro dirija sus acciones hacia los EEUU.

14. Por las mismas razones señaladas al inicio, el Tren de Aragua nunca ha tenido una membresía definida, ni ritos de iniciación o marcas de identidad como tatuaje que identifiquen a sus miembros, a diferencia de otras organizaciones como las maras centroamericanas o algunas gangs étnicas en EEUU. Los tatuajes son populares entre jóvenes venezolanos y no tienen ninguna relación con la pertenencia a alguna organización criminal ni subcultura específica. No hay ningún símbolo gráfico que identifique al Tren de Aragua ni a sus miembros. Tampoco hay evidencia que el grupo tiene ciertas reglas fijas, una constitución o certificados de membresía.

Ejecutado el 27 de marzo, 2025, en Caracas, Venezuela.

Firmado por:
Andres Santillano
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Andrés Antillano

DECLARATION OF ANDRES ANTILLANO,
ASSISTANT PROFESSOR AND HEAD OF THE CRIMINOLOGY DEPARTMENT,
CENTRAL UNIVERSITY OF VENEZUELA

I, Andrés Antillano, declare the following pursuant to 28 U.S.C. § 1746, and declare under the penalty of perjury that the following is true and correct to the best of my knowledge and belief:

Qualifications:

1. I am a social psychologist with a postgraduate degree in Criminology from the University of Barcelona. I was born and live in Caracas, Venezuela

2. I am currently an assistant professor at the Central University of Venezuela in the Department of Law and Political Science. I am also the Head of the Criminology Department at the UCV School of Law. I have worked as a professor since 2002.

3. I teach various courses related to gangs, incarceration, and criminology in Venezuela. I have also taught a seminar for managers and senior officers of the General Police Council, the Bolivarian National Police, and the National University of Security.

4. At the same time, I also work as an investigator at the Institute of Criminal Sciences and Head of the Criminology Section, and I am the coordinator of the Working Group on Security Forces, Control Agencies, and Illegal Markets of the Latin American Council of Social Sciences.

5. I have received funding from numerous sources, including Open Society, the Washington Office on Latin America Drug and Law Studies Collective, the Development Bank of Latin America, the Rosa Luxemburg Foundation-Andean Region, and the Peace and Reconciliation Project Foundation.

6. I have published more than 50 articles and book chapters on gangs, organized crime, migration, and prisons, including in the *Venezuelan Journal of Economics and Social Sciences* and *Political Geography*. My most recent book, titled *Carceral Communities in*

Latin America, compiles research on prison gangs and criminal governments in various Latin American countries.

7. Most of my work has been in Venezuela. However, I have also served as a visiting researcher at Rice University, and as a visiting professor and presenter for seminars and conferences at Harvard University, New York University, Pomona College, and Tulane University.

8. I have read the Proclamation and the Cerna Declaration (ECF No. 26) presented in this case. I provide this statement based on my personal and professional knowledge and my review of these documents.

9. My opinions derive from more than a decade of research I have conducted on gangs, organized crime, migration, and prisons. I have conducted over 100 interviews with gang members in Venezuela, with key informants on gang dynamics, and with members within the Maduro regime, as well as ethnographic work in prisons and gang-controlled areas both in Venezuela and neighboring countries. Based on my experience, I have been asked to evaluate the government's description of Tren de Aragua and how it identifies potential members. My findings are presented below.

Opinions

10. Tren de Aragua is not a highly structured, centralized organization with clearly defined lines of command and membership. The greatest levels of structuring have arisen during the last decade in the state of Aragua, where gangs operating in different locations coordinated with the prison gang that controlled the Tocorón prison.

11. However, in September 2023, this prison was taken over by Venezuelan military forces. Since then, the group's coordinating role appears to have weakened, as they must worry about their survival in the face of persecution and attacks from security forces throughout the region and they have lost one of their main instruments for coordinating and

enforcing actions, the prison, for this reason the local groups operate with even greater autonomy and independence.

12. There is no evidence that Tren [de Aragua] has a significant presence in the US.

13. As I mentioned, Tren [de Aragua] is currently a decentralized and uncoordinated group. There is no evidence that the Tren maintains stable connections with the Venezuelan state or that the Maduro regime directs its actions toward the United States.

14. For the same reasons noted at the beginning, Tren de Aragua has never had a defined membership, nor initiation rites or identity marks such as tattoos that identify its members, unlike other organizations such as Central American gangs or some ethnic gangs in the United States. Tattoos are popular among young Venezuelans and have no connection to belonging to a specific criminal organization or subculture. There is no graphic symbol that identifies Tren de Aragua or its members. There is also no evidence that the group has certain fixed rules, a constitution, or membership certificates.

CERTIFICATE OF TRANSLATION

I, Talia Roma, certify that I am fluent in both English and Spanish and that I have translated the foregoing declaration from Andres Antillano, faithfully and accurately, from Spanish into English. I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Dated: March 27, 2025

Talia Roma
Paralegal
American Civil Liberties Union Foundation
Immigrants' Rights Project
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(412) 626-1379
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EXHIBIT J

DECLARATION OF STEVEN DUDLEY,
CO-DIRECTOR OF INSIGHT CRIME

1. I, Steven Dudley, am the Co-Director of InSight Crime. If called to testify, I could and would do so as follows:

Summary

2. The Venezuelan gang Tren de Aragua is a dangerous transnational gang but has little substantial U.S. presence. In fact, the U.S. government has yet to share any evidence to show that the gang has a structured or operational presence inside the United States, or that it is operating in any coherent or collective fashion across the U.S. Nor have we seen evidence that the Maduro regime is communicating with or directing any Tren de Aragua leaders or any Tren de Aragua activity in the United States, much less that the regime is directing young Venezuelan men to migrate to the United States. Although the Venezuelan government operates as a criminal hybrid state (a term of art I explain below) with ties to many criminal organizations present there, Tren de Aragua, as currently constituted, does not have substantial connections with the Venezuelan state anywhere it operates.

Qualifications

3. I have been asked to provide an expert opinion on aspects of Tren de Aragua in the United States. I have read the Proclamation and the Cerna Declaration (ECF No. 26) submitted in this case. I make this declaration based on my personal and professional knowledge, my skill, experience, training, and education, and facts and data regularly relied upon in my field that are currently available to me. The opinions in this declaration are my own.

4. Appendix A is a true and correct copy of my curriculum vitae.

5. InSight Crime is a think tank with offices at American University in Washington, D.C., and Medellín, Colombia. We specialize in investigating and analyzing organized crime in the Americas and assessing State efforts to combat these organizations, offering a diverse set of perspective on these topics.[1] InSight Crime is the leading source for investigation, reporting, analysis, and training targeted to meet the needs of academics, researchers, policymakers and analysts, journalists, NGOs, and law enforcement and government officials tackling the problems posed by organized crime and drug trafficking throughout the region. InSight Crime has done numerous projects for the U.S. government, including several concerning Venezuela and its multiple non-state criminal groups such as Tren de Aragua. Our open-source reporting reaches between 300,000 and 400,000 readers every month, and our material is routinely cited, quoted, and reprinted in major media outlets. We have been doing this for 15 years. Our coverage has been recognized through awards including, most recently, a special citation by the Columbia Journalism School for coverage of Latin America, the Ortega & Gasset award for best investigative story, and two Simón Bolívar awards for investigative stories.

6. I hold a master's degree in Latin American Studies from the University of Texas at Austin. I have a bachelor's degree in history from Cornell University in Ithaca, New York. I am a Senior Fellow at American University's Center for Latin American and Latino Studies and a former fellow at the Woodrow Wilson International Center for Scholars in Washington, D.C.

7. I lived in Guatemala from 1991 to 1992, in Brazil in 1993 and in 1998, and in Colombia off-and-on for nearly ten years beginning in 1995 and ending in late 2007. I have

[1] For more information, *see* insightcrime.org.

traveled to many parts of Latin America during my 30 years as a journalist and investigator in the region, including to Venezuela on dozens of occasions. During that time period, I worked for media organizations like the *Miami Herald,* the *Washington Post*, National Public Radio, the *Economist*, and the British Broadcasting Corporation (BBC), among others. I am a member of the International Consortium of Investigative Journalists and was a Knight Fellow at Stanford University.

8. In addition to my work for media and InSight Crime, I wrote a book concerning the Revolutionary Armed Forces of Colombia (FARC) guerrillas that was published in English (*Walking Ghosts* - Routledge 2004) and Spanish (*Armas y urnas* - Grupo Planeta 2008), and a book on the MS-13 gang (*MS-13: The Making of America's Most Notorious Gang* – HarperCollins 2020), which won the Lucas Prize for book in progress. I have also published reports on drug trafficking and organized criminal networks in Central America and Mexico for policy groups such as the Woodrow Wilson International Center for Scholars, the International Crisis Group, and the Migration Policy Institute.

9. As part of my work at InSight Crime, I do regular trips to the region and am in nearly constant contact with government authorities, media partners, correspondents, academics, and other investigators throughout the region, including with our team of correspondents in Venezuela. In all, I have made more than 100 trips to the region since I became co-founded InSight Crime in 2010.

10. I focus a lot of this work on trying to understand how international criminal organizations operate, including prison gangs. In 2012-2013, for example, I went to Ciudad

Juárez, Mexico, to investigate and write about the prison gang known as Barrio Azteca.[2] The gang had operations inside and outside the prison system and had expanded across the US-Mexico border. They also worked with corrupt police.

11. In 2016, I directed a year-long investigative project on prisons in the region financed by the National Endowment for Democracy (NED).[3] For that project, we studied the way prison gangs operated in five countries.[4] We entered prisons in the countries I studied and spoke to those on the inside, including the heads of the gangs. Each of the prison gangs in question had operations inside and outside the prisons, including criminal enterprises that involved prison guards and police.

12. In 2014, I became the co-principal of a two-year project funded by the U.S. Department of Justice's National Institute for Justice on the MS-13.[5] Our goal was to study the gang through various academic instruments and field research in three different geographic areas: Washington, D.C., Los Angeles, and El Salvador. For this project, I traveled to El Salvador several times and met with active members of the MS-13 inside jails.

13. In 2018, I was the co-principal of a U.S. State Department-funded project that is focused on criminal dynamics in Brazil, Argentina, and Paraguay. As part of this project, I

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[2] *See* Steven Dudley, "Barrio Azteca Gang Poised for Leap into International Drug Trade," InSight Crime (Feb. 13, 2013), https://insightcrime.org/investigations/barrio-azteca-gang-poised-leap/

[3] NED is a private foundation, funded mostly by the U.S. Congress, that finances projects worldwide that support democracy. See https://www.ned.org/about/.

[4] *See* "The Prison Dilemma," a special project financed by the National Endowment for Democracy, https://insightcrime.org/investigations/the-prison-dilemma-in-the-americas/.

[5] *See* description of project: https://www.american.edu/centers/latin-american-latino-studies/transnational-criminal-capacity-of-ms-13.cfm.

worked with experts and investigators in Brazil. I also traveled to Brazil, where I went inside several prisons. Our focus of the Brazil research is the Primeiro Comando da Capital (PCC), or First Capital Command, which is the region's largest prison gang.

14. Since 2018, I have assisted with InSight Crime's work on Venezuela, which is also funded by the U.S. State Department. The project has mapped the criminal ecosystem of that country. InSight Crime has worked with dozens of its correspondents, as well as independent investigators and civil society organizations, to provide the world's most comprehensive database and repository of organized crime groups in Venezuela.

15. I have been asked to provide an expert opinion on the threat of Tren de Aragua in the United States. I make this declaration based on my personal and professional knowledge, my skill, experience, training, and education, and facts and data regularly relied upon in my field that are currently available to me in large part because of the ongoing work we have in Venezuela.

TREN DE ARAGUA

16. I have studied organized crime in Venezuela for the last 25 years. I am very familiar with the origins of Tren de Aragua in Venezuela and its activities both there and in other parts of South America. I am also familiar with what is now the limited reach of Tren de Aragua in the United States, in part because we at InSight Crime have also reported on this extensively over the last year.

17. I have reviewed the March 15, 2025-Proclamation entitled Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua. In it, the President uses the term "hybrid criminal state" to describe the relationship between Venezuela and Tren de Aragua. The Proclamation indicates that the Venezuelan state has weaponized Tren

de Aragua to "invade, attempt to invade, and threaten to invade the [United States]," to "perpetrate[] irregular warfare within the [United States]," and to "use[] drug trafficking as a weapon against our citizens."

18. That characterization of the relationship between the Venezuelan state and Tren de Aragua as it relates to its activities in the United States is simply incorrect.

19. While InSight Crime has characterized the Venezuelan government as a "hybrid criminal state," we use that term to refer to how the Venezuelan government has, at times, worked with militia groups, Colombian guerrilla organizations, and organized crime groups inside Venezuela to further its own economic, political, and social agenda. In practice, for example, state security forces may permit a group to operate in a particular area; in exchange, the group maintains social and political control in a way that favors the government. In some instances, these arrangements may also include monetary or other economic exchanges between the sides. In other instances, it may just be a promise to control violence in return for free reign over the criminal economies in these areas. These arrangements are made most notably with more overtly political groups or guerrilla groups that have often veered into criminal activities, but sometimes they are made with criminal organizations or prison gangs.

20. Because the Maduro regime's power is fragmented and these criminal groups are broken into semi-independent factions, these arrangements are not uniform nor established for any set time periods. For example, they can take place with one bloc of the state even while another bloc actively opposes a criminal group. The agreements are also volatile and often contingent on personal and political affinities. When one side is no longer served by an agreement, for instance, it can devolve into open fighting between the group and Venezuelan

security forces. We have even identified instances in which one part of a criminal group is fighting with the government while another part of the same criminal group is working alongside it.

21. Currently, Tren de Aragua does not appear to be actively connected to the Venezuelan government in any sustained fashion. In fact, most of the Maduro regime's interaction and coordination occurs with militias, guerrilla groups, and criminal organizations aside from Tren de Aragua. A good comparative example of those other groups are the *colectivos* (collectives), which are a disparate network of grassroots, left-wing political militias that are trained, financed, and armed by the state and act as political shock troops. Unlike the colectivos, Tren de Aragua is not trained, financed, or armed by the state. And the state's interaction with Tren de Aragua is quite minimal as compared to those same colectivos.

22. Much of this can be traced back to 2023, when it emerged that the Venezuelan government had begun a corruption investigation into then-Oil Minister Tareck El Aissami. As noted in the Proclamation, El Aissami was the highest-level government patron of Tren de Aragua. The impact of the corruption investigation, however, was substantial. In March 2023, El Aissami resigned his ministry post. In September 2023, the Venezuelan government raided the Tocorón prison, during which Venezuelan military forces dismantled what was then Tren de Aragua's headquarters. Its leader fled the prison, most likely prior to the raid, and since 2023, the group has become more dispersed and holds less sway in the areas where it is present in Venezuela. And in April 2024, the government announced it had arrested El Aissami.

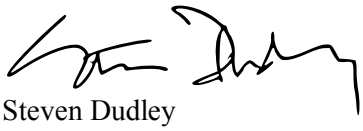
23. In our investigations over the period in which the prison gang has operated, we have never seen Tren de Aragua deployed by the Venezuelan government in a concerted or

military fashion. Tren de Aragua is not a militia or paramilitary group like the colectivos, nor is it a mercenary group associated with the Venezuelan government in the style of the once-vaunted Wagner group from Russia. In other words, it is not an arm of the Venezuelan government. And we have seen no evidence that the Maduro regime has directed Tren de Aragua to migrate to the United States or to commit any crimes within the United States. To be sure, in recent months the Venezuelan government has assisted in capturing members of Tren de Aragua in other countries, most notably in Colombia.

24. That is not to diminish the threat Tren de Aragua poses as a criminal gang operational in Venezuela and other parts of South America, which we have documented in numerous in-depth reports from Colombia, Peru, and Chile. However, although Tren de Aragua is undoubtedly a powerful criminal organization in Venezuela and some other parts of South America, there is no evidence of a structured or operational presence in the United States and no evidence of the Maduro regime communicating with it or any purported leaders, or directing it or any purported leaders to commit crimes in the U.S.

25. Finally, a word about identification of Tren de Aragua members. As noted, I have extensive experience studying street and prison gangs. Some of them do have tattoos that indicate gang affiliation. As of this writing, Tren de Aragua does not have any such tattoos. What's more, even gangs that once used tattoos to identify themselves have moved away from them precisely because they help law enforcement identify them. Therefore, using tattoos as a means of identifying Tren de Aragua members does not seem to me to be a reliable means of identifying them.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.



Steven Dudley
Co-director, InSight Crime
March 28, 2025

EXHIBIT S

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*, *Plaintiffs*, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, *Defendants*.	Case No: 1:25-cv-00766-JEB

DECLARATION OF OSCAR SARABIA ROMAN

I, Oscar Sarabia Roman, declare as follows:

1. I am over eighteen years of age, and I am competent to make this declaration.
2. I am a lawyer at the American Civil Liberties Union Immigrants' Rights Project (IRP). I represent the Plaintiffs in this case.
3. Upon information and belief, Defendants are using the "Alien Enemy Validation Guide," the "Verification of Removal," and the "Notice and Warrant of Apprehension and Removal Under the Alien Enemies Act" forms to determine whether Venezuelan noncitizens are members of Tren de Aragua and subject to summary removal under the Alien Enemies Act.
4. Attached hereto as exhibits are true and correct copies of the following:

Exhibit	**Document**
1.	"Alien Enemy Validation Guide," "Verification of Removal," and "Notice and Warrant of Apprehension and Removal Under the Alien Enemies Act" Transcription
2.	Dep't of Homeland Sec., Homeland Sec. Investigations, Assessment Report of Analysis (HSI-CHI-24-455)

3. Dep't of Homeland Sec., U.S. Border Patrol, Situational Awareness: TDA Gang Recognition Indicators (Oct. 2, 2023).

4. Syra Ortiz Blanes, Veronica Egui Brito & Claire Healy, *Trump Sent These Venezuelans to El Salvador Mega Prison. Their Families Deny Gang Ties*, Miami Herald (Mar. 18, 2025), *available at* https://www.miamiherald.com/news/local/immigration/article302251339.html.

5. Didi Martinez, Daniella Silva & Carmen Sesin, *Families of Deported Venezuelans Are Distraught Their Loved Ones Were Sent to El Salvador*, NBC News (Mar. 19, 2025), *available at* https://www.nbcnews.com/news/us-news/families-deported-venezuelans-are-distraught-loved-ones-sent-el-salvad-rcna196950.

6. Jazmine Ulloa & Zolan Kanno-Youngs, *Trump Officials Say Deportees Were Gang Members. Few Details Were Disclosed*, N.Y. Times (Mar. 18, 2025), *available at* https://www.nytimes.com/2025/03/18/us/trump-deportations-venezuela-gang.html.

7. Annie Correal, *Venezuelan Families Fear for Relatives as Trump Celebrates Deportations*, N.Y. Times (Mar. 16, 2025), *available at* https://www.nytimes.com/2025/03/16/world/americas/el-salvador-venezuela-deportations-families.html.

8. Sarah Kinosian & Kristina Cooke, *Relatives of Missing Venezuelans Desperate for Answers After US Deportations to El Salvador*, Reuters (Mar. 17, 2025), *available at* https://www.reuters.com/world/americas/relatives-missing-venezuelan-migrants-desperate-answers-after-us-deportations-el-2025-03-17/.

9. Camilo Montoya-Galvez, *Trump Invokes 1798 Alien Enemies Act, orders deportation of suspected Venezuelan gang members*, CBS News (Mar. 16, 2025), *available at* https://www.cbsnews.com/news/trump-invokes-1798-alien-enemies-act/.

10. Tim Padgett, *Was a Venezuelan Deported as a Terrorist Because of a Tattoo Celebrating His Child*, WLRN (Mar. 19, 2025), *available at* https://www.wlrn.org/immigration/2025-03-19/venezuelan-deportation-trump-tren-de-aragua-tattoo.

11. Veronica Egui Brito, *Despite Refugee Status in the U.S., Young Venezuelan Was Deported to Salvadoran Prison*, Miami Herald (Mar. 21, 2025), *available at* https://www.miamiherald.com/news/local/immigration/article302464134.html.

12. Kelby Vera, *Gay Venezuelan Makeup Artist Deported Without Due Process*, Huff Post (Mar. 23, 2025), *available at* https://www.huffpost.com/entry/gay-venezuelan-makeup-artist-deported_n_67e05688e4b0dbd2dbaf96f5.

13. Patrick J. McDonnell et al., *They Were Called Gang Members and Deported. Families*

Say Their Only Crime Was Having Tattoos, L.A. Times (Mar. 23, 2025), *available at* https://www.latimes.com/world-nation/story/2025-03-23/deportation-trump-venezuelans-el-salvador.

14. Carla Gloria Colome & Florantonia Singer, *Arturo and Frizgeralth, Convicted for Being Venezuelans: Trump Takes Another Step in His Racist Drift*, El Pais (Mar. 24, 2025), *available at* https://english.elpais.com/international/2025-03-24/arturo-and-frizgeralth-convicted-for-being-venezuelans-trump-takes-another-step-in-his-racist-drift.html.

15. Arelis R. Hernandez & Maria Luisa Paul, *They Were Arrested During Routine ICE Check-Ins. Then They Were Disappeared*, Wash. Post (Mar. 22, 2025), *available at* https://www.washingtonpost.com/immigration/2025/03/22/trump-venezuela-migrants-el-salvador/.

16. Syra Ortiz Blanes & Veronica Egui Brito, *U.S. Sent Venezuelan Man with Pending Political Asylum Case to El Salvador Mega Prison*, Miami Herald (Mar. 27, 2025), *available at* https://www.miamiherald.com/news/local/immigration/article302671624.html.

17. Noah Lanard & Isabela Dias, *You're Here Because of Your Tattoos*, Mother Jones (Mar. 26, 2025), *available at* https://www.motherjones.com/politics/2025/03/trump-el-salvador-venezulea-deportation-prison-cecot-bukele/.

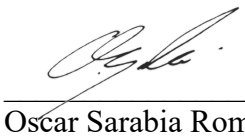
18. Tom Phillips & Clavel Rangel, *Deported Because of His Tattoos: Has the US Targeted Venezuelans for Their Body Art?*, Guardian (Mar. 20, 2025), *available at* https://www.theguardian.com/us-news/2025/mar/20/deported-because-of-his-tattoos-has-the-us-targeted-venezuelans-for-their-body-art.

19. Charlie Savage & Julian E. Barnes, *Intelligence Assessment Said to Contradict Trump on Venezuelan Gang*, N.Y. Times (Mar. 22, 2025), *available at* https://www.nytimes.com/2025/03/20/us/politics/intelligence-trump-venezuelan-gang-alien-enemies.html.

20. Nicole Acevedo, Deon J. Hampton & David Noriega, *Tattoos of Deported Venezuelans Don't Necessarily Signal Gang Affiliation, Experts Say*, NBC News (Mar. 21, 2025), *available at* https://www.nbcnews.com/news/latino/tattoos-deported-venezuelans-not-necessarily-gang-members-rcna197089.

I hereby declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge and belief.

Executed on 28th of March, 2025, in San Francisco, California.



Oscar Sarabia Roman

EXHIBIT 1

ALIEN ENEMIES ACT:
ALIEN ENEMY VALIDATION GUIDE

In the case of: _____ A-File No:_____

1. The person named above is fourteen years or older: ☐
2. The person named above is not a citizen or lawful permanent resident of the United States: ☐
3. The person named above is a citizen of Venezuela: ☐

If any of these three requirements are not satisfied, the person named above shall not be ordered removed under the Alien Enemies Act (AEA). In such a case, you should consult your supervisor and the Office of the Principal Legal Advisor (OPLA), U.S. Immigration and Customs Enforcement, and, where applicable, initiate removal proceedings under the Immigration and Nationality Act (INA).

4. The person named above is validated as a member of Tren de Aragua (TDA), as determined by reference to the following evaluation form:

Instructions: *Complete the following validation evaluation form for each suspected alien targeted for removal under the AEA, or, following apprehension, for each alien potentially subject to an AEA removal.*

After accounting for the two comments below, aliens scoring 8 points and higher are validated as members of TDA; you should proceed with issuing Form AEA-21B, titled, "Notice and Warrant of Apprehension and Removal under the Alien Enemies Act." Aliens scoring 6 or 7 points <u>may</u> be validated as members of TDA; you should consult with a supervisor and OPLA, reviewing the totality of the facts, before making that determination; if you determine an alien should not be validated at this time as a member of TDA, when available, you should initiate removal proceedings under the INA. Alien scoring 5 points or less should not be validated at this time as member of TDA; when available, you should initiate removal proceedings under the INA.[1]

Comment 1: Even if 8 points or higher, if all tallied points for an alien are from the Symbolism and/or Association categories (with <u>no points</u> scoring in any other category), consult your supervisor and OPLA before determining whether to validate the alien as a member of TDA (and proceed with an AEA removal) or initiate INA removal proceedings.

[1] A tally of 5 points or less, or any decision to initiate INA removal proceedings, is not a finding that an alien is *not* an Alien Enemy. Relatedly, at any time, additional information may come to light that gives reason to revisit a prior decision to forego an AEA removal.

Comment 2: For purposes of validating an alien as a member of TDA, at least one scoring category must involve conduct occurring, or information received, within the past five years.

Valuation Explanation			
Category	**Definition Explanation**	**Points**	
Judicial Outcomes and Official Documents	a. Subject has been convicted of violating Title 18, United States Code, Section 521 or any other federal or state law criminalizing or imposing civil penalties for activity related to TDA	**10**	
	b. Court records (e.g., indictments, criminal complaints, sentencing memorandums) identifying the subject as a member of TDA, describing specific activity of TDA	**5**	
Self-Admission	a. Subject self-identifies as a member or associate of TDA verbally or in writing to law enforcement officer, even if that self identification to a law enforcement officer is unwitting, e.g., through lawful interception of communications.	**10**	
Criminal Conduct and Information	a. Subject participates in criminal activity (e.g., narcotics trafficking, human smuggling, etc.) with other members of TDA, including preparatory meetings and significant incidents directly attributed to TDA	**6**	
	b. Law enforcement or intelligence reporting identifying subject as a member of TDA, to include Bureau of Prisons validations and reliable foreign partner information.	**4**	
	c. Credible testimonies/statements from victims, community members, or informants that affirm the subject's membership in or allegiance to TDA.	**3**	
	d. Detailed open-source media (e.g., newspapers, investigative journalism reports) that describe arrest, prosecution, or operations of a subject as a member of TDA	**2**	
	e. Subject conducts and/or facilitates business with TDA (e.g., money laundering, mule, service provider)	**2**	
Documents and Communications	a. Written or electronic communications (e.g., e-mails, letters, texts, secure messages) that discuss business with, and/or are communicating with, known members of TDA; cell phone data contains multiple group, organizational, or organization leaders' or members' information.	**6**	
	b. Subject conducts phone calls about the business of TDA with known members of TDA	**10**	
	c. Financial transactions indicating criminal activity for TDA or with known members of TDA	**3**	
	d. Subject possesses written rules, constitution, membership certificates, bylaws, etc., indicating, together with other conduct, membership of or allegiance to TDA	**6**	
Symbolism	a. Subject has tattoos denoting membership/loyalty to TDA	**4**	
	b. Social media posts by the subject displaying symbols of TDA or depicting activity with other known members of TDA	**2**	
	c. Subject observed tagging or graffitiing to mark the territory of, and the subject's allegiance to, TDA	**2**	
	d. Subject observed displaying hand signs used by TDA	**2**	
	e. Subject displays insignia, logos, notations, drawings, or dress known to indicate allegiance to TDA, as observed by law enforcement in person or via virtual mediums	**4**	

Association	a. Surveillance documentation that a subject is frequently observed closely associating with known leaders and members of TDA	**2**	
	b. Subject part of group photos with two or more known members of TDA	**2**	
	c. Subject presently resides with known members of TDA	**2**	
		Total Points	

VALIDATION DETERMINATION

Note: If any of the four requirements are not satisfied, do not complete this validation determination.

Based on the validation guide and instructions above, including Comments 1 and 2, I find that the person named above, _____:

1. Is fourteen years or older;
2. Is not a citizen or lawful permanent resident of the United States;
3. Is a citizen of Venezuela; and
4. Is a member of Tren de Aragua.

Accordingly, the above-named person is validated as an Alien Enemy.

_____	_____	_____
Name of Agent/officer completing the form	*Signature of agent/officer completing the form*	*Date*

_____	_____	_____
Name of Supervisor	*Signature of Supervisor*	*Date*

VERIFICATION OF REMOVAL

A-number_____ Date: _____

Alien Enemy's name: _____

Departure Date	Port of Departure	Manner of Departure
Signature of Verifying Officer		Title of Officer

Photograph of alien removed

Right index fingerprint of alien removed

_____
(Signature of alien whose fingerprint and Photograph appear above)

_____
(Signature of official taking fingerprint)

NOTICE AND WARRANT OF APPREHENSION AND REMOVAL UNDER THE ALIEN ENEMIES ACT

A-File No._____ Date: _____

In the Matter of: _____

Date of Birth: _____ 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.

_____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 immediately be apprehended, restrained, and removed from the United States pursuant to this Warrant of Apprehension and Removal.

Signature of Supervisory Officer: _____

Title of Officer: _____ **Date:** _____

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, you have been determined to be an Alien Enemy subject to apprehension, restraint, and removal from the United States. You are not entitled to a hearing, appeal, or judicial review of this notice and warrant of apprehension and removal. Until you are removed from the United States, you will remain detained under Title 40, Unite States Code, Section 21. Any statements 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.

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: _____ Date:_____

CERTIFICATE OF SERVICE

EXHIBIT 2

Homeland Security Investigations

HSI-CHI-24-455

ASSESSMENT REPORT OF ANALYSIS

WHAT IS TREN DE ARAGUA?

Tren de Aragua (TdA) is a transnational criminal organization that began as a labor union working in Venezuelan rail yards in the mid-to-late 2000s. TdA rapidly evolved into a gang that specializes in human trafficking, extreme violence, and extortion in the Aragua State of Venezuela. The foundation of the gang and its leadership is based in Venezuelan prisons but has expanded into Mexico, Brazil, Ecuador, Peru, Chile, Costa Rica, Panama, Colombia, Guatemala, and Bolivia. The gang is swiftly growing and ramping up recruiting measures to strengthen its presence in the United States. TdA is headed by Héctor Rusthenford Guerrero Flores aka "Nino Guerrero"—his current whereabouts are unknown.

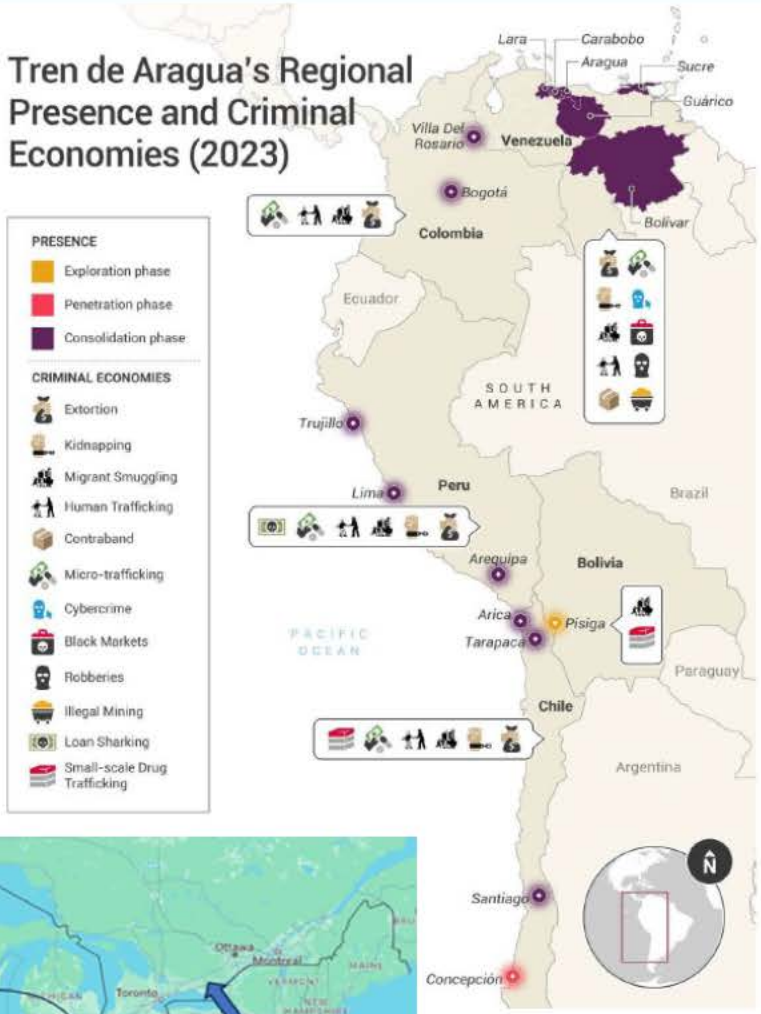
EXPANSION AND CRIMINAL INVOLVEMENT

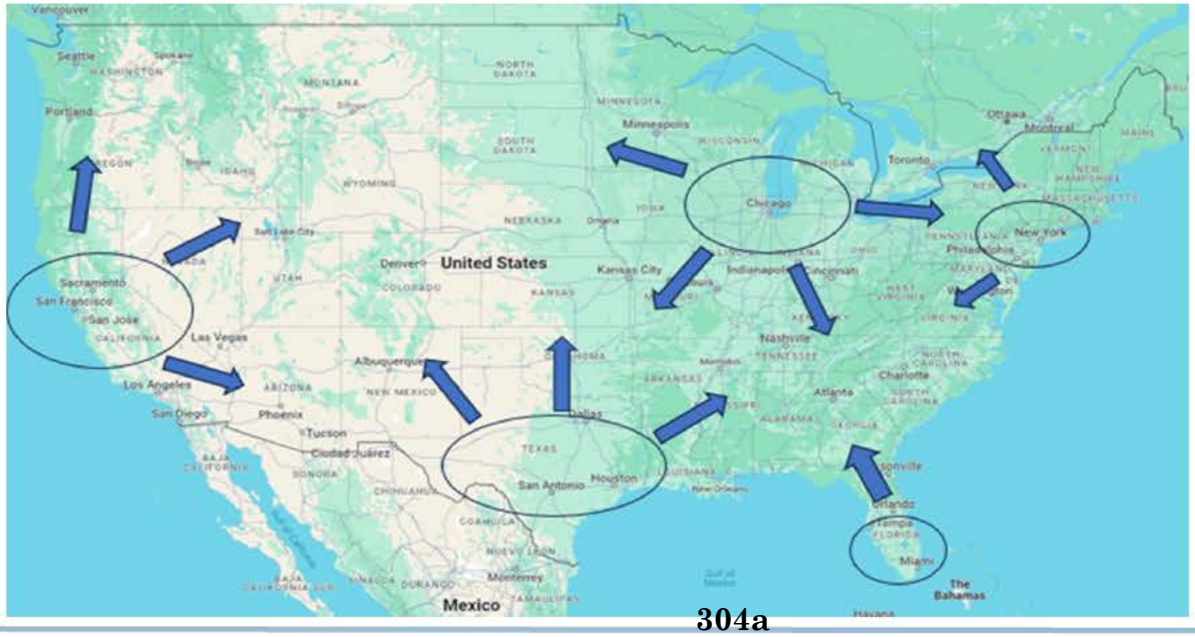
TdA has continuously made efforts to expand its criminal enterprise into other countries. There are three major steps that are part of its expansion process:

1. **Exploration Phase:** TdA members arrive to a new area via border crossings, migration routes, hotspots, or urban areas with notable Venezuelan populations. TdA members exploit migrants and maintain a low profile while conducting illicit activities.
2. **Penetration Phase:** TdA members enter local criminal economies with low barriers to entry.
3. **Consolidation Phase:** TdA establishes roots in criminal economies, sets up a financial base, and builds criminal structures needed to maintain their illicit activities. This phase usually involves money laundering.

As depicted by a July 2023 InSight crime report (see map to the right), TdA has been involved in a variety of crimes while operating in South America.

More recently, the organization has shifted its focus to establish a presence in the United States. Open source information indicates that TdA members are present in California, Illinois, Florida, New York, Nevada, and Texas and that suspected TdA members may be involved in a variety of crimes to include kidnapping, human trafficking, sex trafficking, organized retail crime, robberies, and document fraud.





Homeland Security Investigations

HSI-CHI-24-455

ASSESSMENT REPORT OF ANALYSIS

DETECTING AND IDENTIFYING

Open source material has depicted TdA members with a combination of the below tattoos:

"Jump Man" Symbol

AK-47s

Trains

Crowns

"Hijos de Dios" Quote

"HJ" or "Hijos de Dios" translation: "Sons of God"

"Real Hasta La Muerte" Quote

"Real Hasta La Muerte" translation: "Till Death"

Stars

Clocks

Skull with Gas Mask

ADDITIONAL IDENTIFIERS

Homeland Security Investigations, Chicago Field Office, has obtained additional information to help identify TdA members:

- Typically males in the age range of 18-25 years old;
- Dressed in high-end urban street wear;
- Favor the Chicago Bulls[USPER] basketball jersey, specifically Michael Jordan[USPER] jerseys with the number "23", and Jordan "Jump Man" footwear/sneakers; and / or
- Often wear sports attire from U.S. professional sports teams with Venezuelan nationals on them.

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*This product contains **U.S. person information** that has been deemed necessary for the intended recipient to understand, assess, or act on the information provided. It has been highlighted in this document with the label [USPER] and should be handled in accordance with the recipient's intelligence oversight/information handling procedures. U.S. person information should be protected in accordance with constitutional requirements and all federal and state privacy and civil liberties laws.*

This is a Homeland Security Investigations (HSI), Chicago Field Division document. For any questions related to this report or to provide additional information, please contact HSI Chicago at (630) 458-7400 or HSIChicagoIntake@hsi.dhs.gov.

EXHIBIT 3

U.S. DEPARTMENT OF HOMELAND SECURITY
U.S. CUSTOMS AND BORDER PROTECTION

U.S. BORDER PATROL EL PASO SECTOR

Situational Awareness **DATE: 10/02/2023**
TDA Gang Recognition Indicators

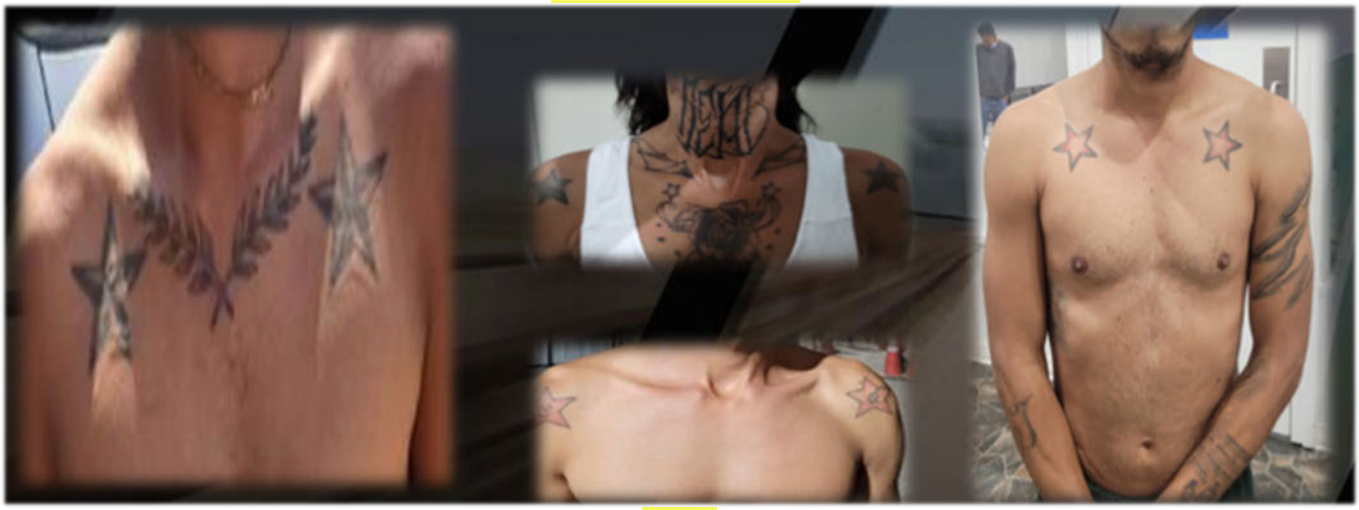
(U//FOUO/LES) The El Paso Sector (EPT) Intelligence Unit (SIU) HUMINT-Gang Unit continues to see migrants from Venezuela with confirmed and suspected links to the Tren de Aragua (TDA) gang.

(U//FOUO/LES) Intelligence collections have identified the below tattoos on subjects; indicative of possibly being a member or associate of the TDA.

AK-47

Gas Mask/Real Hasta la Muerte

Stars on the Shoulders:



Trains:

Ismalito:

(U//FOUO/LES) EPT HUMINT-Gang Unit collections determined that the Chicago Bulls attire, clocks, and rose tattoos are typically related to the Venezuelan culture and not a definite indictor of being a member or associate of the TDA.

(U//FOUO/LES) Agents are reminded to remain cognizant of their surroundings at all times and maintain a high level of situational awareness when dealing with subjects with TDA indicators.

This product was prepared by the El Paso Sector Intelligence and Operations Center.
Comments and/or questions may be directed to the El Paso Sector Intelligence HUMINT-GANG Unit EPT_SIU_HUMINT@cbp.dhs.gov.

EXHIBIT 4

Trump sent these Venezuelans to El Salvador mega prison. Their families deny gang ties.

miamiherald.com/news/local/immigration/article302251339.html

Syra Ortiz Blanes, Verónica Egui Brito, Claire Healy March 18, 2025

Immigration
By Syra Ortiz Blanes,
Verónica Egui Brito and
Claire Healy
| 22

Watch the latest video shared today on President Nayib Bukele's X account, showing over 200 Venezuelan migrants—that the federal government is linking to Tren de Aragua —arriving in El Salvador and being transferred to the country's mega prison. The footage documents their arrival and transfer to the country's notorious prison. U.S. Secretary of State Marco Rubio and President Bukele have both confirmed the deportation flights. By El Salvador Presidential Press Office

The day after he was arrested while working at a restaurant in Texas, Mervin Jose Yamarte Fernandez climbed out of a plane in shackles in El Salvador, bound for the largest mega-prison in Latin America.

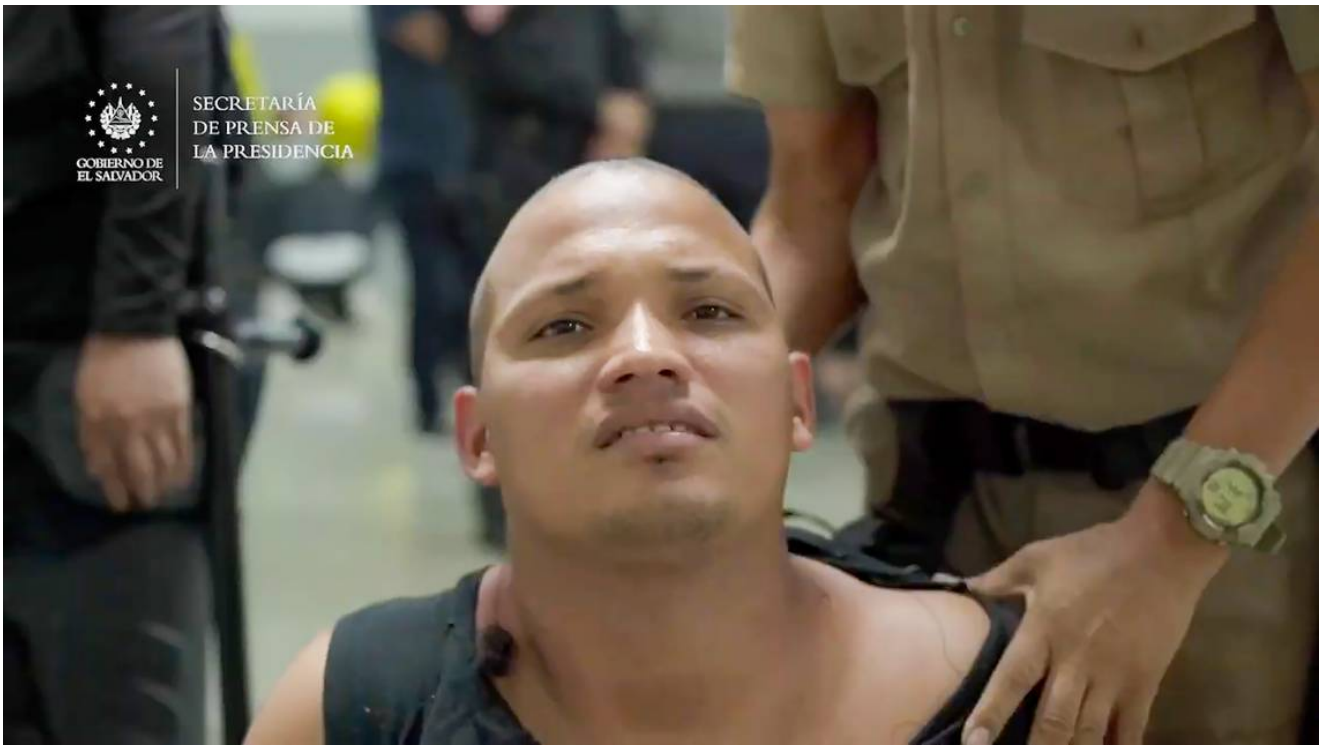
His sister, Jare, recognized him in a video shared on social media. As masked guards shaved detainees' heads and led them into cells at the maximum-security complex, Yamarte Fernandez turned his gaze slowly to the camera.

TOP VIDEOS

"He was asking for help. And that help didn't come from the lips. It came from the soul," said Jare, who asked to be identified by her nickname because she fears for her family's safety and who added her brother has no previous criminal record. "You know when someone has their soul broken."

READ MORE: Trump deports hundreds of alleged Venezuelan gang members. Did he defy a court order?

Yamarte Fernandez, 29, is among 238 Venezuelans the Trump administration accused of being gang members without providing public evidence and sent over the weekend to El Salvador's Terrorist Confinement Center, a prison about 45 miles from the capital designed to hold up to 40,000 people as part of a crackdown on gangs. They will be jailed for at least one year, El Salvador's President Nayib Bukele said in a statement on X, following a deal brokered between the two countries in February.



Mervin Jose Yamarte Fernandez, 29, is one of Venezuelans accused by the Trump administration of gang affiliation and sent over the weekend to El Salvador's Terrorist Confinement Center. His sister identified him in a video shared on social media by the Salvadoran government. "He shouldn't be imprisoned in El Salvador, let alone in a dangerous prison like the one where the Mara Salvatruchas are held," his sister told the Miami Herald. El Salvador Presidential Press Office

"These heinous monsters were extracted and removed to El Salvador where they will no longer be able to pose any threat to the American people," White House Press Secretary Karoline Leavitt said.

But families of three men who appear to have been deported and imprisoned in El Salvador told the Miami Herald that their relatives have no gang affiliation – and two said their relatives had never been charged with a crime in the U.S. or elsewhere. One has been previously accused by the U.S. government of ties to the feared Tren de Aragua gang, but his family denies any connection.

Neither the Department of Homeland Security nor Immigration and Customs Enforcement responded to Miami Herald questions about what criteria was used to select detainees sent to El Salvador, what the plan is for detainees incarcerated abroad, and whether the government had defied a federal judge's orders to send them there.

Legal experts have taken the Trump administration to court over the deportations, arguing that the government illegally invoked an 18th century wartime law. On Saturday, a federal judge ordered the government to hold off on the deportations. The Justice Department has said in court filings that the judge's oral order to turn around the planes, after they had already departed, was not enforceable and suggested that the ruling was not applicable outside U.S. territory.

READ MORE: White House says it didn't defy court order on deportations as judge calls hearing

Hannah Flamm, an attorney and acting senior policy director at the International Refugee Assistance Project, a New York-based legal aid and advocacy group, said the Trump administration's use of wartime authorities to conduct deportations is "shocking." She described the weekend's deportations as part of a "campaign of mass deportations and evisceration of the rule of law."

"The Trump administration is pushing the limits to find out what it can get away with, both in the courts and in public opinion," she said.

Families of some of the men sent to El Salvador told the Herald that they feel powerless in the wake of the U.S. government's decision to ship their loved ones off to a prison in a foreign country without due process. For years, the prison has been the subject of investigations by reporters and advocates who have found thousands of innocent people have been jailed there without due process.

"He shouldn't be imprisoned in El Salvador, let alone in a dangerous prison like the one where the Mara Salvatruchas are held," said Jare, referring to the international criminal organization with roots in El Salvador. "There are many innocent people behind bars. And today, my brother is one of them."

Originally Yamarte Fernandez was hesitant to move to the United States, Jare said, but she convinced him to join her in Dallas County to provide a better life for his partner and daughter, who stayed back in their home state of Zulia. Jare said her brother did not have any tattoos because of their Christian upbringing. Tattoos have been used by the U.S. government in the past as an indication of gang affiliation, though experts say that Tren de Aragua members don't have any particular signs that identify their membership.

"I'm in so much pain," said Jare, who lives in Texas. "I never imagined this country would cause so much harm to my family."

'Irregular warfare'

On Saturday, President Donald Trump invoked the centuries old wartime law to allow his administration to arrest, relocate, and deport any Venezuelan citizens over the age of 14 who are Tren de Aragua members.

Best known for its role in interning Japanese immigrants during World War II, the Alien Enemies Act is a 1798 law that has been used only three times before – all during times of war. In his announcement of the order, Trump said that Tren de Aragua is invading the country.

“Evidence irrefutably demonstrates that TdA has invaded the United States and continues to invade, attempt to invade, and threaten to invade the country; perpetrated irregular warfare within the country; and used drug trafficking as a weapon against our citizens,” a statement from Trump said.

Anyone accused of being a member of the gang has no right to challenge the accusation under the Alien Enemies law, which grants the government the power to deport a person without due process or the opportunity to contest the claim. Before the proclamation, the American Civil Liberties Union filed a lawsuit against the U.S. government on behalf of five Venezuelans facing deportation.

The rights organization claimed the law cannot be used against nationals of Venezuela because the United States is not at war with Venezuela nor has Venezuela launched a predatory incursion into the United States. Attorneys said the five men, who were not among those deported on Saturday, had been wrongly identified as gang members and were seeking asylum. At least two of them fled Venezuela in part because Tren de Aragua was persecuting them, according to the lawsuit.

“J.A.V. is not and has never been a member of Tren de Aragua,” attorneys wrote about one of the plaintiffs. “He was in fact victimized by that group and the group is the reason he cannot return to Venezuela.”

Lee Gelernt, the ACLU’s lead counsel on the case, called the use of the Alien Enemies Act “flatly unlawful” in a statement to the Herald. But he said that even if it could be used, the individuals were entitled to due process to show they were not gang members.

“If these individuals are afforded due process it will then be determined whether they are members of the gang but we would caution hesitation before anybody takes at face value the Trump administration’s characterization given the administration’s frequent overstatement about immigrant detainees, including with respect to the individuals sent to Guantanamo over the past month,” said Gelernt.

READ MORE:‘Give us back our sons’: A look at the Venezuelan migrants Trump sent to Guantanamo

A federal judge issued a ruling blocking the president from deporting the men on Saturday. He also broadened the order to apply to anyone who could be at risk of deportation under the executive order.

At the hearing, he ordered the Trump administration to return any flights that were in mid-air. Flight-tracking data shows that three flights landed after the judge blocked the executive order, according to the Washington Post.

“Oopsie… Too late,” Bukele wrote on X, a post that Secretary of State Marco Rubio later re-shared.

In Monday’s press briefing at the White House, Leavitt said the U.S. is paying $6 million to El Salvador “for the detention of these foreign terrorists.” That same day during a court hearing, the federal judge questioned the Trump administration to determine whether it had violated Saturday’s injunction.

In an interview with Fox News, Rubio was asked about concerns regarding the lack of concrete evidence confirming that all the individuals deported to the Salvadoran prisons are indeed members of Tren de Aragua. He responded, “If one of them turns out not to be, then they’re just illegally in our country, and the Salvadorans can then deport them from — to Venezuela, but they weren’t supposed to be in our country to begin with.”

Flamm, the International Refugee Project lawyer, said the Trump administration was undermining its own ability to crack down on gangs by deporting the people it is in the midst of prosecuting. The federal government sent MS-13 members to El Salvador over the weekend too, including a top leader of the group who is a defendant in a prominent criminal case in New York

“The U.S. government has gone out of its way to prosecute on terrorism charges precisely in an effort to hold gang leaders to account. But the Trump administration clearly does not actually care about public safety or accountability,” she said.

‘Decision to leave’

Yamarte Fernandez had bought a house in a poor neighborhood in Maracaibo to live with his wife and 4-year-old daughter. But the house needed to be remodeled, the kitchen refurbished, the roof replaced.

He decided to travel to the U.S. to support his family at home and send back his earnings to fix up the house. He made the journey from Zulia to the U.S through the Darien Gap, the dangerous jungle between Panama and Colombia, with 13 other Venezuelans, including three other men from his neighborhood who were detained by ICE the same day he was. He arrived at the border in September 2023.

Mervin Jose Yamarte Fernandez, 29, is one of 238 Venezuelans accused by the Trump administration of gang affiliation and sent over the weekend to El Salvador's Terrorist Confinement Center. His sister

recognized him in a video shared on social media, where masked guards shaved the detainees' heads and escorted them into cells at the maximum-security facility. As the camera panned across the scene, Yamarte slowly turned his gaze toward it. Yamarte's family

But as the Trump Administration started its crackdown on illegal immigration – specifically targeting Venezuelans – Yamarte Fernandez and his family had already decided to self deport later this year.

"We had made the decision to leave the U.S. voluntarily to return to Venezuela," Jare said. "I wanted to stay until December, but he was determined to leave in September."

Jare said his brother was a hard worker determined to not burden the U.S. In videos where she recognized her brother in El Salvador, she identified two other men who had traveled with him from their neighborhood in Venezuela.

"We came to this country to work and do things right," she said. "It's painful that they blame my brother, and they portray him as a member of the Tren de Aragua. I don't accept the bad reputation created around my brother."

Yamarte Fernandez is one of seven siblings from a Christian family in Maracaibo, the capital of oil-rich state Zulia, bordering Colombia, according to his sister. Jare described him as a lifelong athlete who loved soccer and baseball and found ways to be active despite his challenging asthma.

"It's a lie when they said that he was from the TdA. My brother doesn't even have a tattoo," his sister said, explaining that his family doesn't believe in tattoos because of religious reasons.

'Speaking to the devil'

On Monday, Venezuelan National Assembly President Jorge Rodríguez called on the legislature, controlled by Nicolás Maduro's regime, to issue a formal request banning all Venezuelans from traveling to the U.S.

"In the United States, there is no rule of law when it comes to the rights of our migrants," Rodríguez said during a press conference in Caracas. He also spoke about Venezuelans who were sent to the prison in El Salvador.

"We will go to great lengths, even if it means speaking to the devil, to ensure that Venezuelans are returned to their homeland," he said.

Venezuelan opposition leader Edmundo Gonzalez, who is recognized by the U.S. and other democratic nations as the real winner of the presidential election held in Venezuela on July 28th, and Maria Corina Machado issued a statement Monday saying that the Tren de Aragua poses a significant "threat to the entire region."

Machado and Gonzalez expressed support for the measures the U.S. is taking to identify, arrest and prosecute those involved with or supporting the gang. However, they stressed the need for authorities to exercise “extreme caution in administering justice.” They said it is crucial to distinguish between high-level criminals like Maduro and the vast majority of innocent Venezuelans, to prevent the unjust criminalization of Venezuelan migrants.

‘Wait for me’

Another family fears that their relative was also sent to prison in El Salvador, after he had spent several weeks awaiting deportation in Texas.

Gustavo Adolfo Aguilera Agüero, 27, is from the Venezuelan Andes in Táchira, an area bordering Colombia, and had been living in Dallas since December 2023 with his wife. The couple entered the United States using a now-defunct mobile application to schedule appointments with southwest border authorities. Aguilera Agüero’s wife soon found out she was five months pregnant with their first child. Her husband was working installing water pipes on rooftops and his wife found work taking care of children.

“It hasn’t been easy, but we came together to move ahead in life together,” said his wife, Susej, who asked to only use her first name because she fears for her safety.

In early February, authorities detained Aguilera Agüero while he was taking trash out of his home, his wife said. Authorities had been looking for someone else, she said, but he was taken to Bluebonnet Detention Facility in Anson, Texas.

Aguilera Agüero spent several weeks in detention waiting for a deportation to Venezuela, but his mother, Miriam Aguilera, now fears her son could be among the Venezuelans deported on Saturday to El Salvador instead. The family last heard from Aguilera Agüero on Friday night, when he told his mother he was being deported to Venezuela. A plane from Conviasa, Venezuelan airlines, was going to take him back to his country.

“Mom, we’re going to be deported to Venezuela. Wait for me,” Miriam Aguilera remembered her son telling her.


PREMIUM
BLACK SERIES

Gustavo Adolfo Aguilera Agüero, 27, from the Venezuelan Andes in Táchira, had been living in Dallas, Texas, with his wife since December 2023. In early February, Aguilera Agüero was detained by authorities while taking out the trash, according to his wife. Authorities were actually searching for someone else, but Aguilera Agüero spent several weeks in detention, awaiting deportation to Venezuela. Now, his mother, Miriam Aguilera, fears her son may be among the Venezuelans deported to El Salvador on Saturday instead. Aguilera's family

But by Sunday, no plane had arrived in Venezuela, and she saw the deportations to El Salvador on the news. She still doesn't know where he is – and has been scanning videos of the Terrorism Confinement Center in El Salvador looking for him.

Aguilera Agüero has an American-citizen son, Jacob, who is nine months old, and an older Venezuelan son, Santiago. His family denies that he has any connection with Tren de Aragua. According to his mother, her son's tattoos tell a story of love and loyalty: A crown, inked with the name of his first son, Santiago. A star intertwined with his name and his mother's name. Across one arm, the phrase "*Real hasta la muerte*" – "Real until death" – which was made famous by Puerto Rican reggaeton artist Anuel AA.

Public safety authorities in Texas have linked these tattoos to Tren de Aragua and officials are using them to identify suspected members.

"We were told he was arrested because of the tattoos on his neck and arms, but my son doesn't have a criminal record," Miriam Aguilera told the Herald.

One man whose relatives spoke with the Herald has previously faced accusations of gang ties from the Drug Enforcement Administration. His family insists he was wrongfully accused of gang involvement.

'Let us leave'

Henry Javier Vargas Lugo, 32, originally from La Guaira state on Venezuela's coast, had been living in Aurora, Colorado, for nearly a year when he was detained on Jan. 29, and he was later transported to Texas.

Before Vargas Lugo migrated to the U.S., he lived in Colombia for seven years, working as a mechanic in Bogotá. Seeking a fresh start, he decided to leave Colombia and try his luck in the United States.

Vargas Lugo entered the U.S. through El Paso, bringing his daughter and her mother with him. When U.S. Customs and Border Protection encountered him, they asked him to remove his shirt to document his tattoos. Officials inquired whether he was affiliated with a gang, including Tren de Aragua, and he denied any association, according to his sister, Nayrobis Vargas, who spoke with the Miami Herald. He has several tattoos, including crowns with his niece and mother's name, a clock on his arm and a rosary.

Henry Javier Vargas, 32, originally from Vargas state on Venezuela's coast, had been living in Aurora, Colorado, for nearly a year when he was detained on January 29. Prior to migrating to the U.S., Vargas spent seven years in Colombia, working as a mechanic in Bogotá. Vargas's family was able to identify him in a video posted by Salvadoran President Nayib Bukele, showing the detainees arriving in El Salvador. In the footage, his hands are shackled, and his head is bowed in a moment of despair Vargas's family

In Colorado he worked odd jobs, delivering food and shoveling snow, doing whatever it took to provide for his family, his family said.

He was arrested in Aurora on extortion charges connected to an incident that occurred on the light rail, officials confirmed. He was later released from jail pending an investigation, and his family says that he was the victim of a scam.

The Drug Enforcement Administration – which participated in the arrest – released a photo of Vargas Lugo, identifying him as a member of Tren de Aragua, but hasn't disclosed any evidence. He has yet to be sentenced with a crime.

Vargas Lugo's family was able to identify him in a video posted by Bukele of the detainees arriving in El Salvador. His hands are shackled and his head bowed.

Henry Javier Vargas, 32, originally from La Guaira state on Venezuela's coast, had been living in Colorado for nearly a year when a family member identified him in a video posted by Salvadoran President Nayib Bukele. The footage showed Vargas among the Venezuelans deported to El Salvador's largest mega-prison, the largest in Latin America. In the video, his hands are shackled, and his head is bowed in a moment of despair. El Salvador Presidential Press Office

"The families are devastated and terrified of what might happen to them," said one of his cousins in Venezuela. "I haven't eaten all day just thinking about what they're going through."

Yamarte Fernandez's family is still planning to self deport back to Venezuela. His sister said she does not "blame Trump" because she was "taught not to judge others." But she said that the president's decisions are "reaching extremes that are impacting innocent people."

“Let us leave, but let us leave in a good way,” said Jare, Yamarte Fernandez’s sister. “Not leaving from here and ending up in a prison.”

Afternoon Newsletter

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Verónica Egui Brito ha profundizado en temas sociales apremiantes y de derechos humanos. Cubre noticias dentro de la vibrante ciudad de Hialeah y sus alrededores para el Nuevo Herald y el Miami Herald. Nacida y criada en Caracas, Venezuela. Se unió al Herald en 2022. Verónica Egui Brito has delved into pressing social, and human rights issues. She covers news within the vibrant city of Hialeah, and its surrounding areas for el Nuevo Herald, and the Miami Herald. Born and raised in Caracas, Venezuela. Joined the Herald in 2022.

SB

Syra Ortiz Blanes covers immigration for the Miami Herald and El Nuevo Herald. Previously, she was the Puerto Rico and Spanish Caribbean reporter for the Heralds through Report for America.

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All Comments

EXHIBIT 5

Families of deported Venezuelans are distraught their loved ones were sent to El Salvador

nbcnews.com/news/amp/rcna196950

Didi Martinez, Daniella Silva, Carmen Sesin March 19, 2025

SHARE THIS —

Relatives of recently deported Venezuelan immigrants said they were anguished and shocked to discover their loved ones were sent to a notorious mega-prison in El Salvador after they recognized them in a social media video.

The families strongly deny that their relatives are connected to the Venezuelan gang known as Tren de Aragua, a claim the Trump administration has used to justify their quick deportations under a rarely used law from 1798, the Alien Enemies Act. They say their family members have been falsely accused and targeted because of their tattoos.

The families also said they never expected their loved ones to be sent to a massive prison in El Salvador instead of their home country, Venezuela.

The White House said in a statement Tuesday that it was “confident in DHS intelligence assessments on these gang affiliations and criminality,” adding that the Venezuelan immigrants who were removed from the United States had final orders of deportation.

“This administration is not going to ignore the rule of law,” the statement said.

Relatives of Mervin Yamarte, 29, say he enjoyed playing recreational soccer with friends in Texas.Courtesy Mercedes Yamarte

Relatives of Mervin Yamarte, 29, said they were horrified to see him in a social media video showing men shackled as authorities dragged them from planes and shaved their heads in preparation to take them to prison.

The men were sent to the Terrorism Confinement Center, a lockup known for allegations of human rights abuses. Human rights organizations such as Human Rights Watch and Amnesty International have documented issues including extreme overcrowding and torture at the prison.

The video, released by Salvadoran President Nayib Bukele, claims the men were Venezuelan gang members deported from the United States.

Anayel Miquelina, a relative of Yamarte's, told Telemundo that Yamarte's mother and wife were distraught when they saw him in the video with his shirt ripped and head shaved.

"They fainted. They started screaming," she said.

The Trump administration announced the deportations this weekend of hundreds of immigrants it alleged were members of the gang to El Salvador under the Alien Enemies Act, which allows the president to deport noncitizens during wartime.

In court documents, an official with Immigration and Customs Enforcement said Monday that many of those who were removed from the United States under the Alien Enemies Act "do not have criminal records in the United States."

The official said that “the lack of specific information about each individual actually highlights the risk they pose” and that the government does not have a “complete profile” of alleged gang members who were deported to El Salvador.

Yamarte’s family said that he had an open asylum case with a hearing set for July and that he does not have a criminal record and was not connected to Tren de Aragua.

A check of criminal records in the city of Irving, Dallas County and the state of Texas, as well as federal court records, by NBC News did not find any charges or convictions for Yamarte. The Department of Homeland Security did not respond to a request for more information on whether he had a criminal background.

“We didn’t come to do harm to anybody. It’s not fair that because of a tattoo they involve us with a very crooked criminal gang,” said Juan Yamarte, his brother.

Juan Yamarte said his brother has the same tattoo as a soccer player he admires and the number 99 — the number he has used as a member of a recreational soccer team. He also has tattoos of his mother’s and daughter’s names, as well as the date he and his partner began dating, another brother told Telemundo. None of his tattoos are gang-related, the family said.

Juan Yamarte said his brother had been in the United States for more than a year before immigration officials took him last week at a home he shared with several other people.

“They grabbed him. They cuffed him all at once when he said, ‘Why are you taking me, too, if I haven’t done anything?’” he said.

On Monday, Yamarte's family and others in his hometown, Maracaibo, Venezuela, held a protest and a prayer vigil.

Several other families told NBC News they believe they saw their relatives in the video released by El Salvador. They claim their loved ones have been falsely accused of having gang connections.

Fritzgeralth De Jesus.Family photo

“He is a good kid. He has never committed a crime; he doesn’t have a criminal record,” the sister of Fritzgeralth De Jesus, one of the Venezuelans she says was deported to El Salvador, said as she cried uncontrollably. “He is young, hard-working and an athlete.”

De Jesus’ sister, who asked not to be identified because of fear of deportation, said she received a call from her brother, who had been detained by ICE officials, on Saturday “to say goodbye” because he was going to be deported to Venezuela.

Recommended

She grew increasingly worried when she did not hear from him, and she began to scour the internet hoping to find a clue to where he could be. She said she spotted him in Bukele’s video, which had gone viral on social media.

De Jesus, 25, entered the United States through the CBP One app in June, along with three other relatives, his sister said. The three family members were released into the United States right away, but De Jesus was sent to an immigration detention center in New Orleans, where he remained until he was deported, she said. It is unclear why De Jesus was detained; his family believes it may have been because of his tattoos.

“They detained him just because he has tattoos,” De Jesus’ sister said. “From the beginning, they asked constantly about his tattoos. They would ask him if he was a member of the criminal gang, Tren de Aragua, and he always said no.”

She said none of her brother's tattoos are gang-affiliated. Some of the more prominent ones include rose art on his neck and arm, an angel on his chest and a tattoo that says “mom” on his chest.

De Jesus had left Venezuela because “colectivos,” armed paramilitary groups that support President Nicolás Maduro, were harassing and extorting him, his sister said.

Joseph Giardina, an attorney based in Baton Rouge, Louisiana, who is representing De Jesus in his asylum case, was stunned to learn his client had been deported to El Salvador. The final hearing in his asylum case was scheduled for April 10.

When Giardina heard De Jesus had been deported, he checked online and saw that his asylum hearing was still pending. He thought there must have been a mix-up.

“With a pending asylum application and a trial, that would make absolutely no sense,” Giardina said. “I’ve been doing this for years. That’s not how it works.”

“He has been in proceedings for months. The government has never filed an I-213, which would indicate any criminal background. They have never filed any evidence of any kind of criminal history,” Giardina said.

Men alleged to be members of the Venezuelan criminal organization Tren de Aragua who were deported from the United States arrive in Tecoluca, El Salvador, in a photo released Sunday.El Salvador's Presidency Press Office via AFP - Getty Images

Mirelys Casique told Telemundo her family recognized her son, Francisco García Casique, in a photo released by the government of El Salvador. She said that while the man in the image was looking down, the family was able to identify him because of his tattoos.

“He’s not a criminal. He has no criminal record,” she said, adding that if the government was going to deport her son, “they should send him back to his country of origin.”

Trump invoked the Alien Enemies Act this weekend, and on Saturday, a federal judge issued a restraining order blocking him from using it to justify the deportations and ordered any planes that were already in the air to turn around.

In court documents, officials said three planes left the United States after Trump issued his proclamation, raising questions about the timing of the flights and the custody handover.

A federal judge reviewing the case Tuesday asked the administration for further details about the flights and which immigrants were deported solely based on the Alien Enemies Act.

The Venezuelan government has since publicly condemned the detention of its citizens in El Salvador and issued a travel warning to those in the United States and those planning to travel abroad.

“We are calling on the international community to stay alert against these practices that serve against human dignity and the principles of international rights,” Venezuela’s Foreign Affairs Ministry said in a statement Monday.

EXHIBIT 6

Trump Officials Say Deportees Were Gang Members. Few Details Were Disclosed.

Families and immigration lawyers argue not all of the deportees sent to a prison in El Salvador over the weekend had ties to gangs.

Listen to this article · 8:07 min Learn more


By Jazmine Ulloa and Zolan Kanno-Youngs
Jazmine Ulloa and Zolan Kanno-Youngs reported from Washington, D.C.

Published March 18, 2025 Updated March 19, 2025, 11:34 a.m. ET

In the days since the federal government sent hundreds of Venezuelan immigrants to a prison in El Salvador, Washington has been debating whether the White House did indeed defy a federal judge who ordered the deportation flights to turn around and head back to the United States.

But beyond the Trump administration's evident animus for the judge and the court, more basic questions remain unsettled and largely unanswered: Were the men who were expelled to El Salvador in fact all gang members, as the United States asserts, and how did the authorities make that determination about each of the roughly 200 people who were spirited out of the country even as a federal judge was weighing their fate?

The Trump White House has said that most of the immigrants deported were members of the Venezuelan gang Tren de Aragua, which, like many transnational criminal organizations, has a presence in the United States. Amid the record numbers of migrants arriving at the southern border in recent years, the gang's

presence in some American cities became a rallying cry for Donald J. Trump as he campaigned to return to the White House, claiming immigrants were invading the country.

After Mr. Trump returned to power in January, Tren de Aragua remained a regular talking point for him and his immigration advisers, and the deportation flights last week were the administration's most significant move yet to make good on its promise to go after the gang. But officials have disclosed little about how the men were identified as gang members and what due process, if any, they were accorded before being placed on flights to El Salvador, where the authoritarian government, allied with Mr. Trump, has agreed to hold the prisoners in exchange for a multimillion-dollar payment.

The Justice Department refused to answer basic inquiries on Monday about the deportations from the federal judge in Washington, D.C., who had ordered the deportation flight to return to the United States. On Tuesday afternoon, he ordered the Justice Department to submit a sealed filing by noon on Wednesday detailing the times at which the planes had taken off, left American airspace and ultimately landed in El Salvador.

More than half of the immigrants deported over the weekend were removed using an obscure authority known as the Alien Enemies Act of 1798, which the Trump administration says it has invoked to deport suspected Venezuelan gang members age 14 or older with little to no due process. The rarely invoked law grants the president broad authority to remove from the United States citizens of foreign countries whom he defines as "alien enemies," in cases of war or invasion.

In a court document it filed on Monday night after the hearing, Robert L. Cerna II, a senior Immigration and Customs Enforcement official, asserted that each of the individuals had been investigated and vetted and that those efforts had involved surveillance data, a review of financial transactions and interviews with victims.

But a number of questions were raised by Mr. Cerna's filing, in which he said an ICE database showed that some of those sent to El Salvador under the Alien Enemies Act had been arrested and convicted in the United States "for dangerous

offenses" and that others had convictions outside the country.

Mr. Cerna also acknowledged, though, that "many" did not have criminal records in American courts, though he said that did not mean they would "pose a limited threat." Still others were said to have been in proximity to Tren de Aragua members during law enforcement raids on vehicles and residences when they were caught in the dragnet.

A growing chorus of families, elected officials and immigration lawyers have begun coming forward in the news media to reject or cast doubt on the allegations. Some lawyers — sent into frantic searches for their clients in detention centers across the country — believe their clients have been singled out simply for their tattoos. Immigration lawyers in New York were able to stop the deportation of at least one Venezuelan who they said had no ties to the gang.

Lindsay Toczylowski, a lawyer with the Immigrant Defenders Law Center, said her client was a young professional in his 30s who worked in the arts industry and had been in detention since he sought entry into the United States last year, when he applied for asylum using an online government app, CBP One. She said her client had come under suspicion because of his tattoos, but his lawyers had not been given the opportunity to counter the claims through a court hearing.

He was transferred earlier this month from California to Texas, she said, and by Saturday, he had disappeared from the online detainee locator.

"Our client is proof that they didn't do the due diligence to understand who they were sending to El Salvador at all," she said, declining to name the young man out of concern for his safety.

Some Democrats have not just accused the Trump administration of violating a court order but have also questioned whom the administration sent to El Salvador to be imprisoned.

"The Trump administration is deporting immigrants without due process based solely on their nationality," Senator Dick Durbin, Democrat of Illinois, said in a statement on Monday. "Courts determine whether people have broken the law. Not

a president acting solo."

More than 260 people deported to El Salvador over the weekend included 137 people removed through the Alien Enemies Act. An additional 101 were Venezuelans were deported under normal immigration proceedings, according to Trump administration officials.

Lawyers and legal experts said that even under wartime conditions, detainees are entitled to due process.

"The Alien Enemy Act expressly provides for 'a full examination and hearing' before noncitizens can be removed under the statute," Stephen Vladeck, a professor of law at the Georgetown University Law Center, said in an email. "Even in the middle of the Second World War, federal courts would hold hearings to determine if alleged alien enemies were, in fact, citizens of countries with which we're at war."

The government of Venezuela has forcefully condemned the transfer of Venezuelans to El Salvador and the use of the wartime authority by the Trump administration. In a statement on Sunday, the government of Nicolás Maduro denounced what he called the "threat of kidnapping" of minors as young as 14 by labeling them as terrorists, claiming that they are "considered criminals simply for being Venezuelan."

Mariyin Araujo, 32, said the father of her two daughters, 2 and 6, had fled Venezuela after he participated in two demonstrations against Mr. Maduro's authoritarian government. On the second occasion, he and other protesters were captured and tortured, with electric shocks and suffocation. He registered through the CBP One application in Mexico and was detained in San Diego when he presented himself for his appointment, Ms. Araujo said.

He was a professional soccer player and coach, and he had a tattoo on his arm of a crown atop a soccer ball. Ms. Araujo said that immigration officials associated the crown with the Venezuelan gang and that they had submitted documents showing that her ex-husband had no criminal history, along with photographs and letters

from his employer to show he was a law-abiding citizen. But before his case had been decided, he called to tell her they were moving him to a detention center in Texas.

She did not know his whereabouts until she recognized him in a photo on social media, she said. He was sitting on the floor with his head bowed down in a white prison uniform with other detainees in El Salvador. She has tried to reach out to prison officials there, but she has since learned the facility where he is being held is notorious for not allowing phone calls or family visits.

“There was something inside of me that held out hope that it would not be him, but it was him,” she said. “He is not a criminal.”

Annie Correal and Luis Ferré-Sadurní contributed reporting.

Jazmine Ulloa is a national politics reporter for The Times, covering the 2024 presidential campaign. She is based in Washington. More about Jazmine Ulloa

Zolan Kanno-Youngs is a White House correspondent for The Times, covering President Trump and his administration. More about Zolan Kanno-Youngs

EXHIBIT 7

Venezuelan Families Fear for Relatives as Trump Celebrates Deportations

The news that hundreds of migrants were headed to an El Salvador prison caused panic for some Venezuelans, who worried that their loved ones might be among them.

By Annie Correal
Reporting from Mexico City

March 16, 2025

Mirelis Casique's 24-year-old son last spoke to her on Saturday morning from a detention center in Laredo, Texas. He told her he was going to be deported with a group of other Venezuelans, she said, but he didn't know where they were headed.

Shortly after, his name disappeared from the website of the U.S. immigration authorities. She has not heard from him since.

"Now he's in an abyss with no one to rescue him," Ms. Casique said on Sunday in an interview from her home in Venezuela.

The deportation of 238 Venezuelans to El Salvador this weekend has created panic among families who fear that their relatives are among those handed over by the Trump administration to the Salvadoran authorities, apparently without due process.

The men were described by the White House press secretary, Karoline Leavitt, as "terrorists" belonging to the Tren de Aragua gang. She called them "heinous monsters" who had recently been arrested, "saving countless American lives." But several relatives of men believed to be in the group say their loved ones do not have gang ties.

On Sunday, the Salvadoran government released images of the men being marched into a notorious mega-prison in handcuffs overnight, with their heads newly shaven.

Like other Venezuelan families, Ms. Casique has no proof that her son, Francisco Javier García Casique, is part of the group, which was transferred to El Salvador on Saturday as part of a deal between President Nayib Bukele and the Trump administration. The Salvadoran leader has offered to hold the Venezuelan migrants at the expense of the U.S. government.

However, Ms. Casique said that not only had her son's name disappeared from the website of U.S. Immigration and Customs Enforcement, she also recognized him in one of the photos of the recently arrived deportees that El Salvador's government has circulated. When she saw him in the photograph, she said, she felt "broken at the injustice" of what was taking place.

Neither government has made public the names of the Venezuelan deportees, and a spokeswoman for the Salvadoran government did not respond to a request for confirmation that Ms. Casique's son was part of the group. The U.S. Department of Homeland Security, which oversees Immigration and Customs Enforcement, did not respond to a request to confirm whether Mr. García had been deported to El Salvador, either.

Ms. Casique said she had identified Mr. García by the tattoos on one of his arms, as well as by his build and complexion, though his face was not visible. The photo shows a group of men in white shirts and shorts with shaved heads, their arms restrained behind their backs.

In recent years, Venezuelans have migrated to the United States in record numbers, as their country has spiraled into crisis under the government of Nicolás Maduro. Because Mr. Maduro, unlike most other leaders in the region, has not accepted regular deportation flights from the United States, the Trump administration has been looking for other ways to deport Venezuelans.

On Sunday, Venezuela's government forcefully denounced the transfer of the migrants to El Salvador, saying in a statement that the United States had used an outdated law — the Alien Enemies Act of 1798 — to carry out an illegal operation that violated both American and international laws.

From the start of his presidential campaign, Mr. Trump has focused on Tren de Aragua and its presence in the United States. When he deported a large group of Venezuelans last month to Guantánamo, a U.S. military base on Cuba, Mr. Trump also said that the deportees belonged to the gang, a claim that some of their relatives have denied.

Neither the United States nor the Salvadoran government has offered evidence that the migrants are connected to Tren de Aragua, a gang that originated in Venezuela's prisons but whose reach now extends throughout Latin America. Mr. Trump, whose government designated it a terrorist group, has zeroed in on incidents that, he said, show the presence of Tren de Aragua in the United States.

Mr. Bukele said that the deportees would be held for at least a year and made to perform labor and attend workshops under a program called "Zero Idleness."

Ms. Casique said her son had no gang affiliation and had entered the United States to seek asylum in late 2023, after several years spent working in Peru to support his family back home. During his journey north, he was injured in Mexico when he fell from a train, she said.

Mr. García, who had turned himself over to the authorities at the U.S. border, was detained at a routine appearance before immigration officers last year after they spotted his tattoos, Ms. Casique said.

The tattoos, which she says include a crown with the word "peace" in Spanish and the names of his mother, grandmother and sisters, led the authorities to place Mr. García under investigation and label him as a suspected member of Tren de Aragua, according to Ms. Casique.

Mr. García remained in a detention center in Dallas for two months, his mother said, but a judge ultimately decided that he did not pose a danger and allowed him to be released as long as he wore an electronic device to track his movements.

The New York Times could not independently verify why he had been held and released.

After Mr. Trump's inauguration this year, Mr. García became worried, but Ms. Casique remembered telling her son that he had nothing to fear: The administration said it would go after criminals first.

But on Feb. 6, the authorities arrived at Mr. García's door and took him into custody.

"I told him to follow the country's rules, that he wasn't a criminal, and at most, they would deport him," Ms. Casique said. "But I was very naïve — I thought the laws would protect him."

Gabriel Labrador contributed reporting from San Salvador.

Annie Correal reports from the U.S. and Latin America for The Times. More about Annie Correal

EXHIBIT 8

Relatives of missing Venezuelan migrants desperate for answers after US deportations to El Salvador

[1/4] Franco Caraballo, 26, a Venezuelan migrant whose family believes he was sent from the United States to a prison in El Salvador, takes a selfie with his wife Johanny Sanchez, in this undated handout... Purchase Licensing Rights Read more

Summary

- U.S. provides no details on identities of deported Venezuelans
- Rubio says all deportees had been identified as gang members
- Woman spots brother in El Salvador prison garb in online images
- Relatives protest innocence of family members

March 17 (Reuters) - Family members of Venezuelan migrants who suspect their loved ones were sent to El Salvador as part of a rapid U.S. deportation operation over the weekend are struggling to get more information as a legal battle plays out.

Advocates have launched a WhatsApp helpline for people searching for family members, while immigration attorneys have tried to locate their clients after they went dark.

In a proclamation published on Saturday, U.S. President Donald Trump invoked the 1798 Alien Enemies Act to swiftly deport what the White House said were members of the Venezuelan gang Tren de Aragua. The Trump administration used the authority to deport 137 Venezuelans to El Salvador on Saturday even as a judge ordered the removals halted, sparking a legal standoff.

The sudden move caused confusion among family members and immigration advocates.

"This chaos is purposeful," said Anilú Chadwick, pro bono director of the advocacy group Together & Free. "They want to exhaust people and exhaust resources."

The U.S. Department of Homeland Security did not immediately respond to a request for comment.

The Trump administration has provided few details so far on the identities of those who were deported.

But Solanyer Sarabia believes she saw her 19-year-old brother, Anyelo, among images shared online of the Venezuelans deported to El Salvador's mega-prison. His head had been shaved and he was dressed in white prison garb.

Anyelo had told his sister on Friday night that he would be deported to Venezuela, she said in a phone interview with Reuters from Texas.

Solanyer said her brother had been detained on January 31 after an appointment at a U.S. Immigration and Customs Enforcement office. He had crossed the U.S.-Mexico border illegally with Solanyer and another sister in November 2023 and had been released to pursue a claim for asylum.

Solanyer said an ICE officer told her that her brother was detained because of a tattoo that linked him to Tren de Aragua, a violent gang with Venezuelan prison origins that has spread through the Americas. She said the tattoo depicted a rose and that he had gotten it in a tattoo parlor in Dallas.

"He thought it looked cool, looked nice, it didn't have any other significance," she said, stressing that he is not a gang member.

ICE did not immediately respond to a request for comment on Sarabia's case.

"It's extremely disturbing that hundreds of people were flown on U.S. government planes to El Salvador and we still have no information on who they are, their attorneys were not notified and families are left excruciatingly in the dark," said Lindsay Toczylowski, executive director at the Immigrant Defenders Law Center.

El Salvador's President Nayib Bukele has gained international attention for his crackdown on gangs in the Central American country. Supporters say his tactics have driven down violent crime, but rights groups have accused his administration of torture, arbitrary detentions, and other abuses in the country's prisons.

MISSING

Johanny Sanchez, 22, suspects her husband Franco Caraballo, 26, who was detained in Texas, could now be in El Salvador, but does not know for sure.

Sanchez says Caraballo called her on Friday at around 5 p.m. to tell her he would be deported to Venezuela. He was confused because he had a pending asylum claim and a court date set for Wednesday.

Sanchez said on Saturday morning she looked him up on an online U.S. government immigration system where detainees' locations are logged and saw that it said he was no longer listed as being at a detention center.

She spoke with Caraballo's family in Venezuela who told her they had not heard anything. By 7 p.m. on Saturday, she was desperate for information. Then at around 11 p.m., she saw news reports about deportations from the United States to El Salvador.

ICE did not immediately respond to a request for comment on Caraballo's case.

Caraballo had multiple tattoos including ones of roses, a clock with this daughter's birth time, a lion and a shaving razor, said his wife.

"I've never seen him without hair, so I haven't recognized him in the photos," she said. "I just suspect he's there because of the tattoos that he has and right now any Venezuelan man with tattoos is assumed to be a gang member", she added, citing also the fact that he has effectively gone missing.

Sanchez said her husband has never been a member of Tren de Aragua.

U.S. Secretary of State Marco Rubio said on Monday that U.S. law enforcement authorities had spent the better part of a year assembling a roster of known gang members. All the people deported to El Salvador had been on that list, he said.

"If one of them turns out not to be, then they're just illegally in our country, and the Salvadorans can then deport them to Venezuela," Rubio said.

EXHIBIT 9

Trump invokes 1798 Alien Enemies Act, orders deportation of suspected Venezuelan gang members

cbsnews.com/news/trump-invokes-1798-alien-enemies-act

Camilo Montoya-Galvez

Politics
By

Updated on: March 16, 2025 / 6:09 PM EDT / CBS News

President Trump on Saturday invoked the Alien Enemies Act of 1798 to order the swift detention and deportation of all Venezuelan migrants suspected of being members of the Tren de Aragua prison gang, treating them like wartime enemies of the U.S. government.

In his proclamation, the president argued the Venezuelan gang was "perpetrating, attempting, and threatening an invasion or predatory incursion against the territory of the United States," the legal threshold for invoking the 227-year-old war authority.

The president directed the Departments of Homeland Security and Justice to "apprehend, restrain, secure, and remove every" Venezuelan migrant, 14 or older, who is deemed to be part of Tren de Aragua and who lacks U.S. citizenship or permanent residency.

Those subject to the law would be eligible to be summarily arrested, detained and deported, without any of the due process protections outlined in U.S. immigration law, which include opportunities to see a judge and request asylum. Instead, they would be treated as enemy

aliens and processed under America's wartime laws.

But Mr. Trump's directive was dealt an almost immediate blow on Saturday, after a federal judge agreed to block the government from deporting anyone in U.S. immigration custody subject to the president's Alien Enemies Act proclamation.

At the request of a lawsuit filed by the American Civil Liberties Union, James Boasberg, chief judge for the U.S. District Court in Washington, D.C., temporarily blocked those deportations through a 14-day temporary restraining order. Deportation flights in the air with deportees subject to Mr. Trump's decree should return to the U.S., Boasberg indicated during a hearing Saturday evening.

Earlier Saturday, Boasberg issued another order blocking the deportation of five Venezuelan migrants in immigration detention who the ACLU said were at risk of being expelled under Mr. Trump's directive.

"We are thrilled the judge recognized the severe harm our plaintiffs would face if removed," said Lee Gelernt, the ACLU attorney leading the lawsuit against Mr. Trump's proclamation. "The President's use of the Alien Enemies Act is flat out lawless."

The Justice Department forcefully denounced the court order. "Tonight, a DC trial judge supported Tren de Aragua terrorists over the safety of Americans. TdA is represented by the ACLU," Attorney General Pam Bondi said in a statement. "This order disregards well-established authority regarding President Trump's power, and it puts the public and law enforcement at risk."

As Mr. Trump's proclamation was litigated in Washington, the U.S. deported more than 260 migrants to El Salvador over the weekend, including Venezuelans with alleged ties to Tren de Aragua. Salvadoran President Nayib Bukele posted a video showing some of the deportees being escorted by armed soldiers and police, having their heads shaved and marched into a prison.

A senior administration official said 137 of the 261 deportees sent to El Salvador were alleged Venezuelan gang members expelled under the Alien Enemies Act. Another 101 Venezuelans were deported under regular immigration law, the official said. The group, the official added, also included 21 Salvadorans accused of MS13 gang membership and two "special cases" that Bukele described as gang leaders wanted by El Salvador's government.

In a filing on Sunday, the Justice Department said the alleged Venezuelan gang members "had already been removed from United States territory" under the Alien Enemies Act before the court order barring the expulsions.

The White House denied it had defied the judge's order. "The Administration did not 'refuse to comply' with a court order," White House press secretary Karoline Leavitt said in a statement. "The order, which had no lawful basis, was issued after terrorist (Tren de Aragua) aliens had already been removed from U.S. territory."

Leavitt added, "A single judge in a single city cannot direct the movements of an aircraft carrier full of foreign alien terrorists who were physically expelled from U.S. soil."

Mr. Trump's extraordinary order is breathtaking in its scope and has little precedent in U.S. history. The law it cites, enacted 22 years after the Declaration of Independence, references invasions and incursions staged by "any foreign nation or government."

The centuries-old statue has been invoked only a few times in American history, including during World War I and World War II, when U.S. officials cited it to surveil and detain foreigners from Italy, Germany and Japan.

But never before has the Aliens Enemies Act been invoked to target migrants from countries with which the U.S. is not actively at war or with the premise that a non-state actor is staging an invasion or incursion of the U.S.

Mr. Trump in his order argued Tren de Aragua is "closely aligned" with the repressive government of Venezuelan President Nicolas Maduro.

"(Tren de Aragua) has engaged in and continues to engage in mass illegal migration to the United States to further its objectives of harming United States citizens, undermining public safety, and supporting the Maduro regime's goal of destabilizing democratic nations in the Americas, including the United States," Mr. Trump said in his order.

In:

- Venezuela
- Trump Administration

Camilo Montoya-Galvez
Camilo Montoya-Galvez is the immigration reporter at CBS News. Based in Washington, he covers immigration policy and politics.

Twitter

EXHIBIT 10

Was a Venezuelan deported as a terrorist because of a tattoo celebrating his child?

WLRN Public Media | By Tim Padgett

Published March 19, 2025 at 7:00 AM EDT

LISTEN • 4:45

Courtesy Johanny Sanchez

Asylum Seekers: Venezuelan migrants Franco Caraballo (right) and wife Johanny Sanchez at their 2024 wedding in Sherman, Texas. Caraballo is believed to be among the 238 Venezuelans deported to El Salvador by the Trump Administration last weekend as gang "terrorists."

Last Saturday night, 238 Venezuelan migrants deported from the U.S., in apparent violation of a federal court order, arrived in El Salvador and were processed into a high security prison.

The Trump administration had expelled most of them as terrorists under the 1798 Alien Enemies Act because — it said — they were members of the violent Venezuelan criminal gang known as Tren de Aragua.

The administration has not released the names of the deportees. But at least one migrant who appears to be among them also appears not to be a gang member, let alone an alien enemy terrorist — and appears to have been branded as such for nothing more than a tattoo.

"It's a travesty," says Miami immigration attorney Martin Rosenow of Coconut Grove. He represents Franco José Caraballo Tiapa, a 26-year-old Venezuelan barber who crossed the U.S. southern border with his wife two years ago seeking asylum.

READ MORE: Trump administration deports hundreds of immigrants to El Salvador even amid court challenge

When Caraballo went to an asylum application appointment in Dallas, Texas, last month, an agent from the Immigration and Customs Enforcement agency, or ICE, noticed a tattoo on his arm.

“It was a clock with the time of birth of his daughter," Rosenow told WLRN.

Courtesy Johanny Sanchez

Franco Caraballo's arm tattoo — a clock showing the time of his daughter's birth, which is a popular style of tattoo in Venezuela today, but which U.S. authorities say is a tell-tale sign someone is a member of the Venezuelan Tren de Aragua criminal gang.

That kind of tattoo is popular in Venezuela. But U.S. authorities identify it as a favorite of Tren de Aragua, which formed back in the Venezuelan state of Aragua.

So, according to court records reviewed by WLRN, ICE agents — apparently solely on that basis — accused Caraballo of being a Tren de Aragua gang member, despite the fact that he had no criminal record in either Venezuela or the U.S.

The document also accuses Caraballo of not crossing the U.S. border "at a prescribed point of entry," although that appears not to have been an issue in his case until ICE decided to accuse him of Tren de Aragua membership.

ICE acknowledged on Tuesday that "many" of the Venezuelans deported as gang members in fact did not have criminal records. But it asserted — questionably if not speciously, say critics — that this "actually highlights the risk they pose."

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and this is just a flagrant violation of everything we know."

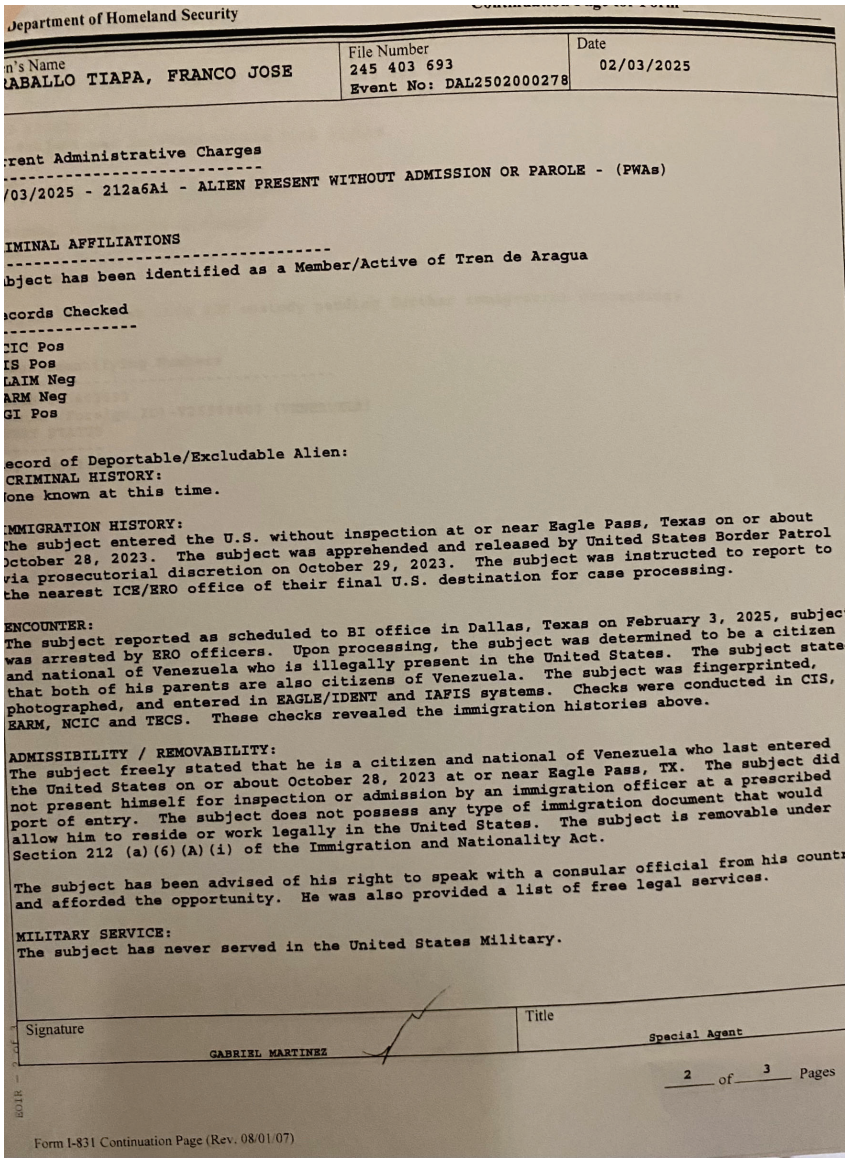
Attorney Martin Rosenow

Either way, Caraballo is likely not the only Venezuelan migrant deported last weekend who was rounded up under that seemingly arbitrary criterion. Several families in Venezuela claim to have recognized the faces of sons or siblings in video released from the arrival of the Venezuelan migrants in El Salvador; and they too insist their relatives are not Tren de Aragua members.

Moreover, in many cases, they insist the deportation involved a hasty and unjust assumption that a tattoo identified a terrorist.

ICE says it cannot comment on individual immigration cases. But Caraballo was detained and processed for deportation, according to ICE locator records — and Rosenow is convinced he was on Saturday's flight from Texas to El Salvador.

"We don't have a hundred percent certainty, because they haven't released a list," Rosenow says, "but all the people that fit under this pattern, the ICE locator system as of Saturday shows that they no longer exist in the system."



Department of Homeland Security

n's Name	File Number	Date
ABALLO TIAPA, FRANCO JOSE	245 403 693 Event No: DAL2502000278	02/03/2025

rent Administrative Charges

/03/2025 - 212a6Ai - ALIEN PRESENT WITHOUT ADMISSION OR PAROLE - (PWAs)

IMINAL AFFILIATIONS
---
bject has been identified as a Member/Active of Tren de Aragua

ecords Checked

CIC Pos
IS Pos
LAIM Neg
ARM Neg
GI Pos

ecord of Deportable/Excludable Alien:
CRIMINAL HISTORY:
one known at this time.

MMIGRATION HISTORY:
The subject entered the U.S. without inspection at or near Eagle Pass, Texas on or about October 28, 2023. The subject was apprehended and released by United States Border Patrol via prosecutorial discretion on October 29, 2023. The subject was instructed to report to the nearest ICE/ERO office of their final U.S. destination for case processing.

ENCOUNTER:
The subject reported as scheduled to BI office in Dallas, Texas on February 3, 2025, subject was arrested by ERO officers. Upon processing, the subject was determined to be a citizen and national of Venezuela who is illegally present in the United States. The subject state that both of his parents are also citizens of Venezuela. The subject was fingerprinted, photographed, and entered in EAGLE/IDENT and IAFIS systems. Checks were conducted in CIS, EARM, NCIC and TECS. These checks revealed the immigration histories above.

ADMISSIBILITY / REMOVABILITY:
The subject freely stated that he is a citizen and national of Venezuela who last entered the United States on or about October 28, 2023 at or near Eagle Pass, TX. The subject did not present himself for inspection or admission by an immigration officer at a prescribed port of entry. The subject does not possess any type of immigration document that would allow him to reside or work legally in the United States. The subject is removable under Section 212 (a)(6)(A)(i) of the Immigration and Nationality Act.

The subject has been advised of his right to speak with a consular official from his countr and afforded the opportunity. He was also provided a list of free legal services.

MILITARY SERVICE:
The subject has never served in the United States Military.

Signature	Title
GABRIEL MARTINEZ	Special Agent

2 of 3 Pages

Form I-831 Continuation Page (Rev. 08/01/07)

ICE

A Immigration and Customs Enforcement document from Feb. 3, 2023, concluding that Franco Caraballo is a Tren de Aragua member, based on his tattoos. It also acknowledges he has no criminal history in the U.S.

In almost all cases, this means deportation.

In the court records, ICE plainly acknowledges Caraballo had no criminal history in the U.S. According to Venezuela's government, he had no criminal past there, either.

A hearing on his case was supposed to take place this week — but Saturday's peremptory deportation, Rosenow says, denied him of that due process, which is supposed to apply to undocumented migrants as well as U.S. citizens.

"I'm nauseous," Rosenow said. "We fight for our clients' civil rights and we're taught to

Secretary of State Marco Rubio said the deportations were “a historic measure to make America safer.” But the Trump Administration may have carried them out in defiance of a federal judge’s ruling that questioned the constitutionality of invoking the 18th-century Alien Enemies Act.

A just as big question hanging over the operation is how U.S. authorities determined the Venezuelans were so-called Tren de Aragua “terrorists" under that law.

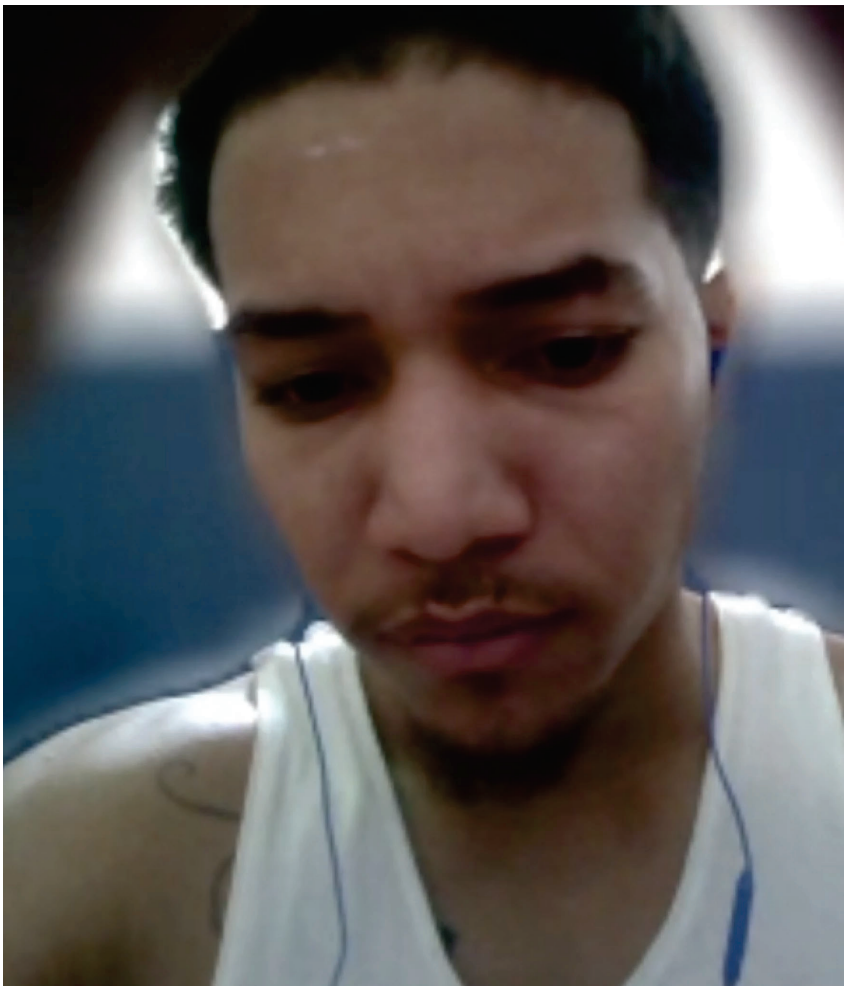
This week President Trump’s border czar, Tom Homan, said it as done "through various investigations.”

"Through social media, through their activities, through their criminal records here and abroad. The review of this issue was at the highest level I’ve seen,” he said.

READ MORE: Migrant crimes bring Venezuelans to their own 'Mariel moment'

But Franco Caraballo’s case seems to contradict Homan’s claim of thorough investigation.

Caraballo’s 22-year-old wife, Johanny Sánchez, told WLRN from Dallas the couple arrived in the U.S. in October 2023 after an often dangerous, three-month trek from their home state of Yaracuy, Venezuela.



Courtesy Johanny Sanchez

Franco Caraballo in detention in Texas last month, after being accused of being a Tren de Aragua member, in a FaceTime phone video photo taken by his wife.

The couple settled in Sherman, Texas, near Dallas, where they married last year, and have supported themselves with barber and housecleaning work. Caraballo's daughter — whom he insists his tattoo is dedicated to — is from a previous marriage and lives in Venezuela with grandparents. He planned to send for her after he and Sánchez received asylum.

In Yaracuy, Sánchez says, Caraballo was a barber (his shop had a Facebook page) an avid soccer player — and, as he told U.S. immigration authorities, a target of persecution by Venezuela's brutal dictatorship.

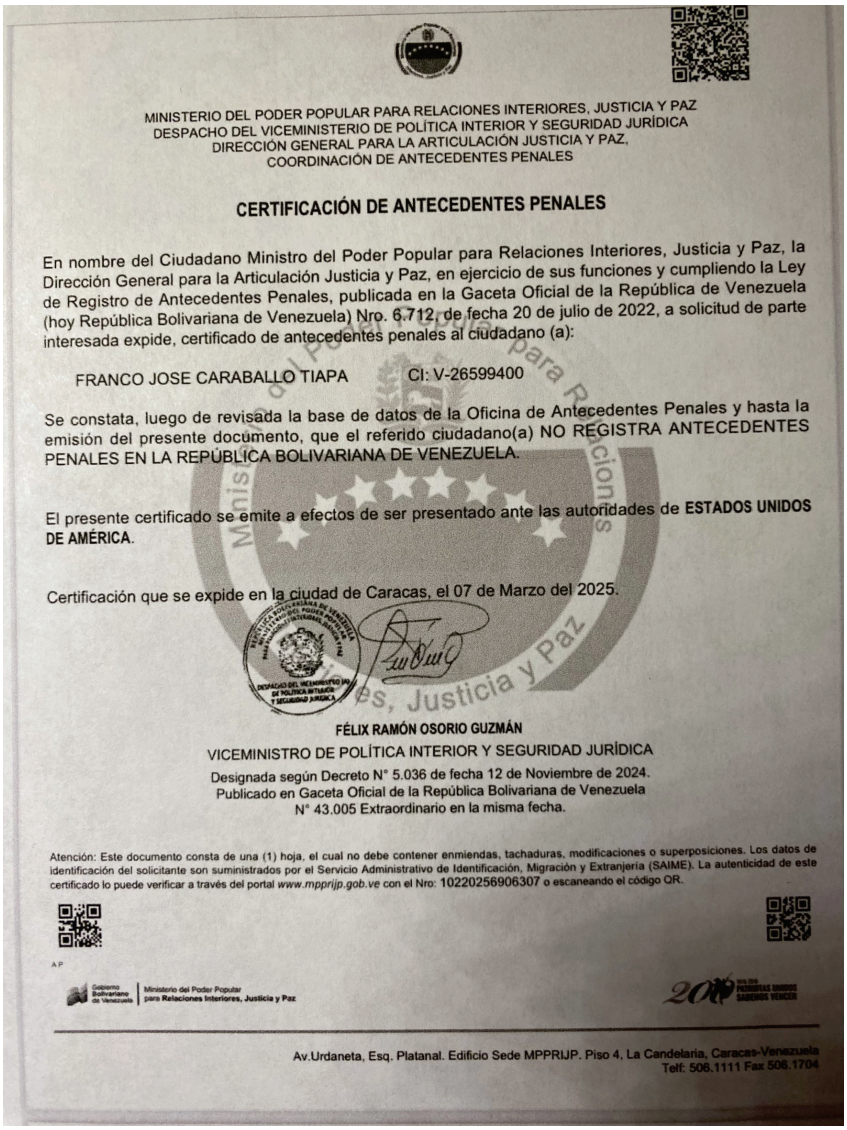
"It's like he was kidnapped for nothing more than a

is labeled as Tren de Aragua."

Johanny Sánchez

The reason: he opposed the left-wing regime — which the U.N. has accused of crimes against humanity, and which is widely blamed for the worst humanitarian crisis in modern South American history — and he had taken part in anti-regime marches led by Venezuelan opposition leader María Corina Machado, they say.

"In 2019 he was arrested and held for two days," Sánchez said, "and they beat him up. He's afraid if goes back now they'll treat him as a traitor to the state."



MINISTERIO DEL PODER POPULAR PARA RELACIONES INTERIORES, JUSTICIA Y PAZ
DESPACHO DEL VICEMINISTERIO DE POLÍTICA INTERIOR Y SEGURIDAD JURÍDICA
DIRECCIÓN GENERAL PARA LA ARTICULACIÓN JUSTICIA Y PAZ.
COORDINACIÓN DE ANTECEDENTES PENALES

CERTIFICACIÓN DE ANTECEDENTES PENALES

En nombre del Ciudadano Ministro del Poder Popular para Relaciones Interiores, Justicia y Paz, la Dirección General para la Articulación Justicia y Paz, en ejercicio de sus funciones y cumpliendo la Ley de Registro de Antecedentes Penales, publicada en la Gaceta Oficial de la República de Venezuela (hoy República Bolivariana de Venezuela) Nro. 6.712, de fecha 20 de julio de 2022, a solicitud de parte interesada expide, certificado de antecedentes penales al ciudadano (a):

FRANCO JOSE CARABALLO TIAPA CI: V-26599400

Se constata, luego de revisada la base de datos de la Oficina de Antecedentes Penales y hasta la emisión del presente documento, que el referido ciudadano(a) NO REGISTRA ANTECEDENTES PENALES EN LA REPÚBLICA BOLIVARIANA DE VENEZUELA.

El presente certificado se emite a efectos de ser presentado ante las autoridades de **ESTADOS UNIDOS DE AMÉRICA**.

Certificación que se expide en la ciudad de Caracas, el 07 de Marzo del 2025.

FÉLIX RAMÓN OSORIO GUZMÁN
VICEMINISTRO DE POLÍTICA INTERIOR Y SEGURIDAD JURÍDICA
Designada según Decreto N° 5.036 de fecha 12 de Noviembre de 2024.
Publicado en Gaceta Oficial de la República Bolivariana de Venezuela
N° 43.005 Extraordinario en la misma fecha.

Atención: Este documento consta de una (1) hoja, el cual no debe contener enmiendas, tachaduras, modificaciones o superposiciones. Los datos de identificación del solicitante son suministrados por el Servicio Administrativo de Identificación, Migración y Extranjería (SAIME). La autenticidad de este certificado lo puede verificar a través del portal *www.mpprijp.gob.ve* con el Nro: 10220256906307 o escaneando el código QR.

Gobierno Bolivariano de Venezuela | Ministerio del Poder Popular para Relaciones Interiores, Justicia y Paz

Av.Urdaneta, Esq. Platanal. Edificio Sede MPPRIJP. Piso 4, La Candelaria, Caracas-Venezuela
Telf: 506.1111 Fax 506.1704

Venezuelan Interior Ministry

Venezuelan government confirmation, dated March 17, 2025, that Franco Caraballo has no criminal record in that

Caraballo spoke to Sánchez last Friday from detention in Laredo, Texas. He told her they'd boarded him and the other Venezuelans on a deportation flight that day, but it was canceled due to bad weather, and they were told they would be flown out of the U.S. on Saturday.

Sánchez said she hasn't heard from him since that call.

"He told me, 'Honey, this is probably the last call I'll be able to make to you,' and then he just disappeared," Sánchez says. "It's like he was kidnapped for nothing more than a tattoo."

Tattoos like Caraballo's have become a focus of whether migrants are being fingered arbitrarily as gang members.

One advice many immigration attorneys now give clients who have the popular clock tattoos marking birth times, for example, is to have a birth certificate with that time on hand, to confirm to authorities that the tattoo commemorates a child, not a gang.

Either way, says Sánchez, "It feels like any Venezuelan immigrant now is labeled as Tren de Aragua."

Rise in anti-Venezuelan discrimination

The gang represents only a miniscule share of Venezuelan migrants in the U.S. But anti-Venezuelan discrimination has in fact been on the rise since Trump's presidential campaign last year — when he made the Tren Aragua gang and its crime sprees in cities like New York and Aurora, Colorado, central to his xenophobic anti-immigration platform.

"It's troubling for all Venezuelans that we are being painted as criminals, when we make up only 2% of the estimated 11 million unauthorized immigrants in the United States," says Venezuelan exile and Miami attorney Maria Corina Vegas, a diaspora advocate.

"We are being vilified and scapegoated for the immigration crisis. It flies in the face of constitutional due process," Vegas added, "And it can happen to any national group now."

Vegas says that's why Trump felt emboldened last month to strip hundreds of thousands of Venezuelan migrants of their Temporary Protected Status, or TPS, which shields them from deportation.

Tim Padgett / WLRN

Franco Caraballo's attorney, Martin Rosenow, at his Coconut Grove office pointing out the court hearing Caraballo was supposed to have this week — but was not granted because he was deported last weekend.

"They were granted in TPS precisely in recognition that deporting people back to Venezuela would be inhumane."

Meanwhile, as for migrants like Franco Caraballo and the rest who were deported over the weekend to a prison in El Salvador as gang members on questionable evidence like tattoos?

Their best hope for freedom now is that Salvadoran President Nayib Bukele will deport them back to Venezuela — the hell they came to the U.S. to escape in the first place.

Tags Immigration | Tren de Aragua | News | Local News | Venezuela | Trump 47: Immigration

EXHIBIT 11

IMMIGRATION

Despite refugee status in the U.S., young Venezuelan was deported to Salvadoran prison

By **Verónica Egui Brito**
Updated March 21, 2025 5:34 PM

A screengrab from a video obtained from the El Salvador Presidential Press Office shows alleged members of the Venezuelan gang Tren de Aragua, deported by the U.S. government, detained at the Terrorism Confinement Center in Tecoluca, El Salvador, on March 16, 2025. *El Salvador Presidential Press Office*

E.M. and his girlfriend fled persecution in their native Venezuela in 2021 and dreamed of making a new life in the United States.

The young couple spend two years in Colombia before applying for refugee status in 2023 to come to the U.S. Struggling to survive in Colombia, they worked tirelessly in informal jobs, selling food on the streets and making deliveries to make ends meet.

On Jan. 8, after they were finally granted the coveted refugee status, E.M., 29, and his girlfriend, Daniela Palma, 30, finally arrived in the United States, flying into Houston.

Upon arrival, an immigration officer asked the young man the question that changed his life in moments.

“Do you have any tattoos?”

He had already been asked that by U.S. authorities in Colombia as part of an extensive background check, and he now gave the same answer. He lifted his shirt and pants and showed the immigration officer tattoos on his chest, legs and arms — a crown, a soccer ball and a palm tree.

At that point, it no longer mattered that he had no criminal record, and that he had been granted refugee status, with the full legal right to enter the United States. Immigration officials decided the tattoos were evidence enough to suspect he might be a member of Tren de Aragua, a prison-born Venezuelan gang whose members have earned a reputation in Latin America as fearless and ruthless.

E.M., whom the Miami Herald is not identifying by his full name for his safety in case he is forced to return to Venezuela, was detained. His girlfriend, threatened with detention for months herself, agreed to be deported back to Colombia.

E.M. spent the next couple of months in three different immigration detention centers in Texas, his girlfriend said.

On March 15, the Trump administration deported him, along with over 200 other Venezuelans, to El Salvador, where they were promptly imprisoned in a maximum-security facility with a troubling history of violating human rights and where men sleep hundreds to a cell on steel beds with no mattresses or pillows.

A screengrab from a video obtained from the El Salvador Presidential Press Office shows alleged members of the Venezuelan criminal organization Tren de Aragua, deported by the U.S. government, detained at the Terrorism Confinement Center in Tecoluca, El Salvador, on March 16, 2025. *El Salvador Presidential Press Office*

His girlfriend and his family suspected he had been sent to the fearsome prison, the *Centro de Confinamiento del Terrorismo* — Terrorism Confinement Center, known by its Spanish initials, CECOT. On Thursday, CBS News got its hands on the entire list of all Venezuelans sent to El Salvador. E.M.'s name was on it.

E.M. is not the only Venezuelan granted refugee status in the U.S. who was deported to El Salvador, the Herald has learned; another man, who was detained longer than E.M., shared the same fate. However, his family has chosen to remain anonymous to avoid jeopardizing his safety.

Rebuilding their lives

E.M. fled his country in 2021 with his girlfriend to escape persecution they endured from the government. They had been targeted by authorities and *colectivos* — Venezuelan armed paramilitary groups — in their hometown, his girlfriend said, for exposing government shortcomings and for their efforts to help their local community.

The couple fled to Colombia, which shares a large — and porous — land border with Venezuela.

For the next three years, E.M. and Palma worked to rebuild their lives. E.M. mainly worked in deliveries, navigating the busy streets of Bogota to earn enough to support themselves while awaiting the results of their refugee status application.

They applied for refugee status – a protection granted to individuals who are unable or unwilling to return to their home country due to past persecution or a well-founded fear of future persecution –to enter the United States. They kept out of trouble — neither had a criminal record in Colombia or Venezuela, according to the Colombian National Police and the Venezuelan Ministry of the Interior and Justice.

The next 17 months were filled with background and criminal checks and countless interviews — by the United Nations High Commissioner for Refugees, the International Organization for Migration, and finally U.S. Citizenship and Immigration Services.

During their interview with the U.S. agency in September, an officer asked E.M. and his girlfriend if they had any tattoos. E.M. said he did, his girlfriend said. The

officer didn't raise any alarms, and the tattoos didn't appear to be an issue. After the thorough background checks, the couple was granted refugee status, their future seemingly secured. The dream of starting fresh in the U.S. appeared within reach.

The tattoo question

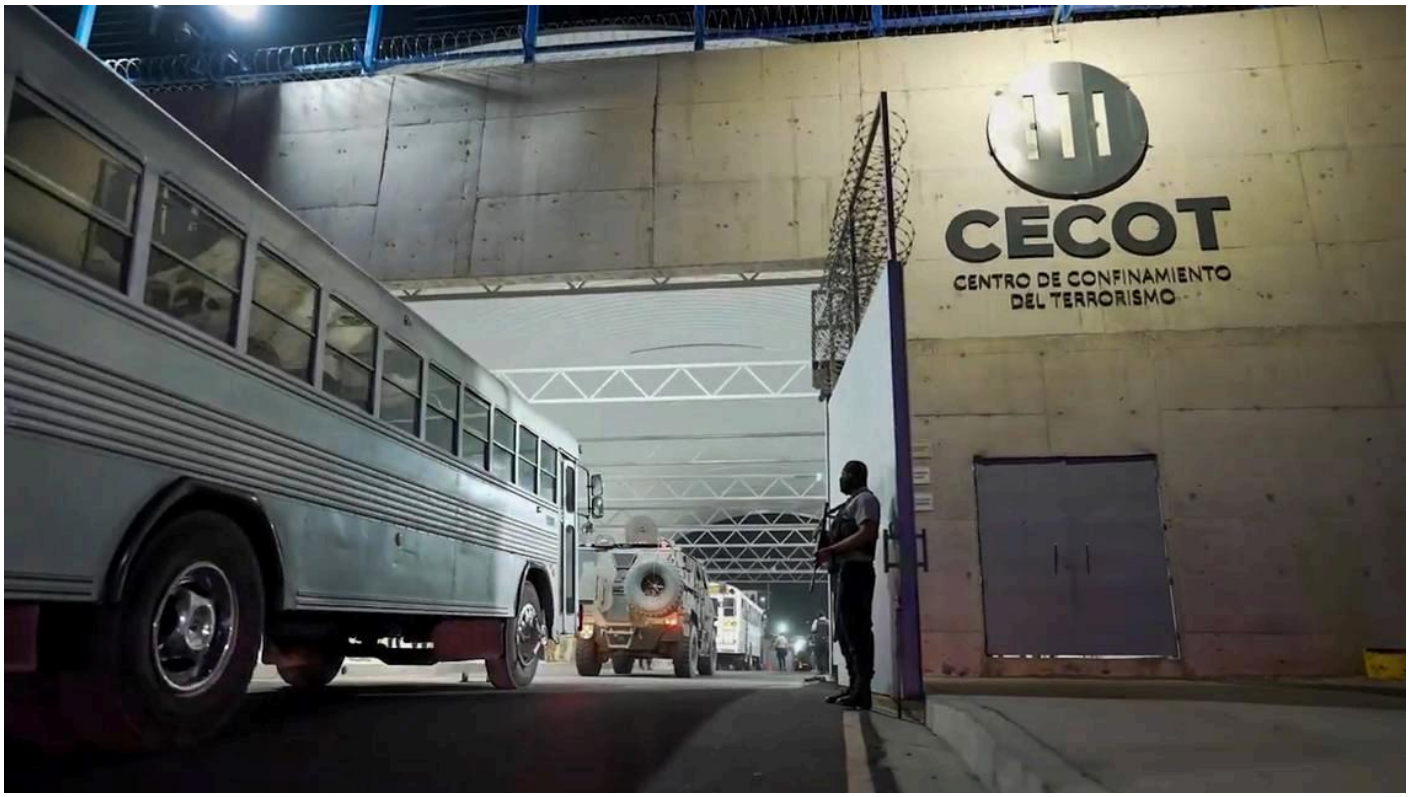
At George Bush Intercontinental Airport in Houston, they were screened — and that's when an immigration officer again asked E.M. if he had any tattoos. The immigration officials in Houston said E.M.'s tattoos were similar to those seen on members of Tren de Aragua. That moment marked the beginning of the couple's troubles and separated them from each other, Palma said.

"It's unfair to criminalize every Venezuelan. Having a tattoo or being born in Aragua doesn't make you a member of a criminal gang," Palma told the Herald. She described her boyfriend as a passionate about sports, especially soccer, a gentle man and an entrepreneur.

They had been together for five years, though they had known each other as kids growing up neighbors in a poor town in Aragua state, in central-west Venezuela.

Aragua state is where the infamous Tren de Aragua gang originated. The gang's roots trace back to the infamous Tocoron prison, where its leaders, many of whom were hardened criminals, began organizing and establishing their power.

E.M.'s tattoos were inked more than a decade ago when he was just a boy, E.M.'s uncle, Noel Guape, said.



Alleged members of the Venezuelan criminal organization Tren de Aragua, deported by the U.S. government, detained at the Terrorism Confinement Center in Tecoluca, El Salvador, on March 16, 2025. *El Salvador Presidential Press Office*

Law enforcement authorities in Texas have linked tattoos to the Tren de Aragua gang, using them as a way to identify suspected members. However, experts have said that, unlike many other criminal gangs, TdA members don't have specific, identifiable tattoos.

E.M.'s family is now left in anguish, wondering if he's safe.

"He is the kind of person who illuminated a room just when he walked in," his uncle told the Herald. "He is the life of the party, always bringing laughter and warmth wherever he goes."

Catholic Charities of Dallas had been expecting to help E.M. and his girlfriend transition into life in the U.S. when they learned he had been detained and Palma had been deported.

"The refugee services that our organization provides do not have the power to influence arrival decisions or deportation processes," said Nadia Ahmad Daniali, the case manager in charge of reception and placement of the Venezuelan refugee couple.

During his last call from E.M. a week ago, he told his uncle he knew he was going to be deported. He didn't specify the destination, but the family assumed it would be Venezuela. But as the days passed without word from E.M., and his alien registration number disappeared from the online immigration system, his family panicked. They worried he had been sent to El Salvador, where he had no connections and where his life might be in danger.

Since last Friday E.M.'s family desperately had tried to contact the ICE detention centers where he had been last held in Texas, but no one had been willing to provide any information about his whereabouts. It wasn't until Thursday afternoon they found out he was on the list of the hundreds of Venezuelans sent to El Salvador.

'He is not a criminal'

Several Venezuelans families have told the Herald their family members were deported to El Salvador despite not having any criminal record in the U.S or elsewhere.

Jerce Reyes Barrios, a professional soccer player from Venezuela, took part in peaceful demonstrations against the Nicolas Maduro regime in 2024. He was detained, tortured with electric shock shock and suffocation. When he was released he fled to the U.S. seeking protection.

Reyes' story was detailed in a court document filed by his attorney, Linette Tobin, in a federal court case in Washington, D.C., where the ACLU is challenging the deportations of the Venezuelans to El Salvador.

Reyes registered with CBP One, a mobile application developed by U.S. Customs and Border Protection that allowed migrants to schedule appointments at ports of entry along the U.S.-Mexico border.

Reyes used the app to secure an appointment and, on the day of his scheduled entry, he presented himself to CBP officials, but his tattoos raised alarms. He was detained and sent to the Otay Mesa Detention Center near San Diego. Despite

having no criminal record in Venezuela, no links to gangs and no history of violence, Reyes was treated as a criminal, his lawyer said.

After applying for asylum in December 2024, he was deported to El Salvador last week without any notice to his lawyer or family, his attorney said. His loved ones were left in the dark, wondering what had become of him.

Reyes and E.M. were deported with another 236 Venezuelans the same day the Trump administration invoked the Alien Enemies Act, an 18th Century law that had been used only three times in history — all during times of war or invasion. Under the law, Trump asserted the power to arrest, relocate or deport any Venezuelan over 14 from what the U.S. considers an "an invasion."

The law strips individuals accused of gang membership, like Reyes and E.M., of their right to challenge the accusation. The government maintains it can deport them without due process.

"My boyfriend is not defined by a tattoo or his birthplace. We want justice for him," Palma said. "We are going to prove he is not a criminal."

This story was originally published March 21, 2025 at 5:00 PM.

Related Stories from Miami Herald

IMMIGRATION

Administration: 'Many' Venezuelans sent to El Salvador prison had no U.S. criminal record

March 18, 2025 7:52 PM

IMMIGRATION

Trump sent these Venezuelans to El Salvador mega prison. Their families deny gang ties.

March 18, 2025 5:30 AM

Verónica Egui Brito

el Nuevo Herald

305-376-2664

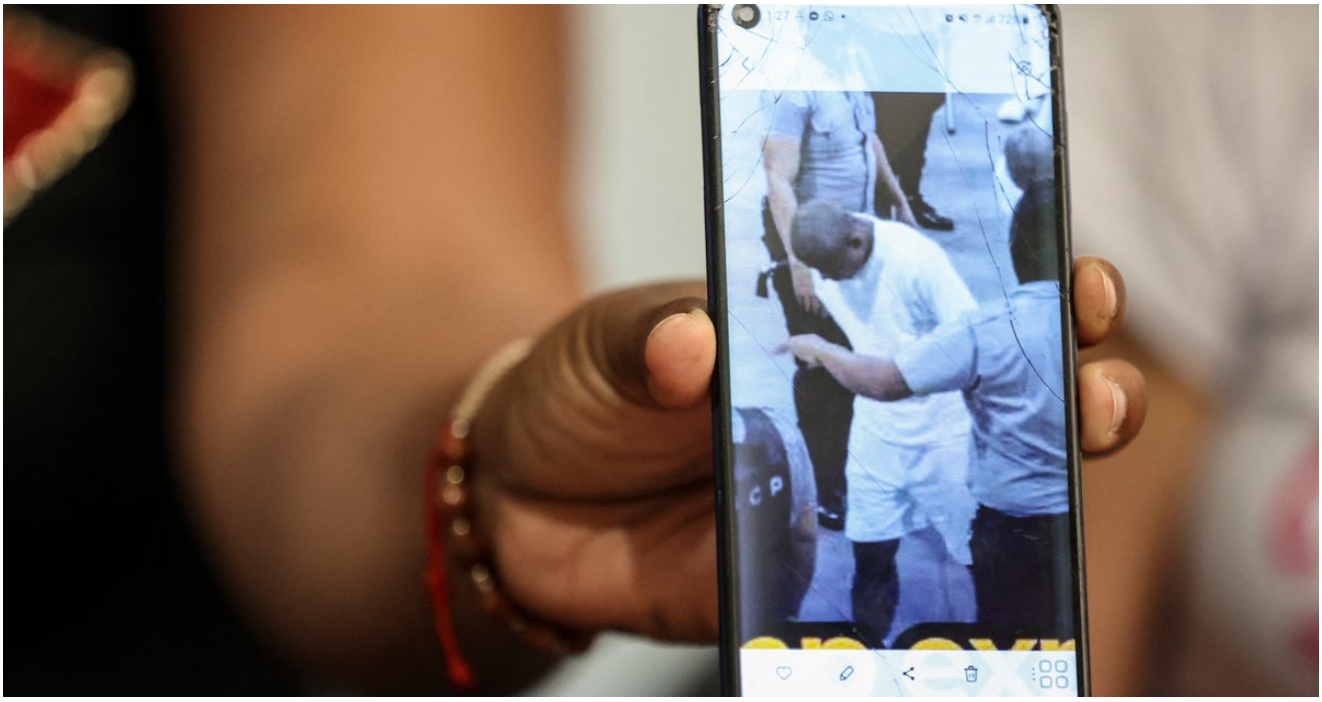
Verónica Egui Brito ha profundizado en temas sociales apremiantes y de derechos humanos. Cubre noticias dentro de la vibrante ciudad de Hialeah y sus alrededores para el Nuevo Herald y el Miami Herald. Nacida y criada en Caracas, Venezuela. Se unió al Herald en 2022. Verónica Egui Brito has delved into pressing social,

EXHIBIT 12

Gay Venezuelan Makeup Artist Deported Without Due Process

huffpost.com/entry/gay-venezuelan-makeup-artist-deported_n_67e05688e4b0dbd2dbaf96f5

Kelby Vera March 23, 2025



A 23-year-old makeup artist with no known gang affiliation was among the hundreds of Venezuelan men deported to El Salvador's infamous CECOT prison without due process last week.

Lindsay Toczylowski, co-founder and president of the Immigrant Defenders Law Center, painted a harrowing picture while recounting how her client was "disappeared" during an appearance on "The Rachel Maddow Show" on Thursday.

Andrys, who is gay and whose last name is being withheld due to concerns over his safety, initially arrived in the U.S. seeking asylum but was detained after immigration officials decided his tattoos could be a sign of gang affiliation.

His attorney firmly denied the accusation, telling Maddow, "These are not the tattoos of somebody who is involved with gangs. These are normal tattoos that you would see on anybody at a coffee shop anywhere in the United States or Venezuela."

Though Andrys was scheduled to appear in U.S. immigration court last week, he was forcibly removed from the country last weekend despite a judge's order to keep him and over 250 other men on U.S. soil until further legal review.

Watch Video At: https://youtu.be/_iNQwfptvyA

The last time he spoke to his family, they believed he would deported to Venezuela, according to an interview with his mother and the Venezuelan news outlet Crónica Uno detailed by The Advocate.

Instead, he was sent to El Salvador's Terrorism Confinement Center, known as CECOT, where he has yet to speak to his family or his attorneys.

In her communications with U.S. Immigration and Customs Enforcement, Toczylowski was told the agency would not help her make contact with Andrys.

"They will not facilitate communication with our client, because he has, in their words, been removed," she told Maddow.

Toczylowski said she has grave concerns about Andrys' safety at CECOT, a 40,000-capacity prison complex where people are often held without a trial or release date and kept in brutally spartan living conditions.

Telling Maddow her team is "pursuing all avenues" to seek Andrys' release, she added, "Because our client's life is at risk. We're concerned for his safety. And the fact that he was forcibly taken from the United States with no due process ... it's something that really shocks the conscience in a way that we haven't seen since family separation happened in 2018."

Last Sunday, El Salvador's President Nayib Bukele appeared to celebrate the arrival of the deportees as he posted a video of shackled men being ushered off a plane and processed for detention to his social media.

EXHIBIT 13

Los Angeles Times

WORLD & NATION

They were called gang members and deported. Families say their only crime was having tattoos

Venezuelan Vice President Delcy Rodriguez, center, attends a rally Tuesday in Caracas to protest the imprisonment of Venezuelans in a Salvadorean jail. Hundreds of people marched through the capital to demand the release and repatriation of 238 Venezuelans sent by President Trump to a prison in El Salvador, accused of links to the El Tren de Aragua criminal gang. (Juan Barreto / Getty Images)

By Patrick J. McDonnell, Kate Linthicum, Mery Mogollon and Nelson Rauda

March 23, 2025 3 AM PT

- Relatives of a Venezuelan deported to El Salvador say his tattoo isn't a sign of gang membership. It supports his favorite soccer team.
- "The United States now has a tropical gulag," says one expert of the Trump administration's agreement with El Salvador to imprison deportees.

SAN SALVADOR — One is a former professional soccer player who, according to his lawyer, fled Venezuela after being tortured by the country's authoritarian government.

The other, also from Venezuela, is a onetime shoe salesman and social media influencer who documented his journey from South America on TikTok.

Both were apparently among thousands of political asylum aspirants who entered the United States from Mexico legally via an immigration process scrapped by the Trump administration.

Both were detained, one in California, and deported. Now they are imprisoned in El Salvador, according to their families, who have been left in the dark about their fates in a penal system widely condemned for human rights abuses.

"This has been a torture for us, an injustice," said Antonia Cristina Barrios de Reyes, mother of Jerce Egbunik Reyes Barrios, 36, the former professional goalkeeper. "My son is not a criminal."


GOLTY
1

Jerce Egbunik Reyes Barrios, a former professional soccer player from Venezuela, was among the alleged gang members deported from the United States to El Salvador. “My son is not a criminal,” his mother said. (Family of Jerce Reyes)

The social media influencer is Nolberto Rafael Aguilar Rodríguez, 32. He initially fled to Colombia, Venezuela’s western neighbor, out of desperation, said his sister, Jennifer Aguilar.

“We’re *campesinos*, we come from the fields,” she said. “We left Venezuela because we were starving.”

WORLD & NATION

Stranded in Mexico City, these migrants hoping to reach the United States have no good options

Jan. 26, 2025

Reyes Barrios and Aguilar were among 261 people — the vast majority Venezuelans — expelled to El Salvador last week after the Trump administration alleged that most were affiliated with the Venezuela-based Tren de Aragua gang, which President Trump has declared a terrorist group.

The evidence of gang membership cited by the government is typically flimsy to nonexistent, defense lawyers allege, and largely based on tattoos and social media postings.

Experts say the administration’s outsourcing of detained migrants to a nation with an infamously repressive prison system has no precedent.

In El Salvador, “the United States now has a tropical gulag,” said Regina Bateson, a political scientist at the University of Colorado Boulder. “The notion that the U.S. government is paying millions of dollars to another government to violate these people’s rights is horrifying.”

WORLD & NATION

This French film about Mexico has 13 Oscar nominations. Why 'Emilia Pérez' is tanking in Mexico

Feb. 1, 2025

The El Salvador operation is part of a deal between the Trump administration and Salvadoran President Nayib Bukele. Advocates have filed a federal lawsuit challenging Trump's use of the Alien Enemies Act — a statute from 1798 previously only invoked during wartime — to expel most of the alleged Venezuelan gang members.

On Friday, a federal judge in Washington, D.C., vowed to "get to the bottom" of whether the Trump administration defied his order to hold off on the deportations while lawsuits challenging the expulsions played out in court.

Many relatives of the deportees deny their kin have gang ties or a criminal record, saying they were simply searching for better lives or escaping persecution in their turbulent homeland, part of the exodus that has seen millions flee Venezuela.

"We have no idea what's going to happen to Jerce," said Jair Barrios, uncle of the soccer player. "We understand and respect the laws of each country; but at the same time, we ask that, please, let justice be done and truly innocent people be released."

Reyes Barrios was detained at the Otay Mesa border post in California in September, according to a statement from his attorney, Linette Tobin, when he appeared for his appointment under the Biden administration program known as CBP One, which facilitated U.S. entry for prospective asylum applicants and others.

According to Tobin, he was mistakenly accused of Tren de Aragua affiliation based on an arm tattoo and a social media post in which he made a hand gesture that U.S. authorities called a gang sign.

The tattoo — a crown atop a soccer ball, with a rosary and the word “Díos” — is actually an homage to his favorite team, Real Madrid, Tobin wrote. The hand gesture is a popular sign language rendering of “I Love You,” the lawyer added.

Reyes Barrios participated in antigovernment demonstrations in Venezuela in February and March 2024, Tobin wrote, and was subsequently arrested and tortured, enduring electric shocks and suffocation. After his release, he fled for the United States and registered for CBP One while in Mexico.

Tobin portrayed Reyes Barrios as a law-abiding person who had never been charged with a crime and wrote that he had “a steady employment record as a soccer player, as well as a soccer coach for children and youth.”

Once in custody in California, Tobin wrote, Reyes Barrios applied for political asylum and other relief. A hearing had been set for April 17 at immigration court in Otay Mesa.

Reyes Barrios was deported to El Salvador on March 15.

Tricia McLaughlin, assistant secretary for the Department of Homeland Security, defended the government action.

Reyes Barrios was “not only in the United States illegally,” McLaughlin wrote on X, “but he has tattoos that are consistent with those indicating TdA [Tren de Aragua] membership. His own social media indicates he is a member of the vicious TdA gang.”

She added that “DHS intelligence assessments go beyond a single tattoo and we are confident in our findings.”

Reyes Barrios is a “respected person” in Venezuela, said his wife, Mariyen Araujo Sandoval, who has remained in Mexico with two of the couple’s four children.

“It’s unjust to criminalize someone because of a tattoo,” said Araujo, 32. She said she recognized her husband in the online videos of Venezuelans expelled to El Salvador.

Now dashed, she said, is her family’s dream of a reunion in the United States. She now hopes for a reunion in Venezuela — if her husband can ever get out of El Salvador.

“I’m too scared to even try to go to the United States,” said Araujo, who noted that she also has a tattoo, of a rose. “I’d be afraid that they would separate me from my daughters and put me in jail.”

The Venezuelans dispatched to El Salvador have no legal recourse for appeal or release, attorneys say, and may face indefinite detention.

“There is, of course, no law, rule or judicial standard in El Salvador to outsource the prisons,” said José Marinero, a Salvadoran lawyer. “These people have … no conviction, no debt to the Salvadoran justice system.”

Their predicament, activists say, highlights the erosion of democracy across the region, as well as the dramatic crackdown on migration pushed by Washington.

“There’s no real safe haven left,” said Michael Ahn Paarlberg, a political scientist who studies Latin America at Virginia Commonwealth University.

An image provided by El Salvador’s presidential press office shows prison guards overseeing deportees at a facility in Tecoluca on March 16. (Associated Press)

The Trump administration has acknowledged that many of those deported under the Alien Enemies Act have no criminal records in the United States. But the government says they may still pose a threat.

“We sent over 250 alien enemy members of Tren de Aragua, which El Salvador has agreed to hold in their very good jails at a fair price that will also save our taxpayer dollars,” Secretary of State Marco Rubio, who brokered the deal with Bukele, declared on X.

Critics say that Trump, like Bukele, invokes crime as an excuse for suspending civil liberties.

“They’re using these particularly vulnerable people as test cases,” said Paarlberg, who added that the message appears to be: “If we can deport people who don’t have criminal records, people who are fleeing a regime that pretty much everyone and the U.S. government agrees is authoritarian, then we can deport anyone.”

Bukele, a former advertising executive who labels himself “the world’s coolest dictator,” dispatched video crews to record the arrival of the Venezuelans, who were led off deportation planes in shackles and had their hair shorn.

“This is a performative act of cruelty … to scare people into not coming, to scare people who are here without papers, to scare people away from protesting,” Paarlberg said.

News of the deportations has sent relatives of the expelled Venezuelans poring over videos and social media posts in an effort to determine if their loved ones were among those flown to El Salvador.

A photo provided by El Salvador's presidential press office shows prison guards transfering deportees from the U.S. to the Terrorism Confinement Center in Tecoluca on March 16. (Associated Press)

The names of the deported Venezuelans appeared on a list leaked to the media. Included was Aguilar, who garnered more than 40,000 followers as he documented his northbound trek from South America on TikTok. His feed included images from the treacherous Darien Gap, the dense jungle separating Colombia and Panama.

Jennifer Aguilar described her brother as a hard-working family man who fled Venezuela for Colombia in 2013. He has three children: an 11-year-old girl in Venezuela and a 4-year-old girl and boy, 2, in Colombia. Aguilar's sister says he got his tattoo, of playing cards and dice, to cover up a scar on his forearm from an accident he had at age 16.

Nolberto Rafael Aguilar Rodríguez, 32, is one of hundreds of Venezuelan migrants detained in the U.S. and sent to El Salvador. (Jennifer Aguilar)

According to his sister, Aguilar made his way to Mexico and secured an appointment for U.S. entry via CBP One. On June 24, he posted a video of himself boarding a plane, apparently en route to the U.S.-Mexican border.

“Have faith in God,” he wrote in a caption. “Never put your head down. And trust yourself.”

Jennifer Aguilar said he got a job in a travel agency in the California border city of Calexico. For reasons that remain unclear, he was detained by U.S. immigration authorities late last year.

From Colombia, where she lives with her three daughters, Jennifer Aguilar has written about her brother's plight on social media and sent messages to Venezuelan President Nicolás Maduro and to Bukele, the Salvadoran leader.

Aguilar "has never been to prison in Venezuela or in Colombia," she wrote to Bukele. "Believe me, if he was guilty I'd say: 'Leave him there.' Because we were taught to be honest and do good."

Nolberto Rafael Aguilar Rodríguez chronicled his journey from South America to the United States on social media. He was deported and is now being held in El Salvador. (Jennifer Aguilar)

"I've tried by all means ... to be Rafael's voice," said the sister, adding that she doesn't know anyone in El Salvador. "If I could be there, I would. I'm deeply sorry that I can't."

El Salvador has rounded up and imprisoned some 85,000 people — the equivalent of 1.5% of the nation's population — since March 2022, when Bukele declared a state of emergency that effectively suspended constitutional due process rights. The Venezuelans were dispatched to the infamous Center for Terrorism Confinement, the centerpiece of Bukele's mass incarceration agenda.

Times staff writers McDonnell and Linthicum reported from Mexico City while special correspondents Mery Mogollón and Nelson Rauda contributed, respectively, from Caracas, Venezuela, and San Salvador. Special correspondent Cecilia Sánchez Vidal contributed from Mexico City.

More to Read

The Tren de Aragua gang started in a Venezuelan prison. It's now deep in U.S. politics

March 18, 2025

EXHIBIT 14

VENEZUELA >

Arturo and Frizgeralth, convicted for being Venezuelans: Trump takes another step in his racist drift

Families recognize their loved ones in videos from the Salvadoran prison where the US deported nearly 300 people with alleged ties to the Tren de Aragua gang. Some have clean criminal records. No one knows if they'll be able to return home

SuarezVzla is the stage name of the reggaeton artist Arturo Suárez-Trejo from Venezuela.
CORTESÍA

CARLA GLORIA COLOMÉ | FLORANTONIA SINGER

New York / Caracas - MAR 24, 2025 - 10:26CET

Dart Martins, a Peruvian reggaeton artist in a hurry to record his song TXTEO, can't believe he has to delay it because SuarezVzla isn't there. They've been making music together for a long time. Last time they were on a stage was at the Urban Fresh Festival in Santiago, Chile, in front of a young, loud audience. A video captures the memory of that April night: Dart Martins at the front of the stage, singing; SuarezVzla in the back, the audience in front, doing *perreo*. Earlier this year, when SuarezVzla had already left Chile to settle in the United States, they exchanged a few messages. Donald Trump had not yet returned to the White House.

"How's it going in the United States?" Martins, 30, asked in one of his messages. "I heard Trump is deporting all the illegal immigrants."

SuarezVzla — the stage name of Arturo Suárez-Trejo, 33 — told him it was true, that they were going to deport many illegal migrants, but that everything was fine with him. He had left his native Venezuela in 2018 and had settled in Chile. There he made music, friends and fans. On September 2, 2024, around 1 p.m., he entered the United States after presenting himself at the San Ysidro border crossing in California. He had benefited from the CBP One program, the application created by the Joe Biden administration and dismantled by the Republican administration on its first day in office, which has allowed legal entry into the country to some 900,000 immigrants.

SuarezVzla left Venezuela in 2018 and settled in Chile. On September 2, 2024, he entered the United States after presenting himself at the San Ysidro border crossing in California.
CORTESÍA

Suárez wanted to improve his musical technique and return to Chile with his wife. He had the protection of a parole program and a hearing scheduled for April 2 of this year. He won't be able to go: he now finds himself in El Salvador. He met the same fate as the 238 Venezuelans who were taken there last week in a dystopian story: expelled from the United States under a two-century-old law in violation of a court order and taken to a maximum-security prison for terrorists built by Salvadoran President Nayib Bukele.

On February 8, Suárez was recording a video clip at a home in Raleigh, North Carolina, where he lived. Immigration and Customs Enforcement (ICE) agents arrived and arrested the entire group of people. They first held him at the Stewart Detention Center in Georgia. They then transferred him to the Valle Detention Center in Texas. At one point, he told his family he was being deported to Venezuela.

"We thought this was going to happen, they were going to deport him to Caracas," says his brother, Nelson Suárez-Trejo, 35, who describes Suárez as a noble man, a lover of music and poetry, who has never thrown a punch beyond his kickboxing practices.

Days after Suárez's last call, the nightmare began. The images of the inmates, shaved, handcuffed, and sent on three flights to El Salvador as alleged members of the Venezuelan criminal gang Tren de Aragua, were shocking. They zoomed in on one and there was no doubt: it was Suárez.

"We knew it because of the tattoos he has and his physical features," his brother says.

No one has provided any information or warning to the family. Confirmation didn't come until Thursday, when CBS News published an internal U.S. government list of the names of the 238 Venezuelans who were sent to the Central American country, despite a judge's order preventing the deportation. The name Arturo Suárez-Trejo appears on the list. To this day, the family remains unaware of what will happen to him.

"We haven't received any response from the Salvadoran government. We don't even know what charges he faces. He had no criminal record," his brother says.

Suárez's family, friends, and fans have been circulating documents on social media confirming that he has no criminal record in any of the countries where he has lived. Dozens of people have shared his photos, his videos perched on a stage, and his love songs. They have united to demand justice for someone they describe as "a fundamental pillar of Santiago's emerging cultural scene." Suárez "is an artist, not a criminal," they assert.

"He doesn't deserve to have his life ended, to have his name tarnished," his brother insists. "I don't understand how they can cut short the dreams of someone who came to this country to dream big and who didn't enter illegally. We're affected; we're not Tren de Aragua, we're not even from Aragua."

Nelson would also like to know "how he is, how they are treating him" in prison. It's the same question being asked by Nathali, Sánchez's wife, who has been struggling with so much concern for almost a week. "In the Texas prison, he was coughing blood and had a fever. I'm afraid it could get worse," says the 27-year-old, who cares for their daughter, a baby born just three months ago. "I won't rest until I see him free, until I see him with his daughter."

Following a wave of condemnation over the deportation of dozens of men considered criminals to El Salvador, U.S. authorities have acknowledged that not all of them are members of the aforementioned gang and that some do not even have a criminal record in the United States. Several officials told CBS News that 137 of the Venezuelan men sent to the Salvadoran mega-prison were treated as "enemy aliens," but that 101 were deported "under ordinary immigration procedures." Organizations such as the United Nations have focused on the way these migrants are being treated. Its Secretary-General, António Guterres, called for respect for "due process, their fundamental rights, and their most basic dignity."

Now, Suárez's brother, Nelson, is the one who will have to take care of the baby and his wife, who remain in Chile. "She doesn't have the means to work three months after giving birth. She's alone, and now I, as his brother, have to take care of them." But the thing is, Nelson is also afraid to go out on the streets. He's an Amazon delivery driver; he has to work. His papers are in order, but nothing guarantees that the same thing that happened to Suárez won't happen to him. "I'm also terrified of being stopped. I have my TPS, my court date, and my

license, all in order, but who knows. I walk the streets in fear because I also have tattoos, but I don't belong to any gang; all I've done my whole life is work."

Guards look after deportees from the United States at the Anti-Terrorist Detention Center in Tecoluca, El Salvador, on March 16, 2025.
AP

The party that wasn't in Venezuela

At the Cornejo Pulgar home, high in the Antímano neighborhood in western Caracas, blue and yellow balloons were placed a week ago. This was how they were planning to welcome Frizgeralth De Jesús, 25, the youngest of the children who would be returning to the country, the only one who still has a huge baby portrait hanging in the living room. The deportation was the best news for his family, after the young man had spent eight months in a detention center in Texas. At home, they were happy, his older brother Carlos says from Caracas.

They were planning to go greet him at the airport that Saturday, after he told them he was happy and about to board the plane home.

Last year, Frizgeralth had made a long journey through the Darien Gap. He waited for his appointment to apply for temporary residence through the now-defunct CBP One application, a benefit that Venezuelans had until last year. His deadline was June 19, 2024. Meanwhile, he was making plans to open a store in the United States to sell the streetwear brand he started in Venezuela. “He was going to look for something better,” says Carlos. That something ended up being a prison as soon as he crossed into the United States. He was with three friends, another one of his brothers, and his brother’s girlfriend. They were headed to Tennessee, where another of his sisters has lived for seven years. Venezuelans have been migrating en masse for a decade now. Now, almost all of them have a place to call home.

Frizgeralth was the only one of his group who wasn’t allowed to enter. The tattoos on his neck, chest, abdomen, arms, and legs became the unwritten reason that led to his being declared a suspect when he tried to enter the country in June 2024. He had been in custody ever since. Now he’s also gone missing. His family hasn’t seen him in the videos Salvadoran President Nayib Bukele released celebrating the agreement with the United States to provide jailer services. But they deduced he’s in that group. Now, his name on the published list confirms it.

During his eight months in prison, Frizgeralth spoke mostly with his sister, who lives a 12-hour drive from where he was detained. In a message she still has, the young man told her: “I never imagined being in prison just for getting tattoos.” Tattoos are part of the style he identifies with, that urban, very hip-hop, very American fashion that led him to start his own clothing brand and for which he was ultimately arrested. “This is mental torture every day,” he wrote in another message.

His sister has considered buying a ticket from Tennessee to El Salvador, not knowing if she’ll be able to see him. Carlos also tried to find information at the march that Nicolás Maduro’s government organized this week in solidarity with their families. The head of the National Assembly, Jorge Rodríguez, compared U.S. immigration policy to the Nazi persecution of Jews sent to concentration camps during World War II, and promised to do whatever was necessary to

bring them to Venezuela. But Carlos found no answers about his brother. “The truth is, I spent the entire march crying.”

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A tattoo, an ear, a neck: Venezuelan mothers recognize their sons in images of alleged gang members sent to El Salvador

CARLA GLORIA COLOMÉ | NEW YORK

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EXHIBIT 15

Immigration

They were arrested during routine ICE check-ins. Then they disappeared.

Deportation proceedings are often shrouded in secrecy. But lawyers say the lack of information about the Venezuelan migrants deported under the Alien Enemies Act is nearly unprecedented.

Updated March 22, 2025

Nays Ñaupari Rosila shows a photo of herself and her husband, Henrry Albornoz Quintero, who was detained by ICE. (Desiree Rios/For The Washington Post)

By Arelis R. Hernández and María Luisa Paúl

SAN ANTONIO — Henrry Albornoz Quintero's family had been tracking his whereabouts through an online detainee locator ever since he was arrested and put in deportation proceedings after a routine check-in with immigration officials in late January.

But on Friday — less than a week before the expected birth of his son — the Venezuelan man disappeared from the database.

"Your search has returned zero (0) matching records," the government website states.

The families and lawyers of dozens of other Venezuelan and Salvadoran men who had been detained by U.S. Immigration and Customs Enforcement say their relatives and clients have similarly disappeared over the past week, with no explanation provided by the government over where they may be.

Deportation proceedings in the United States are often shrouded in secrecy. Arrest records are not public, and detainees can be transferred to far-flung jails anywhere in the United States. But family members, lawyers and the public can get information on an inmate's whereabouts through an online database, contact with an official or direct phone communication with a detainee.

Yet in the week since the Trump administration invoked the Alien Enemies Act to deport 137 Venezuelan migrants accused of being Tren de Aragua gang members to a mega-prison in El Salvador, detainees can no longer be found in the database. The Trump administration cast them as violent threats against Americans, though a top ICE official admitted in a court filing that "many" of those deported under the act do not have criminal records in the U.S. A lawyer advocating for those sent to El Salvador said in court Friday that his team would soon file documents that show some of the migrants deported there were rejected by the prison because they were women or from countries other than Venezuela or El Salvador.

Government prosecutors have offered little or no information about the migrants who were left there. Lawyers have gone to court dates for bond and asylum hearings, only to find that their clients are missing. Relatives have been left to scrutinize images released by the Salvadoran government showing men being frog-marched off a plane in shackles into the prison, to find out if they are there.

"This looks like the kinds of things we thought only happened in other countries, and it's happening to people who come from those places and came here to get away from it," said Michelle Brané, a former Biden appointee who is among a group of lawyers working to identify detainees who may have been sent to El Salvador. "You're not supposed to have people disappear in the United States."

The White House and the U.S. Department of Homeland Security have not released the names of the men sent to El Salvador and did not respond to questions regarding when family members or lawyers will be notified. Press secretary Karoline Leavitt said at a briefing Monday that the names were not being released "because of privacy concerns at this point in time — that doesn't mean we won't."

Do you know someone who was sent to El Salvador?

The Washington Post is trying to learn more about those being detained in El Salvador. If you know — or think — that your loved one is one of those involved, we would like to hear from you. You can send us information at this link.

The Washington Post está intentando obtener más información sobre las personas detenidas en El Salvador. Si sabe o cree que su ser querido está entre las personas afectadas, nos gustaría saberlo. Puede enviarnos información a través de este enlace.

Lawyers of those likely to have been sent to El Salvador say the lack of information around these men is nearly unprecedented. They described a scrambled quest to find out where their clients are that has thus far yielded few answers. Some called ICE detention centers and were told that the detainees about whom they were inquiring were no longer there, but officials weren't able to say where they are now.

"It's like being completely stonewalled," said Lucia Curiel, who is representing a Salvadoran man who she said has no criminal convictions and disappeared from ICE's detainee database after the Alien Enemies Act was invoked.

Communicating with the migrants sent to El Salvador and offering them legal representation is likely to be extremely difficult. Inmates at the prison where they were sent are routinely denied access to lawyers or relatives.

The families of 19-year-old Anyelo Sarabia González and 24-year-old Francisco Javier García Casique shared similar stories. Their relatives had been in regular contact with them before they disappeared last weekend. Their family members believe they have spotted them in photos taken of prisoners at El Salvador's Terrorism Confinement Center, but they have no official information on where they are or why they were taken there.

For Albornoz Quintero's family, the search for information has been anguishing. His wife, Nays Ñaupari Rosila, is nine months pregnant. She said she has repeatedly called Salvadoran authorities but has not been able to get through to anyone. When she went to the Dallas ICE office looking for answers, she said she was told to leave or risk arrest.

"I'm so scared for my baby," Ñaupari Rosila, 22, said, sobbing. "Unfortunately, we came to a country where basically we don't have a right to anything."

'This isn't Venezuela'

The three men whose families spoke with The Washington Post are all young Venezuelans who settled in north Texas. All had been in the United States for about a year after illegally crossing the Rio Grande and surrendering to U.S. Border Patrol. They were released into the country while they pursued asylum claims and were required to attend regular check-ins with ICE.

Anyelo Sarabia González was "the baby of the house," said Solanyer Michell Sarabia González, 25, his older sister. The siblings, along with another sister, crossed into the U.S. in November 2023. They were told to check in with ICE once a year — and it was during one of those check-ins in January that an officer began asking questions.

Solanyer said an ICE official took interest in a tattoo on her brother's hand showing a rose with petals made of $100 bills. He'd only recently gotten the tattoo, she said. Their mother had forbade him from getting one in Venezuela. Because her brother was now helping her pay the bills, "I felt like I couldn't say no when he asked. God, I even helped him pick it. We thought it was just a cool design."

The official asked where Anyelo was from, said his sister, who also had an appointment that day and witnessed what transpired. When he said he was from La Victoria, in the Venezuelan state of Aragua, that "was the nail in the coffin," she said. He was taken to another room and told to strip naked. His sisters got on their knees and begged the official to deport them instead.

For more than a month, Solanyer and her brother stayed in contact regularly by phone. She tried reassuring him that everything would be fine. She reminded him that he had an asylum hearing coming up in May.

"Don't cry. This isn't Venezuela," she told him. "They have a justice system here."

Francisco Javier García Casique had also been detained while trying to comply with a routine ICE check-in during February of last year. His brother, Sebastián García Casique, said one of the officers looked at his arms — sprawled with tattoos of a compass, a crown, a single rose, and his mother's, grandmother's and sisters' names — and began asking questions.

"They saw that and they decided he was Tren de Aragua," Sebastián said. "They didn't care that he had never been arrested before — neither in Peru, Venezuela or the United States — and told him that they needed to investigate him more."

Sebastián said his brother was detained for several months last year. Though Sebastián said authorities could not link Francisco to any criminal activity, he was nonetheless ordered deported. But that didn't happen. A judge released him with an ankle monitor because, at the time, the U.S. did not have a deportation agreement with Venezuela and the court decided he didn't pose a security threat, his brother said.

"Francisco just kept telling us: 'I have nothing to fear because I'm not a criminal,'" his brother recalled. Then in February, officials showed up at Francisco's home and sent him to a detention center. "It was bittersweet for him, but he kept saying that his only wish was to be sent back to Venezuela."

Albornoz Quintero and his wife had just celebrated their first year in the U.S. when he went to the ICE check-in where he was detained. He is a mechanic by training and had managed to find repair jobs while waiting for a work permit. The couple initially made ends meet by sleeping in a car but eventually earned enough money to put a deposit down on an apartment in Dallas.

Both were elated when they learned she was pregnant, Ñaupari Rosila said.

She had no issues at the check-in, but an officer detained her husband without providing any explanation. The expectant mom — then seven months pregnant — got in touch with an attorney and began raising money for him to be released on bond. A hearing was scheduled for the same week that she was due.

But a few days before, Albornoz Quintero told his wife he was going to be deported back to Venezuela. The other men whose families spoke with The Post say their loved ones also said they were going to be sent home.

In Texas and Venezuela, relatives anxiously searched for information on their flights. They were disappointed, but the men were also eager to be out of jail and back with their families, even if it was in the place they'd risked everything to leave. Francisco's relatives cooked his favorite foods and prepared a homecoming celebration.

Then they disappeared.

Pushing legal boundaries

On the same day the men last called their families, President Donald Trump had invoked a wartime provision designating members of the Tren de Aragua gang as alien enemies eligible for immediate deportation.

The next day, March 15, they were boarded onto planes as a court battle began brewing over whether the president had the right to deport the men under the act. Five men named as plaintiffs in the case were removed from the planes, but the others departed and were in the air when a federal judge ordered that they be turned around. The planes landed in El Salvador several hours later anyway.

Greg Chen, senior director of government relations for the American Immigration Lawyers Association, said there appears to have been an information breakdown between immigration officials in Washington and local ICE officials, who do not appear to have received adequate instruction about what is happening and what to do next.

“There’s operational chaos,” he said.

The situation echoes ICE’s early days after its founding in 2003, when entering immigration detention was like “entering a black hole,” said Ohio State University law professor César Cuauhtémoc García Hernández. “People would die in detention, and ICE wouldn’t inform anyone.”

But several immigration lawyers said the agency had become more transparent in recent years, after several embarrassing investigative reports and lawsuits. ICE regularly made detainees available for court, granted some legal access, facilitated phone calls and in 2020 created the locator system in response to pressure from advocacy groups. Anyone with a detainee’s basic details could learn where that person was being held.

That wasn’t the case, however, when the Trump administration began sending migrants to the Guantánamo Bay naval station in Cuba. When families of those migrants searched the ICE locator for information on their loved ones, they were told to call a Florida field office. The agency only updated the locator with a specific “NSGB” label after the advocates brought a lawsuit earlier this year, ACLU attorney Eunice Cho said.

If the system does not offer a location, the likely scenario is that the detainee is no longer in ICE custody. That person could be dead, or in the case of the alleged Venezuelan gang members, out of the country.

“We are in a situation where ICE is pushing the boundaries of what it is legally permitted to do,” García Hernández said. “ICE is trying to act aggressively in making headway on President Trump’s promise of overseeing a mass deportation campaign and making use of every legal tool available with little regard to norms or practices or the effect removal has on the people who care about that individual.”

The Trump administration has wavered in justifying its decision to land two planes carrying Venezuelan migrants deported under the Alien Enemies Act. High-ranking Trump administration officials have argued the president’s executive authority supersedes the judge’s order, while in court his lawyers have argued that because the planes were over international waters, the ruling did not apply.

‘Freedom and rights?’

Dallas attorney John Dutton logged on to Albornoz Quintero’s bond hearing this week through the virtual Webex platform. His client did not. The lawyer asked a government prosecutor where the expectant father was.

The Trump administration attorney said he did not know, Dutton said.

“The judge suggested that I contact the Salvadoran Consulate,” in the event that he was indeed in El Salvador, Dutton recalled. If that was the case, the judged noted, he wasn’t sure if he had any jurisdiction over the case anymore.

“Can you imagine just being taken ahead of what is supposed to be one of the most exciting days of your life, the birth of a child, and being put in a foreign prison designed for terrorists?” Dutton said. “This kid is screwed.”

With no information from lawyers, families are resorting to amateur sleuthing — zooming in on blurry photos, studying every image, and freezing frames of videos shared by the White House and Salvadoran government — to confirm whether their brother, father, son or spouse are among those spirited away to a foreign prison.

Sebastián García Casique found his brother in a photograph. The blurry image featured dozens of men in formation, with their heads shaved and wrists bound behind them. Sebastián zoomed in on every bald head. Then he saw them: the tattoos, the ears, the broad frame he had known his whole life.

Still, hoping to be wrong, Sebastián checked the ICE locator website. Until March 15, it showed his brother was still in Texas. By Sunday night, that had changed. Now it indicated that his search yielded no results.

“The worst part is that they don’t even have the courtesy of calling the families,” Sebastián said. “It’s inhumane how they’re literally disappearing people. What happened to being the country of freedom and rights?”

Solanyer Sarabia González was also bewildered when she spotted her little brother among the prisoners in El Salvador.

“I kept thinking to myself: ‘How in the world will I ever recognize him now among all these bald guys?’” she said. Then she recognized him. “Those are the knees, shoulders, forehead I’ve known and loved forever.”

For Albornoz Quintero’s wife, finding him in a photograph was an official confirmation that he will not be at his child’s birth. Ñaupari Rosila has tried to keep her mind focused on the baby, arranging and rearranging the baby’s corner of their one-bedroom apartment. Most of the walls in their unit are bare, except for where the baby’s crib is, which she has decorated with a dinosaur sticker.

The closet is full of baby clothes that her husband had excitedly picked out.

“I just want to know where my husband is,” she said. “How can they just do this?”

Graphics by Álvaro Valiño. Silvia Foster-Frau contributed to this report.

What readers are saying

The comments express strong opposition to the use of the Alien Enemies Act for deporting individuals without criminal records, drawing parallels to authoritarian regimes and historical instances of "disappearing" people. Many commenters fear this sets a dangerous precedent for... Show more

This summary is AI-generated. AI can make mistakes and this summary is not a replacement for reading the comments.

EXHIBIT 16

IMMIGRATION

U.S. sent Venezuelan man with pending political asylum case to El Salvador mega prison

By **Syra Ortiz Blanes** and **Verónica Egui Brito**
Updated March 27, 2025 10:00 AM | 11

Frengel Reyes Mota and his 9-year-old stepson, whose face has been blurred to protect his identity.

Only have a minute? Listen instead
Powered by **Trinity Audio**
1.0x
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Frengel Reyes Mota was supposed to be dealing with his ongoing asylum case as he fought for his chance to stay in the United States. Suddenly, he instead found himself locked up in a mega prison thousands of miles away.

“He’s in the torture prison in El Salvador,” Mark Prada, Reyes Mota’s lawyer, told Immigration Judge Jorge Pereira

during a hearing on Monday at the Krome Detention Center in western Miami-Dade

County. The hearing had been scheduled before Reyes Mota was sent out of the country.

Reyes Mota is among the hundreds of Venezuelans that the Trump administration deported earlier this month through the use of extraordinary wartime powers based on a 1798 law. The administration sent them to the Terrorism Confinement Center in El Salvador, claiming they are members of the notorious Venezuelan gang Tren de Aragua.

But the 24-year-old father does not have a criminal record in Venezuela. His U.S. immigration detention records are riddled with mistakes, raising questions about how reliable they are. He does not have tattoos and his family members deny he has any gang ties.

“He’s not a gang member, judge,” Prada said.

Had Reyes Mota still been in the United States, the hearing related to his asylum request would have been a commonplace matter. But his absence showcases the remarkable nature of the Venezuelans’ deportation to El Salvador. As lawyers argue the deportation flights were unlawful and violated a federal judge’s order, the immigration court system is navigating the case of an asylum seeker with pending immigration proceedings whom the Trump administration flew to another country without due process.

“We are facing a novel and extremely concerning situation where people’s immigration court proceedings are still pending but they are being disappeared from the United States without any lawful removal order,” said Prada. “This is an affront to the rule of law.”

Other lawyers have said in court documents challenging the deportations that their clients were also in pending asylum or other immigration proceedings.

‘Doesn’t deserve this injustice’

Reyes Mota and his wife decided to come to the United States because they saw no future for their child in Venezuela. In 2023, they became part of the seven million Venezuelans who have fled economic turbulence, political repression and widespread poverty in their native country.

Liyanara Sánchez, Reyes Mota’s wife, described him as a reserved man, a loving husband, a dedicated father and pet lover. In the United States he painted houses for a living. He carefully budgeted to buy treats and clothes to spoil his adopted dog, Sacha.

“He’s the most beautiful person. If you need something, he’ll be there for you,” said Sánchez. “He’s a hard worker. He’s never left us without food or housing.”

At a young age, he chose to build a life with Sánchez, who was already a mother. To the boy, Reyes Mota was more than a stepfather — he was a true father, someone

who stepped into the role with love and commitment, embracing the boy as his own, his family said.

“I need help for my father,” his 9-year-old son, who has learned English in the United States, told the Herald over audio messages. “My father is very nice with me.... My father is not bad people. My father is very, very good people.”

Frengel Reyes Mota, a 24-year-old Venezuelan asylum seeker, enjoyed playing with his dog, Sacha. He was deported to El Salvador’s mega prison despite having no criminal record in Venezuela or the U.S. *Frengel Reyes Mota family*

On Feb. 4, Reyes Mota, who was living in Tampa, went to the Immigration and Customs Enforcement office in the city for a required check-in. There, agents informed him that he was being placed in custody under suspicion of being associated with the Tren de Aragua gang, according to his family.

From detention, Reyes Mota asked his loved ones about whether Sacha was eating enough and how his son was doing in school. But they lost contact with him on the day before the deportation flights to El Salvador, on March 15. A week later, his name popped up on a list of Venezuelans who were being held at the Central American mega prison.

“He doesn’t deserve this injustice,” said a family member who requested to remain anonymous out of fear for their safety.

Back in the courtroom

At attorney Prada’s request the judge froze Reyes Mota’s asylum case for the time being. That way, he could eventually take it up again. That is, if he is ever able to return to the United States.

“We can agree that there was no removal order from this court or another court,” the judge said, noting that there was very little he could do.

The U.S. government claims on Reyes Mota’s I-213 form, a document the Department of Homeland Security uses to support that someone is deportable, that he “may be a Tren de Aragua associate.” But in those same documents, the government says he has no criminal records or immigration history in the United States. The government also uses someone else’s last name in several parts of the document, identifies him with female pronouns, and uses two different unique identification numbers that immigration authorities use to keep track of individuals, raising questions about the reliability of Trump officials’ accusations against him.

After Prada pointed out the mistakes and argued there is no evidence Reyes Mota was a Tren de Aragua member, the judge asked whether the government had made a mistake. Lawyers for the Department of Homeland Security said this was not a hearing to analyze evidence but that they would look into it. However, there are no more hearings for the foreseeable future.

Reyes Mota's family also provided to the Miami Herald government documents showing that Reyes Mota did not have any criminal record in Venezuela, and photos that show he does not have any tattoos. Immigration authorities have used the presence of tattoos to hold migrants on suspicions of being gang members.

On Wednesday afternoon, Homeland Security Kristi Noem was on her way to visit the Terrorism Confinement Center in El Salvador.She and other officials have touted the deportations as a feat of President Donald Trump's agenda to keep Americans safe from violent criminals. Before her arrival she said on her X account she was going to see firsthand "where the worst-of-the-worst criminals are housed."

But the Trump administration has admitted in federal court documents that "many" Venezuelans it accused of being dangerous gang members and deported through presidential wartime powers have no criminal records in the United States, although they argued it was only because they had only been in the U.S. briefly. On Wednesday, a federal appeals court in Washington upheld the block a lower court had imposed on the use of the war time powers to deport immigrants.

Frengel Reyes Mota, a 24-year-old father and asylum seeker, was deported to El Salvador's mega prison despite having no criminal record, according to Department of Homeland Security records. In his free time, Reyes Mota enjoyed playing with his dog, Sacha. *Frengel Reyes Mota family*

Several family members of Venezuelan men sent to El Salvador have also told the Herald their loved ones at the Terrorism Confinement Center are not part of Tren de

Aragua. The Trump administration has also sent Venezuelans who had been granted refugee status to El Salvador. To receive refugee status, people must undergo extensive background checks.

READ MORE: Despite refugee status in the U.S., young Venezuelan was deported to Salvadoran prison

Venezuelan nonprofit organizations have raised alarms about the “arbitrary detentions of Venezuelan migrants” in the United States, emphasizing that they had left their country fleeing a difficult situation where their lives could be in danger if they are returned.

“The mass and indiscriminate deportation of Venezuelans, without properly assessing their individual circumstances” makes them vulnerable, Foro por la Vida, a coalition of human-rights groups in Venezuela, said in a statement.

Reyes Mota, a young man from a poverty-stricken city in a region rich in oil, wanted stability and peace for his family, his loved ones said. When he came to the United States, he was not expecting he would end up held indefinitely in a Central American prison that has been accused of human rights violations, or that the U.S. government would accuse him of belonging to a gang designated as a terrorist organization.

His loved ones insist that he is a man of integrity with no criminal record.

“Please, Trump, there are many innocent people in that jail,” his wife said, “and they are paying the price.”

This story was originally published March 26, 2025 at 6:56 PM.

SB

Syra Ortiz Blanes

el Nuevo Herald

EXHIBIT 17

IMMIGRATION

"You're Here Because of Your Tattoos"

The Trump administration sent Venezuelans to El Salvador's most infamous prison. Their families are looking for answers.

NOAH LANARD AND ISABELA DIAS MARCH 26, 2025

Mother Jones illustration; Mark Boster/Los Angeles Times/Getty; Photos courtesy Génesis Lozada, Joseph Giardina, Arturo Suárez, and María Alvarado

Mother Jones illustration; Mark Boster/Los Angeles Times/Getty; Photos courtesy Génesis Lozada, Joseph Giardina, Arturo Suárez, and María Alvarado

On Friday, March 14, Arturo Suárez Trejo called his wife, Nathali Sánchez, from an immigration detention center in Texas. Suárez, a 33-year-old native of Caracas, Venezuela, explained that his deportation flight had been delayed. He told his wife he would be home soon. Suárez did not want to go back to Venezuela. Still, there was at least a silver lining: In December, Sánchez had given birth to their daughter, Nahiara. Suárez would finally have a chance to meet the three-month-old baby girl he had only ever seen on screens.

But, Sánchez told *Mother Jones*, she has not heard from Suárez since. Instead, last weekend, she found herself zooming in on a photo the government of El Salvador published of Venezuelan men the Trump administration had sent to President Nayib Bukele's infamous Terrorism Confinement Center, or CECOT. "I realized that one of them was my husband," she said. "I recognized him by the tattoo [on his neck], by his ear, and by his chin. Even though I couldn't see his face, I knew it was him." The photo Sánchez examined—and a highly produced propaganda video promoted by Secretary of State Marco Rubio and the White House—showed Venezuelans shackled in prison uniforms as they were pushed around by guards and had their heads shaved.

The tattoo on Suárez's neck is of a *colibrí*, a hummingbird. His wife said it is meant to symbolize "harmony and good energy." She said his other tattoos, like a palm tree on his hand—an homage to Suárez's late mother's use of a Venezuelan expression about God being greater than a coconut tree—were similarly innocuous. Nevertheless, they may be why Suárez has been effectively disappeared by the US government into a Salvadoran mega-prison.

Mother Jones has spoken with friends, family members, and lawyers of ten men sent to El Salvador by the Trump administration based on allegations that they are members of the Venezuelan organized crime group Tren de Aragua. All of them say their relatives have tattoos and believe that is why their loved ones were targeted. But they vigorously reject the idea that their sons, brothers, and husbands have anything to do with Tren de Aragua, which the Trump

administration recently labeled a foreign terrorist organization. The families have substantiated those assertions to *Mother Jones*, including—in many cases—by providing official documents attesting to their relatives' lack of criminal histories in Venezuela. Such evidence might have persuaded US judges that the men were not part of any criminal organization had the Trump administration not deliberately deprived them of due process.

On March 14, President Donald Trump quietly signed a proclamation invoking the Alien Enemies Act—a 1798 law last used during World War II. The order declared that the United States is under invasion by Tren de Aragua. It is the first time in US history that the 18th-century statute, which gives the president extraordinary powers to detain and deport noncitizens, has been used absent a Congressional declaration of war. The administration then employed the wartime authority unlocked by the Alien Enemies Act to quickly load Venezuelans onto deportation flights from Texas to El Salvador.

In response to a class action lawsuit brought by the ACLU and Democracy Forward, federal judge James Boasberg almost immediately blocked the Trump White House from using the Alien Enemies Act to summarily deport Venezuelans, and directed any planes already in the air to turn around. But in defiance of that order, the administration kept jets flying to El Salvador. Now Suárez and others like him are trapped in the Central American nation with no clear way to contact their relatives or lawyers.

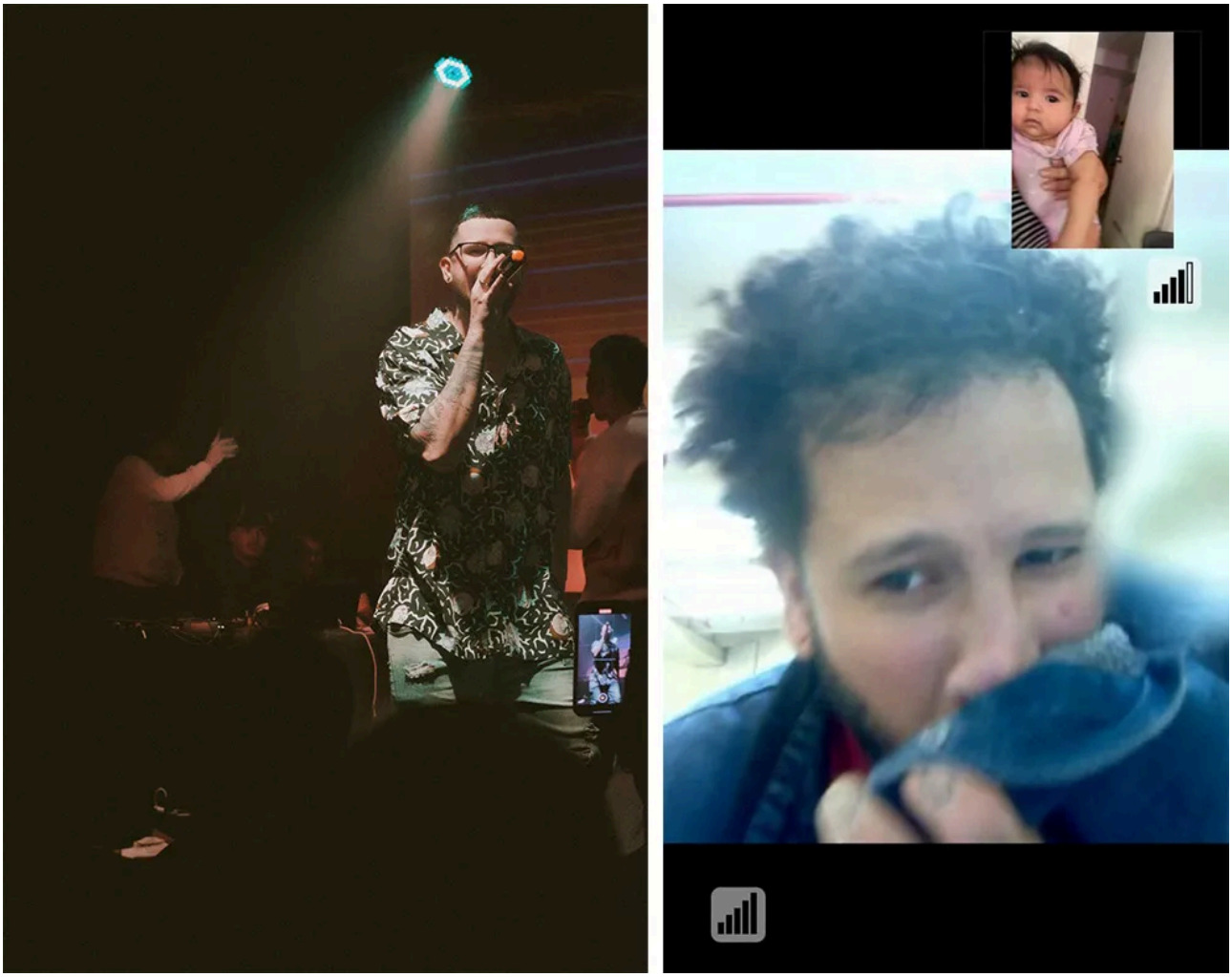
Suárez, whose story has also been reported on by the Venezuelan outlet *El Estímulo*, is an aspiring pop musician who records under the name SuarezVzla. His older brother, Nelson Suárez, said his sibling's tattoos were intended to help him "stand out" from the crowd. "As Venezuelans, we can't be in our own country so we came to a country where there is supposedly freedom of expression, where there are human rights, where there's the strongest and most robust democracy," Nelson said. "Yet the government is treating us like criminals based only on our tattoos, or because we're Venezuelan, without a proper investigation or a prosecutor offering any evidence." (All interviews with family members for this story were conducted in Spanish.)

"Well, you're here because of your tattoos," the ICE agent reportedly said. "We're finding and questioning everyone who has tattoos."

The Justice Department's website states that Suárez's immigration case is still pending and that he is due to appear before a judge next Wednesday. Records provided by Nelson Suárez show that Arturo has no criminal record in Venezuela. Nor, according to his family, does Suárez have one in Colombia and Chile, where he lived after leaving Venezuela in 2016. They say he is one of millions of Venezuelans who sought a better life elsewhere after fleeing one of the worst economic collapses in modern history. (Just a few years ago, Secretary Rubio, then a senator from Florida, stressed that failure to protect Venezuelans from deportation "would result in a very real death sentence for countless" people who had "fled their country.")

The stories shared with *Mother Jones* suggest that Trump's immigration officials actively sought out Venezuelan men with tattoos before the Alien Enemies Act was invoked and then removed them to El Salvador within hours of the presidential proclamation taking effect.

"This doesn't just happen overnight," said immigration lawyer Joseph Giardina, who represents one of the men now in El Salvador, Frizgeralth de Jesus Cornejo Pulgar. "They don't get a staged reception in El Salvador and a whole wing for them in a maximum-security prison…It was a planned operation, that was carried out quickly and in violation of the judge's order. They knew what they were doing."



Arturo Suárez performing and speaking with his baby daughter from detention. **Courtesy Arturo Suárez**

The White House has yet to provide evidence that the hundreds of Venezuelans flown to El Salvador—without an opportunity to challenge their labeling as Tren de Aragua members and "terrorists"—had actual ties to the gang. When pressed on the criteria used for their identification, Press Secretary Karoline Leavitt pointed to unspecified "intelligence" deployed to arrest the Venezuelans she has referred to as "heinous monsters." Trump's border czar Tom Homan has insisted—without providing specific details—that the public should trust ICE to have correctly targeted the Venezuelans based on "criminal investigations," social media posts, and surveillance.

Robert Cerna, an acting field office director for ICE's removal operations branch, said the agency "did not simply rely on social media posts, photographs of the alien displaying gang-related hand gestures, or tattoos alone." But Cerna also acknowledged that many of the Venezuelans deported under the Alien Enemies Act had no criminal history in the United States, a fact he twisted into an argument to seemingly justify the summary deportations without due process. "The lack of a criminal record does not indicate they pose a limited threat," Cerna wrote. "In fact, based upon their association with TdA, the lack of specific information about each individual actually highlights the risk they pose. It demonstrates that they are terrorists with regard to whom we lack a complete profile."

The relatives who talked to *Mother Jones* painted a vastly different picture from the US government's description of the men as terrorists or hardened criminals. Many said their loved ones were tricked into thinking they were being sent back to Venezuela, not to a third country. (The Department of Homeland Security and ICE did not respond to a detailed request for comment asking for any evidence that the Venezuelans named in this article have ties to Tren de Aragua.)

Before leaving for the United States in late 2023, Neri Alvarado Borges lived in Yaritagua, a small city in north central Venezuela. His father is a farmer and his mother supports his 15-year-old brother, Nelyerson, who has autism.

Neri Alvarado with his brother Nelyerson in 2023. **Courtesy María Alvarado**

Alvarado's older sister, María, stressed in a call from Venezuela that her brother has no connection to Tren de Aragua. She said her brother was deeply devoted to helping Nelyerson—explaining that one of his three tattoos is an autism awareness ribbon with his brother's name on it and that he used to teach swimming classes for children with developmental disabilities. "Anyone who's talked to Neri for even an hour can tell you what a great person he is. Truly, as a family, we are completely devastated to see him going through something so unjust—especially knowing that he's never done anything wrong," María said. "He's someone who, as they say, wouldn't even hurt a fly."

Still, Alvarado was detained by ICE outside his apartment in early February and brought in for questioning, Juan Enrique Hernández, the owner of two Venezuelan bakeries in the Dallas area and Alvarado's boss, told *Mother Jones.* One day later, Hernández went to see him in detention and asked him to explain what had happened. Alvarado told Hernández that an ICE agent had asked him if he knew why he had been picked up; Alvarado said that he did not. "Well, you're here because of your tattoos," the ICE agent replied, according to Hernández. "We're finding and questioning everyone who has tattoos."

The agent then asked Alvarado to explain his tattoos and for permission to review his phone for any evidence of gang activity. "You're clean," the ICE officer told Alvarado after he complied, according to both Hernández and María Alvarado. "I'm going to put down here that you have nothing to do with Tren de Aragua."

For reasons that remain unclear, Hernández said that another official in ICE's Dallas field office decided to keep Alvarado detained. María Alvarado said her brother told her the same story at the time.

Hernández spoke to Alvarado shortly before he was sent to El Salvador. "There are 90 of us here. We all have tattoos. We were all detained for the same reasons," he recalled Alvarado telling him. "From what they told me, we are going to be deported." Both assumed that meant being sent back to Venezuela.

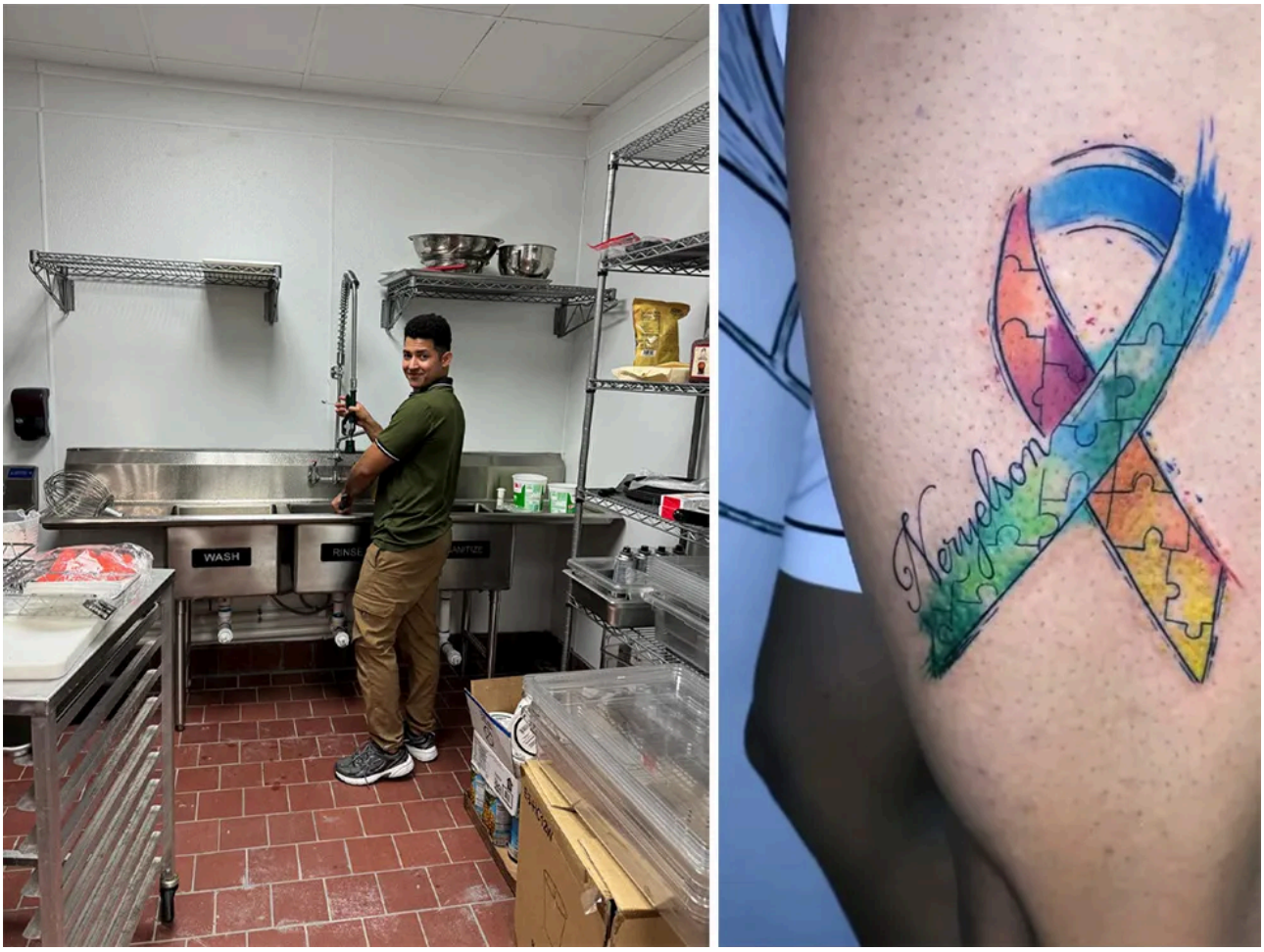
Hernández, a US citizen who moved to the United States from Venezuela nearly three decades ago, searched desperately for Alvarado when he didn't show up in his home country that weekend. He was nearly certain that Alvarado was in El Salvador when he first spoke to *Mother Jones* on Thursday. "I have very few friends," he said. "Very few friends and I have been in this country for 27 years. I let Neri into my house because he is a stand-up guy…Because you can tell when someone is good or bad." Later that day, on Alvarado's 25th birthday, Hernández got confirmation that his friend was in El Salvador when CBS News published a list of the 238 people now at CECOT.

A centerpiece of Bukele's brutal anti-gang crackdown, CECOT is known for due process violations and extreme confinement conditions. Last year, CNN obtained rare access to the remote prison, which can hold up to 40,000 people. The network found prisoners living in crowded cells with metal beds that had no mattresses or sheets, an open toilet, and a cement basin. Visitation and time outdoors are not allowed. A photographer who was allowed into the prison as the Venezuelans arrived earlier this month wrote for *Time* magazine that he witnessed them being beaten, humiliated, and stripped naked.

The Trump administration has indicated in court records that the El Salvador operation was weeks, if not months, in the making. In a declaration, a State Department official said arrangements with the Salvadoran and Venezuelan governments for the countries to take back US deportees allegedly associated with Tren de Aragua had been made after weeks of talks "at the highest levels"—including ones involving Secretary of State Rubio—and "were the result of intensive and delicate negotiations."

As part of the deal, the US government will pay El Salvador $6 million to hold the Venezuelan men for at least one year. Calling the agreements a "foreign policy matter," Rubio has claimed the outsourcing of deportees' detention to Bukele's "excellent prison system" is saving money for US taxpayers.

It is unclear if, or when, anyone sent to CECOT will be able to return to Venezuela. A Human Rights Watch program director noted in a declaration that the organization "is not aware of any detainees who have been released from that prison." During an appeals court hearing on March 24, the ACLU's lead counsel Lee Gelernt said, "We're looking at people now who may be in a Salvadoran prison the rest of their lives."



Neri Alvarado working at the bakery and the autism awareness tattoo with his brother's name. **Courtesy María Alvarado**

Joseph Giardina's client Frizgeralth de Jesus Cornejo Pulgar thought he was set to return to Venezuela on a deportation flight. Carlos, Frizgeralth's older sibling, said his 26-year-old brother called their sister, who lives in Tennessee, from the El Valle detention center in Texas. He said Frizgeralth told her he was going to be deported to Venezuela later that day. "He was happy that he was going to be here with us," Carlos said from Caracas in a video call with *Mother Jones*.

But Frizgeralth never arrived. Eventually, the family heard from the girlfriend of another Venezuelan set to be deported on the same flight as Carlos. She had identified him in videos shared on social media of the men who had been sent to the prison in El Salvador. On March 19, Carlos started scouring the internet and spotted his brother in a TikTok video. In it, Frizgeralth has his freshly shaved head pressed down, a rose tattoo on his neck peeking out from under a white t-shirt.

"We felt very powerless and in a lot of pain," Carlos said. "To see how they mistreat a person who doesn't deserve any of that. It's not fair."

"I never imagined being imprisoned just for getting a tattoo."

Frizgeralth arrived in the United States in June 2024 after crossing the Darién Gap and waiting several months in Mexico for a CBP One appointment. The Biden-era program, which the Trump administration has since terminated,

allowed migrants to schedule a date to present lawfully at a US port of entry. Carlos said Border patrol agents let Frizgeralth's girlfriend and their other brother, as well as two friends, through but they held Frizgeralth back. He ended up detained at Winn Correctional Center, an ICE facility in Louisiana.

In messages to his family from detention, Frizgeralth expressed concern he was being investigated because of his tattoos. He explained that none of the 20 or so images—including one on his chest of an angel holding a gun—he has tattooed on his body have any connection to gang activity. He also described feeling discouraged from hearing stories in detention of Venezuelans who had recently been redetained and said ICE agents picked them up over suspicions about their tattoos.

Frizgeralth even had a declaration from his tattoo artist confirming the harmless nature of the artwork. "I never imagined being imprisoned just for getting a tattoo," Frizgeralth, who owns a streetwear clothing brand with Carlos, wrote. "I never imagined being separated from my family. I wouldn't wish this on anyone, not even my worst enemy if I had one. It's horrible, it's mental torture every day."

Like Suárez and Alvarado, Frizgeralth had no criminal record in Venezuela, documents show. Giardina said his client also had no known criminal history in the United States. Nor did he have a final deportation order. During his preliminary court hearings, the US government never claimed or presented evidence that Frizgeralth had ties to Tren de Aragua. "He was doing everything he was supposed to do," Giardina said. "He got vetted and checked when he came into the country. He was in detention the entire time. It's insanity." If anything, Giardina said, his client had a strong claim for asylum based on political persecution. He said Frizgeralth was being targeted by the *colectivos*, paramilitary groups linked to the Maduro regime.

About a week prior to his deportation, they moved Frizgeralth to Texas. His next hearing, which is scheduled for April 10, still appears on the immigration court's online system. "To detain them in this maximum security prison with no access to lawyers, no charges, just because you're saying they're terrorists…," Giardina said. "I mean, what the hell?"

Génesis Lozada Sánchez said she and her younger brother Wuilliam are from a rural Venezuelan "cattle town" called Coloncito near Colombia. Following Venezuela's economic collapse, both she and Wuilliam lived in Bogota, where her brother saved up for the journey to the United States by making pants at a clothing factory. After he reached the border last January, Wuilliam was detained for more than a year, Génesis said.

On Friday, March 14, he called a cousin in the United States to say that he was about to be deported to Venezuela. "But to everyone's surprise, that's not what happened. They were kidnapped," Génesis said. "Why do I say kidnapped? These people have no ties to El Salvador. They haven't committed any crimes there. And they're not even Salvadoran. They don't even cross into El Salvador after going through the Darién Gap on their way to the United States. So, it's a kidnapping. They tricked these guys into signing papers by telling them they were being sent to Venezuela."

Like other men sent to El Salvador, Wuilliam has tattoos. But Génesis said that they have nothing to do with Tren de Aragua and that her brother has no criminal record. His goal had been to make enough money in the United States to help support their parents and to save up enough to hopefully open a clothing factory back home.

Other reporting and court briefs further support the families' suspicions that their loved ones were primarily targeted for deportation because of their tattoos. In one instance, a professional soccer player, whose attorney said had fled Venezuela after protesting against the Maduro regime and being tortured, was accused of gang membership based on a tattoo similar to the logo of his favorite team, Real Madrid.

John Dutton, a Houston-based immigration attorney, said that he started noticing ICE officers detaining Venezuelans during check-ins due to their tattoos earlier this year. "If they notice they have a tattoo, they're just taking them into custody," he explained. "No more questions to ask." Dutton estimated he now has about a dozen clients who have been arrested because of tattoos.

One of his clients, Henrry Albornoz Quintero, was due in court for a bond hearing last Wednesday after being taken into detention at a routine ICE check-in. "I show up. The judge asked me where my client is," the Houston lawyer said. "I asked the same question to the DHS attorney. She looked at her notes, shuffled papers around as if she's gonna find the answer in there, looks up, and said, 'Judge, I don't know.'"

Dutton told the judge that his client might be in El Salvador; his relatives had recognized him in one of the images of people at CECOT. The judge then decided not to hear the case on the grounds that he no longer had jurisdiction. "You could tell he wanted to help me," Dutton added. "He just couldn't. There's nothing he could do."

The next day, Albornoz's name appeared on the list of people imprisoned in El Salvador. So far, Albornoz is the only one of Dutton's clients to be sent there. His wife is nine months pregnant with their first child.

"They didn't just deport these people and then set them free," says Ilya Somin, a law professor at George Mason University. "They sent them to El Salvador, where that country, at the behest of the United States, is incarcerating them for at least a year in their prison system. This is not just deportation without due process. This is imprisonment without due process in a foreign prison system that has terrible conditions. That's a pretty blatant violation of the Fifth Amendment's due process clause, which says that you can't take away people's life, liberty or property without due process of law."

Until Thursday, March 20, Barbara Alexandra Manzo still wasn't sure if her brother Lainerke Daniel Manzo Lovera was among those sent to El Salvador and transferred to CECOT. The family hadn't heard from him since that Saturday, when he called from El Paso, Texas, to say they were deporting him to Venezuela or Mexico. Her confirmation also came when she saw his name on the CBS News list.

Barbara Alexandra told *Mother Jones* that Lainerke didn't even have a tattoo before he left Venezuela in December 2023. He got one—a clock on his arm—while living and working in Mexico, waiting for a CBP One appointment. It was a gift from a roommate who had been given a date before he did. Last October, Lainerke showed up at the border and was sent to ICE detention; first in San Diego, then briefly in Arizona. He had a court hearing scheduled for March 26.

"My son went to look for a better future, the American Dream," his mother Eglee Xiomara said in a video. "And it didn't come true. That was the worst trip he has ever made in his life."

Lainerke has yet to meet his six-month-old daughter, who was born in the United States. "He's never been in prison," Barbara Alexandra said. "[We're wondering] if he's ok or if something is happening to him. And we'll never know because we have no recourse."

Nelson Suárez fears that he, too, could meet the same fate as his brother Arturo, the Venezuelan musician. Even during the first Trump administration, the fact that Nelson has Temporary Protected Status and a pending asylum case would have been enough to protect him from deportation. But there are no guarantees that it will be now. If Judge Boasberg's temporary restraining order is lifted or overturned, he could be immediately deported to Venezuela, or sent to El Salvador, without due process. He doesn't know if he will walk out of a scheduled check-in with ICE in May free or in chains.

"I'm really scared," he said last week. "My three daughters are here with me. My wife is here. My kids are in school. I don't know what could happen. Since this happened to my brother, I really haven't been able to sleep. I have no peace, no sense of calm. I'm afraid to go out on the street. But at the same time, we have to go out to work and get things done."

EXHIBIT 18

‘Deported because of his tattoos’: has the US targeted Venezuelans for their body art?

US claims tattoos prove membership of Tren de Aragua gang but relatives describe tributes to God, family and Real Madrid

By Tom Phillips and Clavel Rangel

Venezuela migrants who have been caught up in Trump's crackdown, seemingly in part because of their tattoos. Composite: Supplied

Thu 20 Mar 2025 19.42 EDT

Like many Venezuelans of his generation, Franco José Caraballo Tiapa is a man of many tattoos.

There is one of a rose, one of a lion, and another - on the left side of the 26-year-old's neck - of a razor blade that represents his work as a barber.

Two other tattoos pay tribute to Caraballo's eldest daughter, Shalome: a pocket watch featuring the time of her birth and some black lettering on his chest that spells out the four-year-old's name.

"He's just a normal kid ... he likes tattoos - that's it," said Martin Rosenow, a Florida-based attorney who represents the Venezuelan asylum seeker - one of scores shipped to El Salvador by the Trump administration last weekend as part of his hard-line immigration crackdown.

Tattoos on the body of Franco José Caraballo Tiapa.

Caraballo's fondness for body art may have been his undoing. For when the father of two was detained by US immigration officials in Dallas last month, they appear to have taken those tattoos as proof that he was a member of Venezuela's most notorious gang, Tren de Aragua.

An official Department of Homeland Security document issued in early February and reviewed by the Guardian states: "[The] subject [Caraballo] has been identified as a Member/Active of Tren de Aragua" although it does not explain how agents reached that conclusion. The same document notes that Caraballo - who it calls a "Deportable/Excludable Alien" - has several tattoos and no known criminal history "at this time".

Rosenow rejected the idea that the images inked on to his client's skin indicated gang membership. "It's specious - there's no basis [for this conclusion]," he said. "Experts in Venezuela who study the gang have all stated that there are no tattoos that associate gang members. It's not like the Central American MS-13 gang where tattoos are relevant in their organization."

"Tren de Agua has no [specific] tattoos," Rosenow continued. "If you see pictures [of actual Tren de Aragua members arrested in the US], they're shirtless and many of them don't even have tattoos.

"I'm nauseated by it all. I'm distressed for these individuals. I'm sad for what this means. As an American, for me it's disgraceful that we would violate human rights so flagrantly on an international level."

Caraballo, who hails from the Venezuelan state of Bolívar and entered the US over its southern border in October 2023, is one of several Venezuelans

whom immigration officials appear to have identified as gang members based on little more than their nationality and their tattoos.

Daniel Alberto Lozano Camargo

Daniel Alberto Lozano Camargo, a 20-year-old asylum seeker from Maracaibo in western Venezuela, lived in Houston, Texas where he washed cars for a living, advertising his services on Facebook.

His partner, a US citizen called Leslie Aranda, said he was arrested last November after being contacted by a supposed client. She has not heard from him since last Friday, when Donald Trump invoked sweeping wartime powers called the Alien Enemies Act to deport people considered a threat, such as members of Tren de Aragua, which was last month designated a foreign terrorist organization.

Daniel Alberto Lozano Camargo.

Like other Venezuelans who were deported, Lozano has several tattoos, said Aranda, 25. He has the name of his partner's daughter, Danessy, on one arm. A rose. The name of his niece, Eurimar, with a crown over the letter E. Praying hands on his neck. His father's name, Adalberto, and his initials. Lozano also has the date of his anniversary with Aranda: 19 January 2023. Another tattoo reads "King of Myself."

"I know his father's name is significant to him because he died when Daniel was young. And I also know he didn't really like the rose tattoo because a friend who was practising did it. Daniel loves art and tattoos - that's why he has them," Aranda said.

Lozano's mother, Daniela, who is also in the US, said: "They violated his human rights - it's an injustice. He doesn't belong to any gang."

Neri José Alvarado Borges

The sister of Neri José Alvarado Borges, another Venezuelan deported to El Salvador, said the 24-year-old also had tattoos that relatives suspect may have led to him being wrongly identified as a criminal.

One says "Family", another says "Brothers" and a third, on his left thigh, features the name of his younger brother, Neryelson, who is autistic, and the

rainbow-colored ribbon of the autism acceptance movement.

Neri José Alvarado Borges.

“None of these tattoos has anything at all to do with the Tren de Aragua,” said his sister, Lisbengerth Montilla, 20. “But for them [immigration authorities] anyone with a tattoo is connected to Tren de Aragua.”

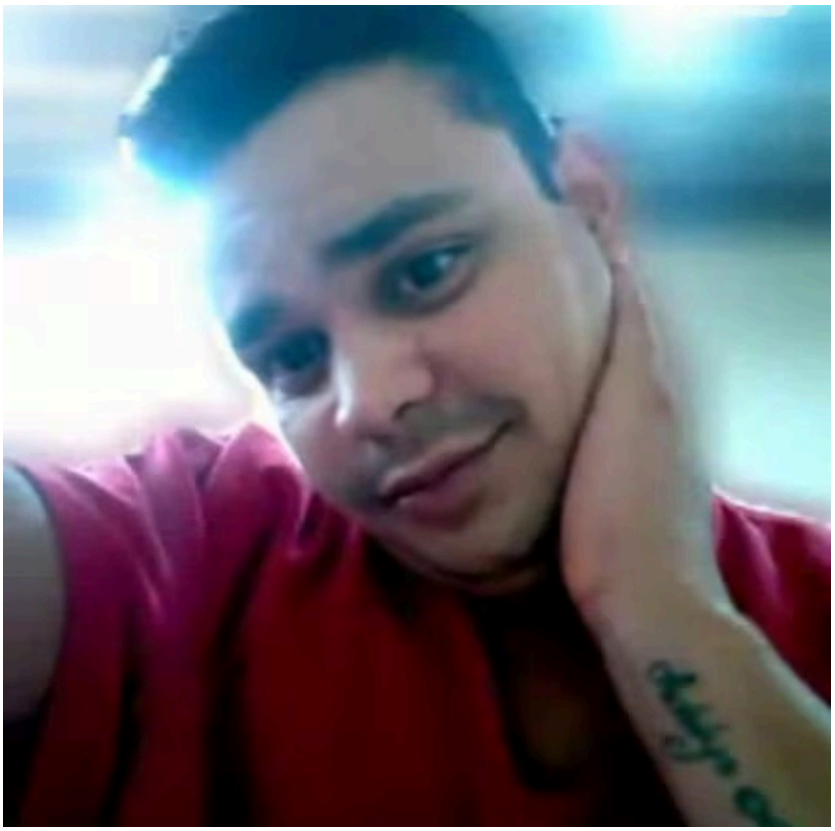
Montilla said her brother was no gangster. In fact, he was a psychology student who had been forced to abandon his studies and migrate to the US nine months ago because of Venezuela’s economic collapse.

After trekking through the perilous Darién Gap jungle and entering the US, Alvarado, who has no criminal history, built a life in Dallas where he worked in a bakery.

“Many of us have come here because of the situation back in our country,” said Montilla, who also lives in the US. “There were times when we didn’t even have food to eat or have the money to buy anything. Many people fled because of the dictatorship in Venezuela, seeking a better future.

“Not all of those people [deported to El Salvador] are criminals - and not all Venezuelans are bad people. We are from a decent, hard-working and upstanding family. We’ve never had problems with anybody.”

Luis Carlos José Marcano Silva



Luis Carlos José Marcano Silva.

Luis Carlos José Marcano Silva, a 26-year-old barber from the Venezuelan island of Margarita, was detained at an immigration hearing in Miami last month. His tattoos also seemingly played a role in his detention and deportation to El Salvador.

One, on Marcano's belly, shows the face of Jesus of Nazareth. Another, on his arm, shows an infinity symbol while a third features the name of his daughter, Adelys. His chest is emblazoned with the image of a crown.

"[At the hearing] all they kept telling him was that he belonged to the Tren de Aragua gang. When his wife contacted the lawyer, they said it was probably because of his tattoos," said Marcano's mother, Adelys del Valle Silva Ortega, denying that her son has any links to the crime group or even a criminal record.

"I feel frustrated, desperate. I imagine they are not treating him well. I've already seen videos of that prison," Silva said of the notorious Salvadoran "anti-terrorism" jail where her son is now thought to be incarcerated. "I think of him every moment, praying to the Virgin of the Valley [a Venezuelan patron saint] to protect him."

Jerce Reyes Barrios

The lawyer for a fifth Venezuelan man deported to El Salvador, a former professional footballer called Jerce Reyes Barrios, 36, has also claimed his tattoos played a role in sealing his fate.

Reyes's tattoos include one of a crown sitting atop a soccer ball with a rosary and the word "Dios" (God). In a sworn declaration, his California-based attorney, Linette Tobin, said the Department of Homeland Security had alleged this tattoo was proof of gang membership.

"In reality, he chose this tattoo because it is similar to the logo for his favourite soccer team, Real Madrid," Tobin said in her statement on Wednesday.

Tobin rejected the idea that her client was a gang member and said he had fled Venezuela in early 2024 after being detained at an anti-government demonstration by security forces. Reyes was subsequently "taken to a clandestine building where he was tortured" with electric shocks and suffocation.

Tobin said US immigration officials had reviewed her client's social media posts and found one in which he made "a hand gesture that they allege is proof of gang membership".

"In fact, the gesture is a common one that means I Love You in sign language and is commonly used as a rock'n'roll symbol," Tobin said.

Francisco Javier García Casique

Sebastián García Casique, the brother of a sixth Venezuelan deported to El Salvador, said his sibling, Francisco Javier García Casique, also had tattoos, including of a rose, a compass and a phrase reading: "God chooses his toughest battles for his best warriors."

Francisco Javier García Casique.

A fourth tattoo says: "Vivir el momento" (Live in the Moment). A fifth says in English: "Family".

In September 2021 García posted an Instagram video of a tattoo of a timepiece being inked on to his right arm by an artist in Peru, where he then lived. "My tattoo in tribute to my two grandmas who I love and miss a lot," García wrote.

Anyelo Sarabia González

In a sworn declaration, the sister of Anyelo Sarabia González, Solanyer Michell Sarabia González, said her 19-year-old brother had been detained by immigration agents at the start of this year in Dallas and that those agents had asked "about a tattoo that is visible on his hand" showing a rose with money as its petals.

"He had that tattoo done ... because he thought it looked cool," González's sister said, adding that she believed her brother had been sent to El Salvador "under the false pretence that he was a member of Tren de Aragua".

"The tattoo has no meaning or connection to any gang," said González, 25. Two other tattoos on her brother's body - of the phrases "strength and

courage" and "I can do all things through Christ who strengthens me" - were also not gang-related, she said.

Franco José Caraballo Tiapa

Rosenow also saw no indication that his client - who he said had sought asylum on the basis of political persecution after taking part in opposition protests - was involved in the Venezuelan gang. He said Caraballo's "cheesy" and romantic Instagram posts indicated he was not "a vicious gang member".

Franco José Caraballo Tiapa

A Venezuelan criminal background check issued earlier this month indicates Caraballo has no criminal record there. Francisco Javier García Casique's family has also published evidence that he had no criminal record back home.

The White House has described the Venezuelans deported to El Salvador as "heinous monsters" and terrorists but has yet to release detailed information about their identities, let alone their alleged crimes.

On Thursday afternoon CBS News published an internal government list of the 238 Venezuelan deportees, which included the names of all of the men in this story.

On Monday, a senior official from immigration and customs enforcement, Robert Cerna, admitted that "many" of those removed from the US under the Alien Enemy Act did not have criminal records in the US, but he nevertheless said they were Tren de Aragua members.

The fact that those people did not have a criminal record "is because they have only been in the country for a short period of time", Cerna said.

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EXHIBIT 19

Intelligence Assessment Said to Contradict Trump on Venezuelan Gang

To invoke wartime deportation powers, President Trump asserted that Venezuela's government controls a gang. U.S. intelligence analysts think that is not true.


By Charlie Savage and Julian E. Barnes
Reporting from Washington

Published March 20, 2025 Updated March 22, 2025

President Trump's assertion that a gang is committing crimes in the United States at the direction of Venezuela's government was critical to his invocation of a wartime law last week to summarily deport people whom officials suspected of belonging to that group.

But American intelligence agencies circulated findings last month that stand starkly at odds with Mr. Trump's claims, according to officials familiar with the matter. The document, dated Feb. 26, summarized the shared judgment of the nation's spy agencies that the gang was not controlled by the Venezuelan government.

The disclosure calls into question the credibility of Mr. Trump's basis for invoking a rarely used wartime law, the Alien Enemies Act of 1798, to transfer a group of Venezuelans to a high-security prison in El Salvador last weekend, with no due process.

The intelligence community assessment concluded that the gang, Tren de Aragua, was not directed by Venezuela's government or committing crimes in the United States on its orders, according to the officials, speaking on the condition of anonymity to discuss internal deliberations.

Analysts put that conclusion at a “moderate” confidence level, the officials said, because of a limited volume of available reporting about the gang. Most of the intelligence community, including the C.I.A. and the National Security Agency, agreed with that assessment.

Only one agency, the F.B.I., partly dissented. It maintained the gang has a connection to the administration of Venezuela’s authoritarian president, Nicolás Maduro, based on information the other agencies did not find credible.

“Multiple intelligence assessments are prepared on issues for a variety of reasons,” the White House said in a statement. “The president was well within his legal and constitutional authority to invoke the Alien Enemies Act to expel illegal foreign terrorists from our country.”

A spokesman for the Office of the Director of National Intelligence declined to comment.

Mr. Trump’s extraordinary use of wartime powers to advance his immigration crackdown has edged the administration closer to a constitutional clash with the judiciary. A judge in Washington is considering whether the administration violated his order blocking, for now, the expulsion of migrants under the law. The Justice Department denounced the order as infringing on Mr. Trump’s national security powers and asked an appeals court to overturn it.

The Alien Enemies Act empowers the executive branch to summarily remove foreign citizens whose government is in a declared war with the United States or is otherwise invading or engaged in a “predatory incursion” into American territory. The government last used the law in the internment and repatriation of Japanese, Italian and German citizens during and after World War II.

On its face, the law appears to require not just an invasion or incursion, but a link to the actions of a foreign government.

German immigrants being prepared for deportation in Hoboken, N.J., during World War I in 1918. The Alien Enemies Act has been used to repatriate immigrants during World War I and II. Universal History Archive/Universal Images Group, via Getty Images

In his proclamation, Mr. Trump effectively summoned such a link into legal existence by saying that he had determined that Tren de Aragua was a proxy for the Venezuelan government and committing crimes in the United States at its direction because Mr. Maduro sought to destabilize the country.

“I make these findings using the full extent of my authority to conduct the nation’s foreign affairs under the Constitution,” Mr. Trump said.

But Mr. Trump’s key factual assertions contradicted the earlier intelligence assessment, the officials said. It concluded that the gang was not acting at the direction of the Maduro administration and that the two are instead hostile to each other, citing incidents in which Venezuelan security forces exchanged gunfire with gang members.

Because available information in the world of intelligence is often imperfect or incomplete, analysts assign levels of confidence to factual assertions and conclusions. Such caveats indicate that even if most or all the currently available

evidence points in one direction, it remains possible that something else might turn up that would change their minds.

The overall conclusion was put at “moderate” confidence, and some supporting points put at “low” confidence, the officials said, because there was not as much reporting as analysts typically want to have “high” confidence. The United States has long scrutinized the government of Venezuela, but only recently has it begun to focus on Tren de Aragua, they said.

The assessment, according to one official, also portrayed the gang as lacking the resources and being too disorganized — with little in the way of any centralized command-and-control — to be able to carry out any government orders. And, the official said, the assessment says that while a handful of corrupt Venezuelan officials have ties to gang members, that does not amount to the gang’s being under the sway of the government as a whole.

The assessment, this official also said, asserts that when the State Department designated the gang as a foreign terrorist organization last month at Mr. Trump’s direction, a minister in the Maduro administration publicly praised the action. (The administration’s move broke with the practice of limiting “terrorism” designations to organizations that are clearly ideologically motivated.)

Federal courts typically defer to the executive branch’s factual declarations about what is happening and why, rather than probing for what may actually be going on. That is particularly the case in matters of national security and foreign policy.

But such deference is premised on the idea that officials are making determinations in good faith and drawing on executive branch resources like intelligence agencies to evaluate fast-moving and sometimes dangerous situations. Mr. Trump’s pattern of distorting the truth is testing that practice.

The administration’s insistence that all the men it sent to El Salvador are members of Tren de Aragua has also been challenged. In one court filing, an official acknowledged that many have no criminal records but said the dearth of details

only underscored that “they are terrorists with regard to whom we lack a complete profile.”

Lawyers for some of the migrants have collected statements from family members and others denying involvement in the gang. A lawyer for one detainee, for example, identified her client as a soccer player who had been tortured for participating in anti-Maduro protests and so fled to the United States to request asylum.

The lawyer said U.S. officials accused him of being a Tren de Aragua member based on a tattoo and on a hand gesture he made in a picture on social media. But, she said, the tattoo was a version of a soccer team logo, and the hand gesture was a common “rock ’n’ roll” symbol.

Mr. Trump’s proclamation cited scant evidence for his core finding that Tren de Aragua as an organization has been committing crimes to destabilize the United States “at the direction, clandestine or otherwise, of the Maduro regime in Venezuela.”

Its most concrete detail was that the gang had expanded from 2012 to 2017, when Tareck El Aissami served as governor of the region of Aragua, and in 2017 Mr. Maduro appointed him as vice president. But the proclamation omitted that Mr. Aissami is no longer part of the Maduro administration, which is prosecuting him on corruption charges.

Tareck El Aissami was appointed as vice president by Mr. Maduro in 2017, after serving as governor of the Venezuelan region of Aragua. Mr. Aissami is now being prosecuted by the Maduro administration. Matias Delacroix/Associated Press

On Saturday, as planeloads of Venezuelan migrants were being flown to El Salvador, Judge James E. Boasberg, the chief judge of the Federal District Court for the District of Columbia, temporarily barred the administration from summarily removing people based on the Alien Enemies Act.

A former prosecutor, he was first appointed to the bench by a Republican president and elevated to his current role by a Democratic one. His decision to block the Trump administration's deportations under the law has outraged the president and his allies, prompting Mr. Trump to call for his impeachment.

The administration has appealed to the Court of Appeals for the District of Columbia Circuit. The case is now before Judges Karen Henderson and Justin Walker, both Republican appointees, and Patricia Millett, a Democratic appointee.

Appeals courts typically reject challenges to temporary restraining orders. But the panel has ordered expedited briefings and scheduled arguments, suggesting it is considering deciding on the legal merits of Mr. Trump's invocation of Alien

Enemies Act powers.

Any ruling could turn in part on whether the judges accept Mr. Trump's assertions about Tren de Aragua and its supposed ties to the Venezuelan government, as the administration has insisted.

The Justice Department wrote that "the determination of whether there has been an 'invasion' or 'predatory incursion,' whether an organization is sufficiently linked to a foreign nation or government, or whether national security interests have otherwise been engaged so as to implicate the A.E.A., is fundamentally a political question to be answered by the president."

Charlie Savage writes about national security and legal policy. More about Charlie Savage

Julian E. Barnes covers the U.S. intelligence agencies and international security matters for The Times. He has written about security issues for more than two decades. More about Julian E. Barnes

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A version of this article appears in print on , Section A, Page 13 of the New York edition with the headline: Analysis by Spy Agencies Challenges Trump's Basis For Scrutiny of Venezuela

EXHIBIT 20

IMMIGRATION

Tattoos of deported Venezuelans don't necessarily signal gang affiliation, experts say

Relatives of some Venezuelan deportees believe the men were targeted as Tren de Aragua members based on their tattoos, but a gang expert said this isn't a reliable identifier.

The Trump administration on March 16 deported to El Salvador 238 people it claimed were members of Venezuela's Tren de Aragua gang and 23 people it said belonged to MS-13.

El Salvador Presidency handout / Getty Images

March 21, 2025, 12:22 PM PDT

By Nicole Acevedo, Deon J. Hampton and David Noriega

Nike's Jumpman, roses and a popular phrase from a Donald Trump-supporting Puerto Rican rapper: These are some of the tattoos defense lawyers and relatives say helped authorities accuse several Venezuelan men of belonging to Tren de Aragua gang.

The men were not deported to their homeland last weekend but were instead sent to El Salvador, where they were jailed in a notorious megaprison, raising questions about whether they were given due process.

Lawyers for at least five men have said in court filings this week that the U.S. government apprehended their clients in part because of tattoos that immigration authorities believed signaled ties to the gang.

Law enforcement and immigration officials have said in the past they've had a challenging time identifying legitimate members of the Venezuelan criminal organization. Often the only information they do have to identify individuals is alleged gang tattoos.

In the case of the recent deportation flights, Robert Cerna, the acting field office director of enforcement and removal operations at Immigration and Customs Enforcement, said in a sworn declaration on Monday that officials did not solely rely on tattoos to identify the deportees as alleged gang members.

But family members and attorneys are contesting that assertion, saying the inkings in question merely indicate the men are sports fans or family men, not gang members. They believe their clients and deported relatives were falsely accused and targeted because of their tattoos, and denied the men are connected to Tren de Aragua at all.

What is 'Tren De Aragua'? Explaining the gang at center of Trump's immigration crackdown

04:40

Other Latin American gangs, such as the Salvadoran group MS-13, are known to use certain tattoos to identify their membership.

But that's not the case with the Venezuelan gang Tren de Aragua, according to Ronna Risquez, an expert on the group who authored the Spanish-language book "The Tren de Aragua: The Gang That Revolutionized Organized Crime in Latin America."

Risquez said tattoos are not closely connected with affiliation to Tren de Aragua. When asked if there's a specific tattoo that identifies Tren de Aragua members, Risquez told Noticias Telemundo, "Venezuelan gangs are not identified by tattoos."

"To be a member of one of these Venezuelan organizations, you don't need a tattoo," she said in Spanish. "You can have no tattoos and still be part of Tren de Aragua. You can also have a tattoo that matches other members of the organization."

Law enforcement and immigration officials across the nation have linked several tattoos to Tren de Aragua: stars on shoulders, crowns, firearms, grenades, trains, dice, predatory felines, gas masks, clocks, the Illuminati sign and the jersey number 23 – which basketball players including Michael Jordan and LeBron James made famous – in addition to tattoos of roses and the Jumpman logo.

Families of deported Venezuelans are distraught their loved ones were sent to El Salvador

Other tattooed phrases law enforcement says are associated with the gang include “Hijos de Dios” (Sons of God), or its abbreviation “HJ,” and “Real Hasta la Muerte” (Real Until Death).

The government of El Salvador stated this week that hundreds of men deported from the U.S. last weekend were members of Tren de Aragua. In a propaganda-style video, the detainees were shown handcuffed in a crouched position as their heads were being shaved ahead of their transfer to the CECOT megaprison, according to El Salvador’s Press Secretariat.

The video shows some prisoners who have tattoos: One man sports ink of a rose, an Illuminati symbol and the Jumpman logo, inspired by Michael Jordan – all tattoos previously cited by police and immigration authorities as evidence of ties to Tren de Aragua.

But Risquez said that gang members also sport tattoos considered culturally popular at the moment and popular among the general public – such as “Real Hasta la Muerte” tattoos, a phrase popularized by Anuel AA, the reggaeton singer.

“This guy is loved by many Venezuelans and by many Latin Americans who have adopted this tattoo, and they’ve gotten that tattoo,” Risquez said. “So that tattoo can’t be associated with Tren de Aragua because there are many people who aren’t from the Tren de Aragua, including Anuel, who have that tattoo.”

— A photo from U.S. Border Patrol of what it said are Tren de Aragua tattoos. U.S. Border Patrol

The Trump administration views Tren de Aragua as a national security threat, saying dangerous members have entered the country illegally. In the U.S., law enforcement has accused dozens of people of belonging to the gang in at least 14 states, according to an NBC News analysis.

The administration has repeatedly cited Tren de Aragua as the embodiment of the criminal immigrant as part of the president's aggressive immigration enforcement agenda, which has included sending hundreds of Venezuelan immigrants to the U.S. naval base in Guantanamo Bay,

Cuba, and to the Salvadoran megaprison, as well as stripping hundreds of thousands more of temporary legal status in the U.S.

Targeting Venezuelans because of their tattoos is "wrong and outrageous," said Bill Hing, a law professor at the University of San Francisco and co-director of the school's immigration and deportation defense clinic.

"It's very evident that just having a Michael Jordan tattoo does not necessarily mean that a person is a gang member," said Hing, who has represented hundreds of asylum-seekers from Central America, Colombia and Venezuela.

A neck tattoo of the Jumpman logo was allegedly among the reasons one man was detained at Guantanamo along with 176 other Venezuelans, according to documents filed in a lawsuit by the American Civil Liberties Union and other groups.

"Jordan is popular around the world, and for many Venezuelans he's part of their fashion," Hing said. He echoed Risquez in saying that most people get tattoos based on pop culture references as well as their geographical or ancestral roots, racial pride and religion.

The idea that a Jordan tattoo or jersey would be used to link someone with Tren de Aragua is close to laughable, said Risquez.

The Department of Homeland Security did not respond to a request for comment. But on Tuesday, the White House said in a statement in response to the deportation flights to El Salvador that it was "confident in DHS intelligence assessments on these gang affiliations and criminality." It added that the Venezuelan immigrants who were removed from the U.S. had final orders of deportation, though some attorneys and family members of the deportees are contesting that.

"This administration is not going to ignore the rule of law," the statement said.

Hundreds of Venezuelans have since been removed from the U.S. under the Alien Enemies Act, which allows the president to expeditiously deport noncitizens during wartime.

Trump invoked this law after he claimed the gang was invading the United States. That justification is now the heart of dispute between Department of Justice lawyers and a federal judge.

But in assessing the use of tattoos as a main identifier of gang affiliation, Risquez pointed out that as in all parts of the world, the only way to determine that a person is a delinquent or criminal is "to conduct a police investigation" and "grant them due process."

Nicole Acevedo

Nicole Acevedo is a reporter for NBC Latino.

Deon J. Hampton

Deon J. Hampton is a national reporter for NBC News.

David Noriega

David Noriega is an NBC News correspondent based in Los Angeles.

Sarah Ford, Damià Bonmatí, Daniella Silva, Gary Grumbach and Carmen Sesin contributed.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*,

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

No. 1:25-cv-766 (JEB)

Declaration Of Acting Field Office Director Robert L. Cerna

DECLARATION OF ROBERT L. CERNA

I, Robert L. Cerna, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am an Acting Field Office Director Enforcement and Removal Operations ("ERO") at U.S. Immigration and Customs Enforcement ("ICE") within the U.S. Department of Homeland Security ("DHS").

2. As the (A)FOD of the Harlingen Field Office, I am responsible for, among other things, the detention and enforcement operations of more than 350 employees, assigned to six ERO Harlingen offices. ERO Harlingen encompasses fifteen South Texas counties and is responsible for six detention facilities with a combined total of 3,790 detention beds.

3. I am aware that the instant lawsuit has been filed regarding the removal of Venezuelan members of Tren de Aragua ("TdA") pursuant to the Alien Enemies Act ("AEA").

4. I provide this declaration based on my personal knowledge, reasonable inquiry, and information obtained from various records, systems, databases, other DHS employees, and information portals maintained and relied upon by DHS in the regular course of business.

5. ICE understood the Proclamation *Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua* to be effective only once it was posted to the White House website (https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/), which was at or around 3:53 PM EDT on March 15, 2025. Based on the face of the Proclamation, it had been signed by the President on March 14, 2025.

6. On March 15, 2025, after the Proclamation was publicly posted and took effect, three planes carrying aliens departed the United States for El Salvador International Airport (SAL). Two of those planes departed U.S. territory and airspace before 7:25 PM EDT. The third plane departed after that time, but all individuals on that third plane had Title 8 final removal orders and thus were not removed solely on the basis of the Proclamation at issue. To avoid any doubt, no one on any flight departing the United States after 7:25 PM EDT on March 15, 2025, was removed solely on the basis of the Proclamation at issue. ICE carefully tracks the TdA members who are amenable to removal proceedings. At this time approximately 54 members of TdA are in detention and on the detained docket, approximately 172 are on the non-detained docket, and approximately 32 are in criminal custody with active detainers against them. Should they be transferred to ICE custody, they will likely be placed in removal proceedings.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 18th day of March 2025.

ROBERT L CERNA II

Digitally signed by ROBERT L CERNA II
Date: 2025.03.18 10:45:15 -05'00'

Robert L. Cerna
Acting Field Office Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement
U.S. Department of Homeland Security

EXHIBIT A

DECLARATION OF DEBORAH FLEISCHAKER

I, Deborah Fleischaker, declare the following under 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I began working on immigration detention issues in 2011, when I was a career employee at the U.S. Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL). I was employed by CRCL from March 2011 until September 2021. One year of this (May 2019 - May 2020) was spent on a temporary detail to Senator Patrick J. Leahy's Judiciary Committee staff. An additional four months was spent on a temporary detail at the DHS Office of Policy and three months at U.S. Immigration and Customs Enforcement (ICE). I worked on immigration issues in all of these temporary assignments.
2. Between September 2021 and November 2023, I was employed as a political appointee by DHS's ICE. I was an Assistant Director at ICE and headed the Office of Regulatory Affairs and Policy from September 2021 to November 2022. From November 2022 until November 2023, I served as the Acting ICE Chief of Staff.
3. As the Assistant Director for the Office of Regulatory Affairs and Policy, I spearheaded policy and regulatory initiatives for the agency, with a significant focus on immigration enforcement, detention, and removal. In that position, I worked on a number of enforcement and detention policies, including Secretary Alejandro Mayorkas' enforcement priorities, the DHS sensitive locations and courthouse enforcement policies, and policies relating to the detention of pregnant people, crime victims, and parents.
4. I provide this declaration based on my personal knowledge and experience as well as my review of Robert L. Cerna's Declaration.

5. Mr. Cerna's declaration indicates that ICE is not prepared to detain members of Tren de Aragua ("TdA").
6. Based on my extensive experience with ICE detention policies and practices, that is wrong.
7. ICE detention facilities in the United States are prepared to detain any noncitizen, regardless of their security risk level. This includes people with violent criminal histories, as well as members of gangs and Foreign Terrorist Organizations.
8. Mr. Cerna testifies that gang members in ICE facilities pose a grave risk to nonviolent detainees. That is not true.
9. ICE has a clear custody classification system. Detainees are assessed a custody level and detained at that level. The custody classification system allows ICE facilities to separate detainees with no criminal histories from those with a history of violence. ICE facilities also have "Special Management Units" designed to securely house individuals who cannot be housed safely with the general detainee population. This could include the highest risk and most violent detainees.
10. All but a handful of ICE detention facilities are able to manage all levels of detainees in a safe and secure manner, and ICE is able to ensure that higher risk detainees are housed in appropriately secure facilities.
11. Mr. Cerna also testifies that gang members pose a grave risk to ICE personnel. This is also wrong.
12. As a threshold matter, ICE personnel typically do not serve as guards at detention facilities. Contracted guard services are usually responsible for the safety and security of all detainees and staff, including ICE personnel.

13. ICE has numerous policies in place to ensure a safe and secure environment for both detainees and staff. In all facilities, detainees are subject to line-of-sight monitoring, regular searches, and limitations on the amount and type of property they may have in their possession. ICE also maintains staff/detainee ratios that must be met at all detention facilities to ensure the safety and security of the facilities.
14. ICE devotes significant effort and preparation to safety and security, and the agency routinely manages complex populations with high levels of criminality and gang affiliation, all while keeping its personnel safe.
15. Mr. Cerna testifies that holding TdA members risks potential gang recruitment activities in ICE detention. Again, this is untrue and any risks can be appropriately mitigated.
16. ICE facilities have specific tools to address gang recruitment concerns. Detainees may be held in segregation or housed in pods that contain only detainees with the same gang affiliation. Individual cells are regularly searched, telephone calls are monitored, and there is not significant freedom of movement for high-risk detainees.
17. Finally, Mr. Cerna testifies that holding members of TdA without "an immediate mechanism to remove them" is "irresponsible." That is simply not true.
18. ICE routinely holds gang members through their immigration proceedings. ICE also had facilities designated to hold specific gang-affiliated individuals, often separated by gang. I am not aware of any evidence that TdA's presence in ICE units is any more difficult to manage than the presence of other criminal gangs.
19. Mr. Cerna's declaration describes the types of crimes alleged against individuals removed under the AEA. Assuming the allegations in paragraphs 10 and 11 of Mr. Cerna's

declaration are true, it would have been well within ICE's capacity to detain those individuals safely for the duration of their removal proceedings.

20. ICE has always safely and securely detained individuals who are gang members and/or who have been arrested, charged, or convicted, or who have INTERPOL red notices for violent crimes. There is nothing about the situation described by Mr. Cerna that is different than what ICE normally handles. Safe and secure detention of all individuals, regardless of their security risk, is essential to ICE's mission and a core agency function.

Executed on this 19th day of March, 2025 in Washington D.C.

DocuSigned by:
Deborah T. Fleischaker
8AA70A96D4E74C5...

Deborah T. Fleischaker

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*, Plaintiffs-Petitioners, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants-Respondents.	Civil Action No. 1:25-cv-00766

RESPONSE TO ORDER TO SHOW CAUSE

On March 20, 2025, the Court directed Defendants to "show[] cause why they did not violate the Court's Temporary Restraining Orders by failing to return class members removed from the United States on the two earliest planes that departed on March 15, 2025." Dkt. 47, at 3.[1] That directive refers to flights carrying criminal aliens removed from the United States pursuant to the March 15, 2025 Presidential Proclamation entitled "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua."

These removals both complied with the law and safeguarded Americans against members of a foreign terrorist organization. The Government will continue to defend the removals before this Court and, if necessary, on appeal challenging this Court's two injunctions issued on March 15. The first injunction, in a written minute order entered before a class was provisionally certified, enjoined the Government from "remov[ing] any of the individual Plaintiffs from the United States for 14 days absent further Order of the Court." Although that first injunction did not comply with

[1] This Court provisionally certified a class consisting of "[a]ll noncitizens in U.S. custody who are subject to the March 15, 2025, Presidential Proclamation." Minute Order (March 15, 2025).

Rule 65(d)(1)(A)'s requirement that the order "state the reasons why it issued," no one disputes that the Government complied with that Order, and Defendants therefore do not discuss it further.

The second injunction issued via a minute order at 7:25 PM: "The Government is ENJOINED from removing members of [the] class (not otherwise subject to such removal) pursuant to the Proclamation for 14 days or until further Order of the Court." That minute order likewise did not comply with Rule 65(d)(1)(A). Regardless, the injunction thus bars the Government from *removing* class members; it does not require the Government to *undo* removals that have already occurred. And for good reason. Even without the challenged Proclamation, the President doubtlessly acts within his constitutional prerogative by declining to transport foreign terrorists into the country. Here, any members of the putative class aboard the referenced flights had already left the United States when the minute order was entered, and thus had already been removed. No court has the power to compel the President to return them, and there is no sound basis to read the Court's minute order as requiring that unprecedented step.

I. The Government Did Not Remove Any Class Members from the United States After Entry of the Court's Injunctions.

The Government fully complied with the terms of the Court's 7:25 PM injunction. That order purported to enjoin the Government "from removing" class members under the Alien Enemies Act. The Government did not "remove" any class members after that time under the AEA. To be sure, the Government had *already* removed some *before* the injunction. But nothing in the minute order suggested that the Government had to return already-removed class members to the United States (even assuming the Court could compel such an act consistent with Article II of the Constitution, which it cannot, *infra* § III).

"[A]n injunction must be read in the context of its circumstances." *Milk Wagon Drivers Union v. Meadowmoor Dairies, Inc.*, 312 U.S. 287, 298 (1941). Here, Plaintiffs challenged the

President's exercise of his authority under the Alien Enemies Act, which authorizes the President to "remove[]" certain dangerous aliens in the event of certain threats against "the territory of the United States." 50 U.S.C. § 21. Because neither the injunction on which the injunction is based nor the statute defines "remove," the "ordinary or natural meaning" controls. *See al Janko v. Gates*, 741 F.3d 136, 140 (D.C. Cir. 2014).

When the Alien Enemies Act was enacted, the ordinary meaning of "remove" was "to take or put away," or "to place at a distance." Samuel Johnson, Dictionary of the English Language (6th ed. 1785) ("To put from its place; to take or put away"; "to place at a distance"); John Ash, The New and Complete Dictionary of the English Language, Vol. II (1795) ("to put from its place, to place at a distance."); Sheridan, A Complete Dictionary of the English Language (3d ed. 1790) ("to put from its place, to take or put away, to place at a distance"). And it continues to mean the same thing today. *See Remove*, The American Heritage Dictionary (5th ed. 2011) ("to move from a place or position occupied"); *Remove*, Webster's New World College Dictionary (4th ed. 2009) ("to move (something) from where it is; lift, push, transfer, or carry away, or from one place to another"); *Remove*, Black's Law Dictionary (defining "removal" as "[t]he transfer or moving of a person or thing from one location, position, or residence to another."). The Court's injunction thus directs the Government not "to take," "move," or "transfer" class members from the United States.

The plain meaning of "remove" aligns with the context of the Alien Enemies Act, a statute with which Congress empowered the President to protect "the territory of the United States" from foreign threats. 50 U.S.C. § 21; *cf. Nicusor-Remus v. Sessions*, 902 F.3d 895, 899 (9th Cir. 2018) (holding, in distinct INA context, that an alien has been removed once he has "left the United States"). Given that purpose, the statute is understandably focused on removing enemy aliens from U.S. territory—not where they go after departing our borders.

The Government thus complied with the Court's injunction with respect to the two flights at issue. According to Plaintiffs, those two flights took off approximately two hours *before* the Court's Minute Order of 7:25 PM EDT, and did so from a location very close to the outer limit of U.S. airspace. *See* Dkt. 21, at 3.[2] And, as explained in the Declaration of Robert Cerna of U.S. Immigration and Customs Enforcement, "two flights carrying aliens being removed under AEA departed U.S. airspace before the Court's minute order of 7:25 PM EDT." Dkt. 49-1 at 2. Accordingly, by the time the Court issued its injunction, the planes' occupants had *already* been "transferred"—that is, removed—from United States territory and airspace. The Government thus did not "remove" any class members from the United States after the Court issued its injunction. Indeed, the Government could not possibly have "removed" them from a place they had already departed.

To be clear, the Government did not order any removal flights to return to the United States. But as noted above, declining to bring class members *back* to the United States is not the same thing as *removing* them from the United States. As the injunction said nothing about class members who had already departed the country, there was no violation.

If any doubt remains (and none does), the Court should apply the "longstanding, salutary rule" that favors the party subject to the injunction when that injunction's meaning is uncertain or debatable. *Pasadena City Bd. of Ed. v. Spangler*, 427 U.S. 424, 439 (1976); *accord Ford v. Kammerer*, 450 F.2d 279, 280 (3d Cir. 1971); *Common Cause v. Nuclear Regul. Comm'n*, 674 F.2d 921, 927 (D.C. Cir. 1982) (citing, *inter alia*, *Ford*). Here, the Government enjoys that presumption, which underscores that the Government complied with this Court's injunction.

[2] Plaintiffs also identified a third flight that departed later. Dkt. 21, at 4. As the Government has already disclosed, that flight carried detainees who were removable on grounds other than the Proclamation and is therefore irrelevant. Dkt. 24, at 3.

In any event, the 7:25 PM Minute Order failed to satisfy Rule 65(d)(1)(A)'s requirement that it "state the reasons why it issued." The order does not contain any such reasoning—only directives. The Minute Order thus failed to satisfy the requirements for issuing a binding injunction. *See*, *e.g.*, *Adkins v. Nestle Purina PetCare Co.*, 779 F.3d 481, 483 (7th Cir. 2015); *e360 Insight v. The Spamhaus Project*, 500 F.3d 594, 604 (7th Cir. 2007).

II. The Court's Written Minute Orders Control.

In suggesting a violation of this Court's orders, Plaintiffs have focused not on the written minute orders—which, as explained above, were fully respected—but instead on oral statements that the Court made during the course of the March 15, 2025 hearing. They suggest that the Court's oral statements (which were made available for viewing at the courthouse or purchase only the next day, Dkt. 20) should control rather than the Court's minute order (which was entered on the docket at 7:25 PM the day of the hearing). *See* Dkt. 21. Specifically, Plaintiffs fixate on a handful of lines in the 46-page transcript, in which this Court said that class members "need to be returned to the United States" "immediately," while "leav[ing]" to the Government the choice of accomplishing that result by "turning around a plane or not embarking anyone on the plane." Hearing Tr. 43:13–19. Thus, Plaintiffs' argument goes, even if the planes were already outside the United States—and even though the minute order itself speaks only to "removal" and not "returning" already-removed class members—the Government had to turn around planes carrying foreign terrorists mid-flight, based on the Court's statements at the hearing that began at 5 PM. Dkt. 21, at 2-3.

This argument ignores blackletter law. It is well-settled that an oral directive is not enforceable as an injunction. *See Bates v. Johnson*, 901 F.2d 1424, 1427 (7th Cir. 1990) ("Oral statements are not injunctions."). Federal Rule of Civil Procedure 65(d) provides that a temporary

restraining order or injunction "must … state the reasons why it issued," "state its terms specifically," and "describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required." Those requirements "contemplate[] the issuance of a *written* order." *Lau v. Meddaugh*, 229 F.3d 624, 633 (2d Cir. 1976) (emphasis added); *see also Garcia v. Yonkers Sch. Dist.*, 561 F.3d 97, 105 (2d Cir. 2009) (Miner, J., joined by Sotomayor and Katzmann, JJ.) ("Requirements for the form and content of preliminary injunctions and temporary restraining orders are properly met by a written order.").

Thus, "[i]f an injunction is not recorded in writing, the defendant is *under no judicial compulsion*." *Landmark Legal Found. v. EPA*, 272 F. Supp. 2d 70, 83 (D.D.C. 2003) (emphasis added). As Judge Easterbrook squarely put it: "Oral statements are not injunctions," and "[a] judge who proclaims, 'I enjoin you' and does not follow up with an injunction [in writing] has done nothing." *Bates*, 901 F.2d at 1427; *see also Hispanics United v. Village of Addison*, 248 F.3d 617, 621 (7th Cir. 2001) ("[I]f the district judge neither puts pen to paper nor identifies an authoritative document, nothing of legal significance has happened—for oral statements are not judgments and under Rule 65(d) have no legal effect."). This principle is deeply ingrained in caselaw. "[O]nly concrete language in a written order can be enforced as an injunction," *In re Rockford Prods. Corp.*, 741 F.3d 730, 734 (7th Cir. 2013), and "statements in court … do not change the contents of injunctions," *Bethune Plaza, Inc. v. Lumpkin*, 863 F.2d 525, 527 (7th Cir. 1988). That accords with the general rule that, "[w]here the record includes both oral and written rulings on the same matter," it is the "written opinion" that matters—"not the oral statements." *PlayMakers LLC v. ESPN, Inc.*, 376 F.3d 894, 897 (9th Cir. 2004).[3]

[3] The general rule is inverted in the criminal-sentencing context where a district court's "oral pronouncement of a sentence controls over a written judgment." *United States v. Russell*, 45 F.4th 436, 441 (D.C. Cir. 2022). That rule derives from the Federal Rules of Criminal Procedure and

There are powerful, common-sense reasons why only written injunctions are binding. *First*, the written order may represent a more considered judgment of the court about the proper exercise of its powers: "Oral responses from the bench may fail to convey the judge's ultimate evaluation," and "[s]ubsequent consideration may cause the district judge to modify his or her views." *Ellison v. Shell Oil Co.*, 882 F.2d 349, 352 (9th Cir. 1989). Indeed, that was a very reasonable inference to draw here. Ordering the Government to reverse an extant counterterrorism operation and deliver foreign terrorists to United States soil would have been an astonishingly *ultra vires* exercise of judicial power—and in conflict with basic constitutional principles, *see infra* § III. When the written order did not include that command, the Government could reasonably have understood that as reflecting the Court's more considered view in a quickly evolving situation. And that is true regardless of how Government counsel understood the Court's intent at the time of the hearing.

Second, "the specificity provisions of Rule 65(d) are … designed to prevent uncertainty and confusion on the part of those faced with injunctive orders." *Schmidt v. Lessard*, 414 U.S. 473, 476 (1974). "An injunctive order is an extraordinary writ," and Rule 65 "require[es] that a federal court frame its orders so that those who must obey them will know what the court intends to require and what it means to forbid." *Gunn v. University Committee to End War*, 399 U.S. 383, 389 (1970). "[A]n ordinary person reading the court's *order* should be able to ascertain from the

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special needs of "[c]riminal defendants." *United States v. Godoy*, 706 F.3d 493, 495 (D.C. Cir. 2013) (cleaned up); *see also* Fed. R. Crim. P. 35(c) (defining "sentencing" as "oral announcement of the sentence"); *United States v. Villano*, 816 F.2d 1448, 1452 (10th Cir. 1987) (connecting this exception to the "right to be present at sentencing"). But in the civil context, the written judgment invariably controls. *See* Fed. R. Civ. P. 58(a) (requiring that "[e]very judgment and amended judgment must be set out in a separate *document*," with few exceptions (emphasis added)); *United States v. Moroyoqui-Gutierrez*, 602 F. App'x 378, 379 (9th Cir. 2015) ("[O]utside of [the criminal-sentencing] context the district court's written order is the operative decision.").

document itself exactly what conduct is prescribed." Wright & Miller, Fed. Prac. & Proc. § 2955 (3d ed. 2024) (emphases added). It would undermine the principles embodied in Rule 65(d) to hold that every syllable uttered at a hearing (whether after briefing or mere hours after the complaint itself was filed) is as binding as a subsequent written order.

This Court itself appeared to recognize that its oral statements did not amount to a binding injunction. Just before explaining its preference that the Government "tur[n] around [the] plane[s]," Hearing Tr. at 43:16, the Court informed counsel that it "w[ould] issue a minute order memorializing [a TRO] so *you don't have to race to write it down*," *id.* at 42:22-23 (emphasis added). And immediately after the oral statement, the Court further stated that it "will issue a minute order memorializing all of this." *Id*. at 46:9-10. Those promises accord with the rule that a court will ensure "those enjoined receive explicit notice of precisely what conduct is outlawed." *Schmidt*, 414 U.S. at 476. That rule is doubly important in a case like this one, which involves many parties, grave national security concerns, and complex foreign arrangements. And even at the hearing itself, the Court's statements were inconsistent and contradictory—just a few transcript pages before the above remarks, the Court admitted that "once they are out of the country, I'm not sure what I can do there," acknowledging that its jurisdiction ended at the border.[4] Hearing Tr. at 36:20–21. Plaintiffs agreed, conceding that the Court would "*clearly* lose jurisdiction" once the class members exit the country, in support of their irreparable-harm arguments. *Id.* 36:17–19, 22–23 (emphasis added).

[4] As noted above, Plaintiffs have asserted that the alleged deportation flights departed at 5:26 and 5:45 PM EDT, from a location very close to the outer limit of U.S. airspace. *See* Dkt. 21, at 3. Plaintiffs also assert that this Court made the oral statements on which they rely "between approximately 6:45 pm ET and 6:48 ET." *Id.* at 1. Based on Plaintiffs' own assertions—which the Government neither confirms nor challenges—the flights thus departed U.S. airspace before this Court made the oral pronouncements on which Plaintiffs rely.

Under Rule 65(d), there is no need to wade into the thicket of parsing contradictory and imprecise verbal exchanges after-the-fact. This Court should decline Plaintiffs' request to transform oral statements into a binding injunction. What matters is the written minute order, which the Court posted 30 minutes after the hearing concluded. Moreover, even if the Court's earlier, oral statements were binding, because Rule 65(d) requires that an injunction set out its terms without reference to any other document, the Court's written order would have superseded its earlier oral statements.[5] *Cf. United States v. Com. of Va.*, 569 F.2d 1300, 1302 (4th Cir. 1978) (holding that an oral statement of "findings of fact and conclusions of law from the bench, with the written order thereafter entered merely making reference to the 'reasons stated from the bench' … did not comply with the provisions of Rules 52(a) and 65(d) of the Federal Rules of Civil Procedure") (footnote omitted). Adherence to this rule is particularly important when, as here, the Court explicitly modifies an earlier order. *MillerCoors LLC v. Anheuser-Busch Companies, LLC*, 940 F.3d 922, 923 (7th Cir. 2019). Either way, the Government has complied with the Court's operative order—the 7:25 PM Minute Order.

III. In All Events, the President No Longer Needed To Rely on the Proclamation Once the Flights Had Left the United States.

As explained above, the Government fully complied with the Court's injunctions. But even if those orders had purported to prohibit the Government from continuing to transfer class members who were already outside the United States to a foreign country, the orders could only

[5] Notably, Plaintiffs themselves have already taken the position that the court's oral instruction to return planes was *not* incorporated into the written minute order. Specifically, Plaintiffs have taken the position that only the 7:25 PM Minute Order was appealed to the D.C. Circuit and that the oral statements regarding planes were entirely separate from this Court's written order. Plaintiffs' counsel thus yesterday told the D.C. Circuit that, unlike the minute order, "I don't think the order to return the planes is before you." Oral Argument at 1:19:39-42, https://media.cadc.uscourts.gov/recordings/docs/2025/03/25-5067.mp3; *id.* at 1:17:29-37 ("The order about bringing people back, or potentially bringing people back, is not before you.").

be understood as enjoining such conduct *based on the Proclamation*. *See, e.g.*, 7:25 PM Minute Order (Mar. 15, 2025) (enjoining removals "pursuant to the Proclamation"). Proclamation aside, the President has ample independent authority under Article II to decline to bring foreign terrorists into the United States, including by returning to the United States foreign terrorists who were previously within the United States. For that reason too, the Government's decision not to turn around the alleged deportation flights complied with the Court's orders.

The President is "entrusted with … vast powers in relation to the outside world." *Ludecke v. Watkins*, 335 U.S. 160, 173 (1948). For one, he is the "Commander in Chief" of the armed forces. U.S. Const. art. II, § 2. "As commander-in-chief, [the President] is authorized to direct the movements of the naval and military forces placed by law at his command, and to employ them in the manner he may deem most effectual to harass and conquer and subdue the enemy." *Fleming v. Page*, 9 How. 603, 615 (1850). And the Constitution makes the President "not only the Commander-in-Chief but also the guiding organ in the conduct of [this country's] foreign affairs." *Ludecke*, 335 U.S. at 173; *see also First Nat'l Cty. Bank v. Banco Nacional de Cuba*, 406 U.S. 759, 767 (1972) (the President has "the lead role … in foreign policy").

Indeed, these Presidential powers—implicating "national security, military matters and foreign relations"—are "quintessential sources of political questions." *Al-Aulaqi v. Obama*, 727 F. Supp. 2d 1, 45 (D.D.C. 2010). "[A] controversy involves a political question where there is a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it." *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012) (cleaned up). The Court "lacks the authority to decide" cases presenting such questions. *Id.* "The principle that the courts lack jurisdiction over political decisions that are by their nature committed to the political branches to the exclusion of

the judiciary is as old as the fundamental principle of judicial review." *Schneider v. Kissinger*, 412 F.3d 190, 193 (D.C. Cir. 2005). And the reasons counseling against courts intervening in such disputes are only heightened when the relevant facts occur outside the country. The "lack of discoverable and manageable judicial standards" is exacerbated when judges "sit[] thousands of miles from the field of action." *DaCosta v. Laird*, 471 F.2d 1146, 1155 (2d Cir. 1973).

The President's ultimate direction of the flights at issue here—especially once they had departed from U.S. airspace—implicated military matters, national security, and foreign affairs outside of our Nation's borders. As such, it was beyond the courts' authority to adjudicate. *Cf. Ghaleb Nassar Al-Bihani v. Obama*, 619 F.3d 1, 38 (D.C. Cir. 2010) (Kavanaugh, J., concurring in denial of rehearing en banc) (noting "the well-established principle that the Judiciary should not interfere when the President is executing national security and foreign relations authority in a manner consistent with an express congressional authorization"); *People's Mojahedin Org. of Iran v. U.S. Dep't of State*, 182 F.3d 17, 23 (D.C. Cir. 1999) (holding that courts are "not competent to pass" on Secretary of State's finding that an organization's "terrorist activity" threatens "the national security of the United States").

Two consequences follow. *First*, to the extent there was any ambiguity about the Court's orders, or about how the Court's oral statements interacted with the subsequent written order, that ambiguity should be resolved in favor of a reading that not only avoids the notice issues associated with imposing penalties for violation of a vague order, but also does not purport to interfere with the President's Article II authorities or decisions beyond judicial review. Indeed, at the hearing itself, this Court expressed strong doubts that its jurisdiction would extend beyond the border under these circumstances—and Plaintiffs were certain that it did not. *See* Hearing Tr. 36:17–23. If courts cannot assess a President's decision to target terrorists on foreign soil, *see Al-Aulaqi v.*

Obama, 717 F. Supp. 2d at 47; *El-Shifa*, 607 F.3d at 844, they surely cannot require the President to *bring* terrorists *into* the United States. And even if the Court disagrees with that proposition, the Executive Branch cannot be faulted for not interpreting the Court's order as impliedly claiming such extravagant authority. That courts lack authority to micromanage how the President decides to deal with terrorists abroad is simply another reason to reject any broader reading of the Court's order.

Second, whatever else the Court's orders may have done, they surely were limited to the use of the Proclamation and the Alien Enemies Act. They did not reach the President's inherent Article II authorities, which were independently sufficient to support his directions with respect to flights and terrorists outside the United States. Again, the minute order in no way directed the Government to do *anything* outside the United States. But, at most, the Court's injunctions and oral statements—in the context of this litigation—concerned the invocation of the Proclamation and use of the Alien Enemies Act. In other words, even if one could broadly and improperly construe the Court's orders as restricting the government from "turn[ing] over" alien enemies "to foreign governments" (Dkt. 21, at 2), or as governing presidential decisions with respect to actions taken outside the United States, that still was limited by its terms to actions taken "pursuant to the Proclamation."

For the reasons explained above, however, 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. At that point, the Constitution itself provided sufficient authority to act, and any dispute over the President's extraterritorial exercise of that authority would present a non-reviewable political question. For that reason as well, any order that restrained the invocation of the Proclamation could not have thereby compelled the

President to return foreign terrorists from outside the United States—and any governmental refusal to do so was thus not a violation of the Court's orders.

CONCLUSION

The Court should discharge the order to show cause because the Government has complied with the Court's orders in this case. If the Court concludes otherwise, the Government respectfully requests the opportunity to submit further briefing.

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