No. _____

IN THE

Supreme Court of the United States

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

Applicants,

—— V.——

DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, ET AL.,

Respondents.

TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT

EMERGENCY APPLICATION FOR AN EMERGENCY INJUNCTION OR WRIT OF MANDAMUS, STAY OF REMOVAL, AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE INJUNCTION

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PARTIES TO THE PROCEEDING AND RELATED PROCEEDINGS

Applicants are Venezuelan men in immigration custody at risk of imminent removal under the President's Proclamation invoking the Alien Enemies Act ("AEA").

Respondents include the following Defendants in the Northern District of Texas and Appellants in the Fifth Circuit: President Donald J. Trump, in his official capacity; Pamela J. Bondi, U.S. Attorney General at the U.S. Department of Justice, in her official capacity; Kristi Noem, Secretary of the U.S. Department of Homeland Security, in her official capacity; U.S. Department of Homeland Security ("DHS") , through U.S. Immigration and Customs Enforcement ("ICE"); Todd Lyons, Acting Director of ICE, in his official capacity; Marco Rubio, Secretary of State at the U.S. Department of State, in his official capacity; U.S. Department of State; Josh Johnson, Acting Director of ICE's Dallas's Field Office, in his official capacity; Marcello Villegas, Facility Administrator of the Bluebonnet Detention Center, in his official capacity; Phillip Valdez, Facility Administrator of the Eden Detention Center, in his official capacity; Jimmy Johnson, Facility Administrator of the Prairieland Detention Facility, in his official capacity; Judith Bennett, Warden of the Rolling Plains Detention Center, in her official capacity.

The proceedings below are:

1. *A.A.R.P. & W.M.M. v. Trump et al.*, No. 1:25-cv-00059-H (N.D. Tex.)
2. *A.A.R.P. & W.M.M. v. Trump et al.*, No. TBD (5th Cir.)

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TO THE HONORABLE SAMUEL A. ALITO, JR., ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE FIFTH CIRCUIT:

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, Applicants A.A.R.P, W.M.M., et al., on behalf of a proposed class of Venezuelan men in immigration custody, respectfully file this emergency application for a stay of removal and an immediate administrative stay to preserve the status quo for individuals challenging their removal under the Alien Enemies Act ("AEA") in the U.S. District Court for the Northern District of Texas. Members of the proposed class are in imminent and ongoing jeopardy of being removed from the United States without notice or an opportunity to be heard, in direct contravention of this Court's order in *Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *3 (U.S. Apr. 7, 2025). Many individuals have already been loaded on to buses, presumably headed to the airport. Because of this ongoing and imminent risk of removal to a prison in El Salvador, Applicants are simultaneously seeking relief through a renewed application for a temporary restraining order in the district court in the District of Columbia and an application for a stay of removal in the U.S. Court of Appeals for the Fifth Circuit.

Yesterday, on April 18, 2025, the district court denied the proposed class's application for a temporary restraining order staying their removal under the AEA, principally on the ground that the government represented that it would not seek to remove two named class members, A.A.R.P. and W.M.M., while their habeas petition is pending. However, after the district court's order and starting last night, counsel for Applicants and the proposed class of individuals subject to removal under the AEA

were informed that numerous Venezuelan nationals currently in the government's custody in the Northern District of Texas have received notices that they are subject to removal under the AEA, and further were informed by government officials that they may be removed from the United States as soon as this afternoon or tomorrow. DHS has now publicly announced that AEA removals are imminent.[1]

The Government's actions to-date, including its lightning-fast timeline, do not give members of the proposed class a realistic opportunity to contest their removal under the AEA. The notices some members of the proposed class have received are in English only and do not inform proposed class members of their right to contest the designation in a federal court. The government has refused to give any information to undersigned counsel for the proposed class. And, as far as Applicants and their counsel know, the government is not giving notice to proposed class members' immigration attorneys.

Removal without sufficient notice and time to seek habeas relief is in clear violation of this Court's decision of April 7, 2025 in *Trump v. J.G.G.* As of this filing, the district court has not acted on the emergency request for a TRO Applicants filed in light of yesterday evening's events. Applicants therefore respectfully request an immediate order from this Court barring any removals of proposed class members. Without this Court's intervention, dozens or hundreds of proposed class members

[1] Laura Romero & Luis Martinez, *US Planning Imminent Military Deportation Flight under Alien Enemies Act*, ABC News (Apr. 18, 2025), *available at* https://abcnews.go.com/US/attorneys-venezuelans-warn-clients-imminent-risk-deportation-aea/story?id=120950962.

may be removed to a possible life sentence in El Salvador with no real opportunity to contest their designation or removal.

Emergency relief is necessary not only to preserve the status quo and prevent permanent and irreversible harm to Applicants, but also to preserve the courts' jurisdiction, in light of the government's position that it need not return individuals, even those mistakenly removed. *See* All Writs Act, 28 U.S.C. 1651 (court can issue writs necessary to preserve its jurisdiction).[2]

Accordingly, Applicants respectfully request an emergency writ of mandamus or class-wide injunction pending appeal and a class-wide temporary administrative injunction. Significantly, the relief sought here does *not* seek to prohibit the government from prosecuting any individual who has committed a crime. Nor does it seek release from immigration detention or prohibit the government from removing any individual who may lawfully be removed under the immigration laws. It asks only that this Court preserve the status quo so that proposed class members will not be sent to a notorious prison in El Salvador before the American judicial system can afford them due process.

STATEMENT

I. Factual and Procedural Background

This Court is already familiar with the background of this case from the

[2] *See, e.g.*, *Abrego Garcia v. Noem*, No. 251345, 2025 WL 1021113, at *4 (4th Cir. Apr. 7, 2025) (Thacker, J., concurring); *see also Abrego-Garcia v. Noem*, No. 8:25-cv-951-Px (D. Md. Apr. 15, 2025), ECF No. 77 ¶ 7 ("DHS does not have authority to forcibly extract an alien from the domestic custody of a foreign sovereign nation."); *id.* at ECF No. 77-1 ("That's up to El Salvador if they want to return him, that's not up to us." (quoting AG Bondi)).

emergency application in *Trump v. J.G.G.*, No. 24A931. In this Court's order granting the government's stay application on the ground that challenges to designation for removal under the AEA should be filed through petitions for habeas corpus, and not through a civil action under Administrative Procedure Act, the Court further ordered that "AEA detainees must receive notice after the date of this order that they are subject to removal under the Act . . . [and that such] notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *3 (U.S. Apr. 7, 2025).

In accordance with this Court's order in *Trump v. J.G.G.*, Applicants filed this habeas action in the Northern District of Texas on behalf of themselves and a proposed class on April 16. *A.A.R.P. v. Trump*, No. 1:25-cv-59-H, ECF No. 1. Applicants simultaneously moved for a temporary restraining order and to certify a district-wide class. *Id.* at ECF Nos. 2, 3. Applicants sought class-wide relief enjoining their imminent removal without adequate notice because the government had begun moving Venezuelan noncitizens around the country to Bluebonnet Detention Facility in Anson, Texas ("Bluebonnet"), without meaningful explanation, and had not indicated the type of notice it intended to provide those designated under the AEA nor how much time it would give individuals before seeking to remove them to El Salvador or another country under the AEA. Moreover, in a hearing in the Southern District of Texas on Friday, April 11, the government said it had not ruled out the possibility that individuals would receive as little as 24 hours' notice before removal—

which would deprive them of the "reasonable time" and "due process" required by the Supreme Court's order. *Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *3 (U.S. Apr. 7, 2025).

On April 17, the district court in this case issued an order denying Applicants' TRO. The court found no risk of summary removal because "the government does not presently expect to remove [the named Applicants] pending resolution of their habeas petition." ECF No. 27 at 1. But the government provided no assurances with respect to other putative class members. The district court nonetheless stated: "the Supreme Court's opinion in *J.G.G.,* along with the government's general representations about the procedures necessary in these cases, strongly suggest that the putative class is also not facing such an imminent threat …." Order at 9 (ECF No. 27). Since the district court denied the TRO, Applicants have learned that officers at Bluebonnet have distributed notices under the Alien Enemies Act, in English only, that designate Venezuelan men for removal under the AEA, and have told the men that the *removals are imminent and will happen today*. *See* App. 55a (Brown Decl.). These removals could therefore occur at any moment.[3]

[3] Counsel for Applicants contacted counsel for the government by email at 4:49pm CT on April 17, 2025, even before hearing about the distribution of notices at Bluebonnet, to ask if the government would make the same representations as to the putative class members as it did for the two named Applicants. Counsel for the government did not respond to that correspondence. After then hearing that notices were being distributed at the Bluebonnet facility, counsel again contacted the government, at 6:23 pm CT, to ask whether it was accurate that the government had begun distributing AEA notices to Venezuelan men at the facility. At 6:36pm CT, counsel for the government said they would inquire and circle back. At 8:11pm CT, the government responded once more that the two named Applicants had not been given notices. Counsel immediately responded that they were inquiring about

Applicants submitted a copy of the notice to the district court, ECF Nos. 34-1. 34-2. It states that the noncitizen has been designated an alien enemy under the AEA. It gives no timeframe for the removal. It does not inform the noncitizen how long they have to contest their designation or even how to do so. Nor does it provide notice of any opportunity for judicial review or permit the designee to indicate that they intend to contest their designation. It says only that "[i]f you desire to make a phone call, you will be permitted to do so."

The notice is in English. The overwhelming number of people designated under the AEA speak only Spanish.

Over the past hours since the district court's order denying Applicants' original TRO application, immigration attorneys representing some Venezuelan individuals now detained at Bluebonnet have informed undersigned counsel that their clients are receiving these notices and being told their deportation is imminent. Shortly after the district court's order on the TRO, for example, one attorney client, F.G.M., was approached by ICE officers, accused of being a member of Tren de Aragua, and told to sign papers in English. App. 55a (Brown Decl.) ¶ 3. F.G.M. understands only Spanish, and he refused to sign. ICE told him the papers "were coming from the President, and that he will be deported even if he did not sign it." *Id.* Another

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putative class members, not just the named plaintiffs. At 8:41pm CT, the government wrote: "We are not in a position at this time to share information about unknown detainees who are not currently parties to the pending litigation." The government has continued to decline to provide any information beyond the two named Applicants, and opposed even an emergency status hearing before the district court today.

Venezuelan man who is detained at Bluebonnet and speaks English then read the notice to F.G.M.'s attorney, and the notice tracks the language of the Alien Enemies Act: "In the notice, it classified F.G.M. as a TdA gang member" who "must be removed" from the United States. *Id.* F.G.M., like other men against whom the Alien Enemies Act has already been used, does not have a final order of removal and is therefore not removable under the immigration laws. *See id.* The notice was not provided to counsel by the government, not did the government inform F.G.M.'s attorney that her client was being designated under the AEA.

In addition to F.G.M., dozens if not hundreds of Venezuelan men were moved to the Bluebonnet facility according to reports from immigration lawyers and family members. They are reporting that the forms are being passed out widely to the dozens of Venezuelan men who have been brought there over the past few days. App. 56a (Brane Declaration); *see also* App. 58a (Collins Decl.); *see also* ECF No. 34-4 (Petty Decl.); ECF No. 34-3 (YSGC Decl.). Lawyers have not been provided with the form or told that their clients were being designated under the AEA.[4]

These circumstances appear strikingly similar to the government's initial efforts to avoid judicial review of its summary removals. There, the government issued the Proclamation publicly just hours before it "rushed to load people onto

[4] On March 15, at least 137 Venezuelans were removed under the AEA to the CECOT prison in El Salvador. Those individuals were overwhelmingly, if not exclusively, detained at facilities in the S.D. Texas. On April 11, after a hearing, Judge Rodriguez entered a class wide TRO to preserve the status quo and prevent additional individuals from being removed under the AEA. He then ordered expedited preliminary injunction briefing and set a hearing on the P.I. for April 23, 2025. *J.A.V. v. Trump*, No. 25-cv-72 (S.D. Tex 2025).

planes and get them airborne" in "an attempt to evade an injunction and deny those aboard the planes the change to avail themselves of judicial review." *J.G.G. v. Trump*, 1:25-cv-766 (D.D.C. Apr. 16, 2025), ECF No. 81 at 42; *see also id.* at 41 ("From the opening hours of Saturday, the Government's conduct betrayed a desire to outrun the equitable reach of the Judiciary.").

II. The Alien Enemies Act

The AEA is a wartime authority that grants the President specific powers with respect to the regulation, detention, and deportation of enemy aliens. Passed in 1798, the AEA, as codified today at 50 U.S.C. § 21, provides:

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

This Act has been used only three times in the country's history and each time in a period of war—the War of 1812, World War I, and World War II.

The Act also provides that individuals designated as enemy aliens will generally have time to "settle affairs" before removal and the option to voluntarily "depart."[5] *See, e.g.*, *United States ex rel. Dorfler v. Watkins*, 171 F.2d 431, 432 (2d Cir.

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

1948) ("An alien must be afforded the privilege of voluntary departure before the [AG] can lawfully remove him against his will.").

III. The AEA Proclamation and the Unlawful Removals

On March 14, the President signed the AEA Proclamation at issue here. It provides that "all Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies." *See* Proclamation. Although the AEA calls for a "public proclamation," 50 U.S.C. § 21, the administration did not make the invocation public until around 3:53 p.m. EDT on March 15. As set forth more fully in Judge Boasberg's opinion, even prior to the Proclamation's publication the government sought to remove individuals. *J.G.G. v. Trump*, No. 1:25-cv-766-JEB (D.D.C. Mar. 18, 2025), ECF No. 28-1 (Cerna Decl.) ¶ 5; *J.G.G.*, 2025 WL 890401, at *3 (D.D.C. Mar. 24, 2025) (noting that prior to publication of Proclamation, and after a lawsuit was filed against the summary removals, it appeared that "the Government . . . was nonetheless moving forward with its summary-deportation plans.")

In addition to claiming that a *criminal gang* during *peacetime* satisfies the AEA's statutory predicates, the Proclamation does not provide any process for individuals to contest that they are members of the TdA and do not therefore fall within the terms of the Proclamation. The Proclamation also supplants the removal

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time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality").

process under the congressionally enacted immigration laws, which, among other things, provide a right to seek protection from persecution and torture. *See, e.g.*, 8 U.S.C. §§ 1158, 1231(b)(3), 1231 note.

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

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

attributes are reliable ways of identifying gang members. *Id.* at 67-3 (Hanson Decl.) ¶¶ 22-24, 27; *id.* at 67-4 (Antillano Decl.) ¶ 14; *id.* at 67-12 (Dudley Decl.) ¶ 25.

Experts on El Salvador have also explained how those removed to that country face grave harm and torture at the Salvadoran Terrorism Confinement Center ("CECOT"), including electric shocks, beating, waterboarding, and use of implements of torture on detainees' fingers. *See J.G.G.*, 2025 WL 1024097, at *9 (U.S. Apr. 7, 2025) (Sotomayor, J., dissenting); *see also J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 44-4 (Bishop Decl.) ¶¶ 21, 33, 37, 39, 41; *id.* at 44-3 (Goebertus Decl.) ¶¶ 8, 10, 17. These abusive conditions are life threatening; hundreds of people have died in Salvadoran prisons in recent years. *J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 44-3 (Goebertus Decl.) ¶ 5; *id.* at 44-4 (Bishop Decl.) ¶¶ 43–50. Equally alarmingly, those removed and detained at CECOT face indefinite detention. *Id.* at 44-3 (Goebertus Decl.) ¶ 3 (quoting the Salvadoran government that people held in CECOT "will never leave"); Nayib Bukele, X.com post (Mar. 16, 2025, 5:13AM ET) (detainees "were immediately transferred to CECOT . . . for a period of one year (renewable)").[6]

IV. Applicants

Applicant A.A.R.P. is a Venezuelan national who is detained at Bluebonnet Detention Center in Anson, Texas. *See* ECF No. 2-2 (Blakeborough Decl.) ¶ 2. A.A.R.P. fled Venezuela because he and his family were persecuted there in the past for their political beliefs and for publicly protesting against the current Venezuelan government. *Id.* ¶ 8. He came to the United States in 2023 with his wife and their

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

son. *Id.* ¶ 3. He is currently seeking asylum, withholding, and protection under the Convention Against Torture. *Id.* ¶ 8. His next hearing is scheduled for April 28, 2025, at the Fort Snelling Minnesota Immigration Court. *Id.* A.A.R.P. was detained while carpooling to work with his wife on March 26, 2025. *Id.* ¶ 5. ICE has accused A.A.R.P. of having "tattoos and associates that indicate membership in the Tren de Aragua gang" in an I-213. *Id.* ¶ 6. A.A.R.P. has a number of tattoos including a clock that shows the date and time of his son's birth, a cross, and the Virgin Mary. *Id.* ¶ 7. None of these tattoos are related to TdA and A.A.R.P. vehemently denies any connection to TdA. *Id.* ¶¶ 7-8. Early on April 14, A.A.R.P. was suddenly transferred from the Sherburne County Jail in Minnesota to the Bluebonnet Detention Center despite his upcoming April 28 hearing in immigration court in Minnesota. *Id.* ¶ 8. A.A.R.P. is at risk of being classified as an alien enemy under the Aliens Enemy Act and summarily deported under the Proclamation to El Salvador. *Id.* ¶¶ 8, 10.

Applicants W.M.M. is a Venezuelan national who is also detained at Bluebonnet Detention Center in Anson, Texas. ECF No. 2-3 (D'Adamo Decl.) ¶ 3. W.M.M. fled Venezuela after the Venezuelan military harassed and assaulted him because they believed that he did not support the Maduro regime. *Id.* ¶ 4. W.M.M. arrived in the United States in 2023, was released on his own recognizance, and filed an asylum application. *Id.* ¶ 9. Several months later, federal authorities arrested W.M.M. on a misdemeanor warrant for alleged illegal entry into the United States. *Id.* ¶ 10. At his hearing on the warrant, the government alleged that W.M.M. is affiliated with TdA based on emojis used in W.M.M.'s social media feed, and a

comment left by another individual on a social media post. *Id.* ¶ 11. The government also alleged that W.M.M. was arrested at a residence where an alleged TdA associate was present. *Id.* W.M.M. denies any connection with TdA. *Id.* The magistrate judge ordered W.M.M. released from federal criminal custody because the government had not met its threshold burden to show a serious risk that W.M.M. would flee. *Id.* ¶ 12. The judge noted that the illegal entry case was W.M.M.'s only interaction with a court. *Id.* The U.S. Marshals released W.M.M. into ICE's custody on March 17 and subsequently detained for about a month at the Winn Correctional Center in Louisiana. *Id.* ¶¶ 13-14.

On April 14, W.M.M. was abruptly transferred along with several other Venezuelans to the Bluebonnet Detention Center, where he is now currently detained with Venezuelans transferred from other facilities. *Id.* ¶ 15. Even though W.M.M. has an individual hearing scheduled in immigration court for August 22, his phone access was abruptly cut off the afternoon of April 15 and he was told he would be imminently transferred again. *Id.* ¶ 18. W.M.M. is fearful that he will be classified as an alien enemy under the Aliens Enemy Act and summarily deported under the Proclamation to El Salvador. *Id.* ¶ 19.

Upon information and belief, the government has over the past 24-48 hours transferred Venezuelan men from detention centers around the country—including Louisiana, Minnesota, and California—to the Bluebonnet Detention Center in this District despite their pending removal proceedings in immigration court in other regions. Upon information and belief, people have been transferred in groups of

Venezuelan men, and been told that they appear to be on a list with other Venezuelans. Thus, many individuals in this District are at imminent risk of summary removal pursuant to the Proclamation.

ARGUMENT

I. This Court Has Jurisdiction.

Applicants seek an emergency class-wide injunction that enjoins Defendants from removing the named plaintiffs and putative class members in the Northern District of Texas under the AEA Proclamation until they have a meaningful opportunity to seek judicial review and challenge Defendants' efforts to imminently remove them from the United States to a Salvadoran prison or elsewhere without due process. The relief sought here parallels the TROs that AEA detainees sought and obtained in *J.G.G. See Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *1 ("On March 15, 2025, the District Court for the District of Columbia issued two temporary restraining orders (TROs) preventing any removal of the named plaintiffs and preventing removal under the AEA of a provisionally certified class consisting of '[a]ll noncitizens in U.S. custody who are subject to' the Proclamation.").

Thus, the district court's denial of Applicants' motions for an emergency class-wide TRO are appealable because, as this Court just recently held, the orders sought may be construed as "appealable injunctions." *See Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (U.S. Apr. 7, 2025). The Court has jurisdiction to review a denial of such an injunction under 28 U.S.C. § 1292(a)(1).

II. An Emergency Injunction Preserving the Status Quo Will Prevent Irreparable Injury, Will Not Injure Defendants, and Will Serve the Public Interest.

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

Even if the government instead removes Applicants or the class to Venezuela, they face serious harm there, too. Many fled Venezuela for the very purpose of escaping persecution there, and have pending asylum cases on that basis. For example, A.A.R.P. and his family were persecuted for their political beliefs and actions protesting against the current Venezuelan government, and he fears persecution if returned. ECF No. 2-2 (Blakeborough Decl.) ¶ 8. Likewise, W.M.M. fled Venezuela because he was harassed and assaulted by the Venezuelan military for his

perceived opposition to the Maduro regime, and he is seeking asylum on that basis. ECF No. 2-3 (D'Adamo Decl.) ¶ 4. And returning to Venezuela labeled as a gang member by the U.S. government only increases the danger, as they will face heightened scrutiny from Venezuela's security agency, and possibly even violence from rivals of TdA. *J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 67-3 (Hanson Decl.) ¶ 28.

Not only do Applicants and the class face grave harm, thus far the government appears to be carrying out removals without any due process, in violation of this Court's order in *Trump v. J.G.G. See Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146, 172 (D.D.C. 2021) (irreparable harm where plaintiffs "face the threat of removal prior to receiving any of the protections the immigration laws provide"). Although the Supreme Court has now made clear that meaningful notice is required under the AEA, *J.G.G.*, 2025 WL 102409, at *2.

Defendants face no comparable harm. Applicants and the class do not contest Respondents' ability to prosecute criminal offenses, detain noncitizens, and remove noncitizens under the immigration laws. *Cf. J.G.G.*, 2025 WL 914682, at *30 ("The Executive remains free to take TdA members off the streets and keep them in detention. The Executive can also deport alleged members of TdA under the INA[.]"). Thus, Respondents cannot show how the government's interests "overcome the irreparable injury to [petitioner] absent a stay, or justify denial of a short stay *pendente lite*." *Ragbir v. United States*, No. 2:17-CV-1256-KM, 2018 WL 1446407, at *18 (D.N.J. Mar. 23, 2018), *appeal dismissed*, No. 18-2142, 2018 WL 6133744 (3d Cir. Nov. 15, 2018); *see also Patel*, 2020 WL 4700636, at *9 (noting "any inconvenience to

the Government from the brief delay is far outweighed by the threat of irreparable harm to [plaintiff]" and that "[t]he public interest is also better served by an orderly court process that assures that [the plaintiff's] invocation of federal court relief is considered before the removal process continues.").

The public interest also weighs in favor of Applicants. The public has a critical interest in preventing wrongful removals, especially where it could mean a lifetime sentence in a notorious foreign prison. *See Nken*, 556 U.S. at 436; *see also Nunez v. Boldin*, 537 F. Supp. 578, 587 (S.D. Tex. 1982) (protecting people who face persecution abroad "goes to the very heart of the principles and moral precepts upon which this country and its Constitution were founded"). That is especially so given the government's position that it will not obtain the release of individuals mistakenly sent to the notorious Salvadoran prison. *See Abrego Garcia*, 2025 WL 1021113, at *4. Moreover, "[t]here is generally no public interest in the perpetuation of unlawful agency action." *See Wages & White Lion Inv., L.L.C. v. FDA*, 16 F.4th 1130, 1143 (5th Cir. 2021).

III. Applicants Are Likely to Succeed on the Merits of Their Habeas Petition.

In their habeas petition and motion for class certification below, Applicants seek to vindicate the due process rights this Court described in *Trump v. J.G.G.* just two weeks ago. In that decision, every member of this Court agreed that individuals putatively removed under the Alien Enemies Act are entitled to a meaningful opportunity to challenge their "alien enemy" designations in court. *See J.G.G.*, 2025 WL 102409, at *2 (Kavanaugh, J., concurring) ("[A]ll nine Members of the Court agree

that judicial review is available."). Specifically, this Court's majority opinion made clear that the government must provide Applicants and putative class members notice "within a reasonable time and in such a manner as will allow them to actually seek" relief from summary removals under the Proclamation. *J.G.G.*, 2025 WL 102409, at *2 ("detainees subject to removal orders under the AEA are entitled to notice and an opportunity to challenge their removal."). Because the government seeks to imminently remove class members without adequate notice, reasonable time, or sufficient opportunity to "actually seek" court review as the Supreme Court commanded, an injunction pending appeal or writ of mandamus and emergency administrative injunction are warranted to ensure that class members receive due process. *See J.G.G.*, 2025 WL 102409, at *2 ("'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law' in the context of removal proceedings.").

The notice the government is providing does not remotely comply with the Supreme Court's order. At a minimum, the notice must be translated into a language that individuals can understand, for Venezuelans Spanish and English. Most importantly, there must be sufficient time for individuals to seek review. As during World War II, that notice must be at least 30 days in advance of any attempted removal. *See* 10 Fed. Reg. 12,189 (Sept. 28, 1945). And it must be provided to undersigned counsel so that no individual is mistakenly removed. *See*, *e.g.*, *Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1077101 (U.S. Apr. 10, 2025).

Furthermore, there should be no legal obstacle to Applicants seeking

emergency relief on behalf of members of the proposed class. To the extent that Applicants' request for emergency relief depends on certification of a petitioner class encompassing the individuals who are under an imminent and ongoing threat of removal under the AEA, Applicants have also shown a likelihood of success. Emergency relief is needed to protect members of the putative class and preserve Applicants' ability to pursue that class certification motion. The district court reserved decision on the class certification motion, and denied the original TRO application, based on the government's representations, which "strongly suggest[ed] that the putative class is also not facing such an imminent threat as the petitioners allege." Order at 9, ECF No. 27. However, early this morning, counsel for Applicants apprised the district court that putative class members *are*, in fact, facing imminent removals. *See supra*.

Every circuit that has addressed the issue has found that a class habeas action may be maintained. *See, e.g.*, *U.S. ex rel. Sero v. Preiser*, 506 F.2d 1115, 1125–26 (2d Cir. 1974); *Bijeol v. Benson*, 513 F.2d 965, 967 (7th Cir. 1975); *Williams v. Richardson*, 481 F.2d 358, 361 (8th Cir. 1973); *Mead v. Parker*, 464 F.2d 1108, 1112–13 (9th Cir. 1972); *Napier v. Gertrude*, 542 F.2d 825, 827 & n.5 (10th Cir. 1976); *LoBue v. Christopher*, 82 F.3d 1081, 1085 (D.C. Cir. 1996).

For instance, in *Sero*, the Second Circuit relied on the Supreme Court's decision in *Harris v. Nelson*, 394 U.S. 286 (1969), to "confirm[] the power of the judiciary, under the All Writs Act . . . to fashion for habeas actions 'appropriate modes of procedure, by analogy to existing rules or otherwise in conformity with judicial

usage,'" and held that "unusual circumstances" provided "compelling justification for allowing a multi-party proceeding similar to the class action authorized by the Rules of Civil Procedure." 506 F.2d at 1125 (citing *Harris*, 394 U.S. at 299). Adopting a similar approach in *Bijeol*, the Seventh Circuit found a class habeas appropriate where all prisoners raised an "identical" issue of law and the number of prisoners was "too great for joinder of all to be practical." 513 F.2d at 968. Likewise, the Eighth and Ninth Circuits reversed district court decisions, holding that a habeas corpus petition may seek relief for an appropriate class. *See Mead*, 464 F.2d at 1113 ("where the relief sought can be of immediate benefit to a large and amorphous group . . . a class action may be appropriate"); *Williams*, 481 F.2d at 361 (agreeing with *Mead*); *see also Napier*, 542 F.2d at 827 & n.5 (Tenth Circuit noting "class treatment" could be available by the court "apply[ing] an analogous procedure by reference to Rule 23"); *LoBue*, 82 F.3d at 1085 (noting that "courts have in fact developed such equivalents" of "class actions in habeas").

Although it has not addressed the availability of class habeas, this Court has ruled on the merits in multiple class habeas cases, including several recent ones involving immigration detention. *See*, *e.g., Johnson v. Guzman Chavez*, 594 U.S. 523, 532 (2021) (class of noncitizens detained in Virginia); *Nielsen v. Preap*, 586 U.S. 392, 400 (2019) (two classes of noncitizens, one detained in California and the other in the Western District of Washington); *Jennings v. Rodriguez*, 583 U.S. 281, 290 (2018) (class of noncitizens in the Central District of California, with subclasses for different detention authorities). Courts in the Fifth Circuit have also considered class habeas

cases on the merits. *See, e.g.*, *Aguilar-Ayala v. Ruiz*, 973 F.2d 411, 421 (5th Cir. 1992) (habeas class of noncitizen witnesses challenging government practice of detention over ten days, where government has opposed certification based on mootness and lack of typicality); *St. Jules v. Savage*, 512 F.2d 881, 882 (5th Cir. 1975) (reversing dismissal and remanding where district court held that each petitioner's challenge had to be "considering individually" because those inmates "present a single constitutional challenge"); *In re Class Action Application for Habeas Corpus on Behalf of All Material Witnesses in W. Dist. of Texas*, 612 F. Supp. 940, 948 (W.D. Tex. 1985) (granting summary judgment to class of individuals detained as material witnesses in the Western District of Texas).

The reasoning of these cases confirms why class treatment is not only appropriate but preferred here in light of the vulnerabilities of the class, which consists of detained noncitizens with limited resources and English proficiency, preventing them from bringing their own individual claims. *See Sero*, 506 F.2d at 1125-26; William B. Rubenstein, *Newberg on Class Actions* § 3.12 (5th ed. 2017).. Classwide relief is also urgently necessary in light of the government's failure to comply with the Supreme Court's clear instruction that individuals must be given sufficient notice and opportunity to seek review. *Supra*.; *see also Mead*, 464 F.2d at 1112-13 ("there can be cases, and this is one of them, where the relief sought can be of immediate benefit to a large and amorphous group. In such cases, it has been that a class action may be appropriate[.]").

IV. The Court Should Alternatively Grant Mandamus Relief.

The extraordinary circumstances here warrant mandamus relief. In deciding whether the writ should issue, courts must consider: "(1) whether the petitioner has demonstrated that it has no other adequate means to attain the relief [he] desires; (2) whether the petitioner's right to issuance of the writ is clear and indisputable; and (3) whether we, in the exercise of our discretion, are satisfied that the writ is appropriate under the circumstances." *In re Itron, Inc.*, 883 F.3d 553, 567 (5th Cir. 2018) (quoting *Cheney v. U.S. Dist. Court for D.C.*, 542 U.S. 367, 380–81 (2004) (cleaned up)). "These hurdles, however demanding, are not insuperable." *In re Gee*, 941 F.3d 153, 158 (5th Cir. 2019) (quoting *Cheney*, 542 U.S. at 381). In cases such as this, mandamus provides a "useful 'safety valve[]' for promptly correcting serious errors." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 111 (2009) (citation omitted).

Moreover, as noted, another district court in the Fifth Circuit has issued a district-wide TRO for the Southern District of Texas. In that case, Judge Rodriguez issued the TRO because there was a risk that individuals might not get sufficient notice given the government's refusal to provide specificity or rule out that notice might be as little as 24 hours' notice – precisely what has now happened. *J.A.V. v. Trump*, No. 25-cv-72 (S.D. Tex. 2025).

As discussed above, petitioners have no other means to halt the removals that may divest the courts of jurisdiction to address the enormously important legal questions presented by their claims. Their right to the issuance of the writ is clear and indisputable, as the district court's refusal to act on an emergency application for temporary restraining order or emergency request for a status conference, and

constructive denial of a classwide TRO, in light of the circumstances was a "clear abuse of discretion that produces patently erroneous results." *In re JPMorgan Chase & Co.*, 916 F.3d 494, 500 (5th Cir. 2019) (cleaned up). Because of the district court's constructive denial of Applicants' motion for class certification, its denial of Applicants' motion for a TRO, and its failure to act on Applicants' emergency motion, potential class members are facing imminent removal—without adequate notice and without due process, contrary to the Supreme Court's command in *J.G.G.* This Court's intervention is immediately required to ensure that the courts retain jurisdiction and to prevent manifest irreparable harms.

V. This Court Should at Least Immediately Grant a Temporary Administrative Injunction

At a minimum, this Court should grant an immediate administrative injunction in order to preserve the status quo while it considers the application. The Government's prior removals putatively conducted under the Alien Enemies Act have transferred individuals from immigration detention in the United States to a prison facility in El Salvador. The Government's position in other pending litigation has been that it cannot reverse those transfer decisions absent consent from the government of El Salvador. *See, e.g.*, *Abrego Garcia v. Noem*, No. 25-1404, slip op. at 3 (4th Cir. Apr. 17, 2025) (Wilkinson, J.). The government of El Salvador, meanwhile, has to-date declined to release individuals putatively removed from the United States under the Alien Enemies Act from its custody, even where the United States Government has conceded that removal was erroneous. *See, e.g.*, Nayib Bukele (@nayibbukele), X (Apr. 17, 2025, 9:01 pm EDT),

https://x.com/nayibbukele/status/1913035243918864742 (individual wrongly removed to El Salvador "gets the honor of staying in El Salvador's custody").

This raises a substantial likelihood that plaintiffs will suffer irreparable injury—detention in El Salvador with no clear pathway to relief through American courts—if no action is taken by the courts immediately. *Accord Nken v. Holder*, 556 U.S. 418, 435 (in mine-run immigration proceedings, removal is not "categorically irreparable"). An administrative injunction to freeze the status quo (i.e., plaintiffs' continued detention in U.S. immigration custody) is thus essential to preserve the possibility of meaningful judicial review.

CONCLUSION

The Court should grant an injunction pending appeal or issue a writ of mandamus, or immediately grant a temporary administrative injunction.

Respectfully submitted,

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