IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA

Y.A.P.A.,

Petitioner–Plaintiff,

v.

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

Respondents–Defendants.

Case No. 4:25-cv-00144

PETITIONER-PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF A TRO

INTRODUCTION

Petitioner-Plaintiff Y.A.P.A. ("Petitioner") respectfully requests an immediate Temporary Restraining Order ("TRO") to avoid irreparable harm to Petitioner—and to ensure that this Court is not potentially deprived, permanently, of jurisdiction.

In a Proclamation signed on March 14 but not made public until March 15 (after the government had already attempted to use it), the President invoked a war power, the Alien Enemies Act of 1798 ("AEA"), to summarily remove noncitizens from the U.S. and bypass the immigration laws Congress has enacted. *See* Invocation of the Alien Enemies Act (Mar. 15, 2025) ("Proclamation").[1] The AEA permits the President to invoke the AEA only where the United States is in a "declared war" with a "foreign government or nation" or when a "foreign government or nation" is threatening to, or has engaged in, an "invasion or predatory incursion" against the "territory of the United States." 50 U.S.C. § 21. The Proclamation targets Venezuelan noncitizens accused of being part of Tren de Aragua ("TdA"), a criminal gang, and claims that the gang is engaged in an "invasion and predatory incursion" within the meaning of the AEA.

On the evening of March 15, a D.C. District Court issued an order temporarily pausing removals pursuant to the Proclamation for a provisionally certified nationwide class. *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *2 (D.C. Cir. Mar. 26, 2025). The D.C. Circuit denied the government's motion to vacate that TRO. On April 7, the Supreme Court granted vacated the TRO, deciding the named petitioners had to proceed through habeas, without reaching the merits of whether the Proclamation exceeds the President's power under the AEA. The Court emphasized that individuals who are designated under the AEA Proclamation are "entitle[d] to due process" and notice "within a reasonable time and in such manner as will allow them to actually seek habeas

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

relief" before removal. *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025).

In light of the Supreme Court's ruling that people subject to the AEA Proclamation must have a meaningful opportunity to contest their designation as an alien enemy, district-wide preliminary relief is now in place in a number of federal districts, preventing removal or transfer of people designated "alien enemies" from each respective district while the cases are pending. *G.F.F. v. Trump*, No. 25-cv-2886, 2025 WL 1166480 (S.D.N.Y. Apr. 9, 2025), *as amended*, 2025 1166911 (Apr. 11, 2025), *extended*, WL 1166450 (S.D.N.Y. Apr. 22, 2025); *J.A.V. v. Trump*, --- F. Supp. 3d ---, 2025 WL 1226023 (S.D. Tex. Apr. 24, 2025); *D.B.U. v. Trump*, --- F. Supp. 3d ---, 2025 WL 1163530 (D. Colo. Apr. 22, 2025), *appeal docketed*, No. 25-1164 (10th Cir. Apr. 23, 2025); *Sanchez Puentes v. Garite*, --- F. Supp. 3d ---, 2025 WL 1203179 (W.D. Tex. Apr. 25, 2025); *A.S.R. v. Trump*, --- F. Supp. 3d ---, 2025 WL 1208275 (W.D. Pa. Apr. 25, 2025).

Despite the Supreme Court's clear instructions, the government has since made one other known attempt to remove a large number of individuals under the Proclamation without meaningful notice. On the evening of April 17, the government gave detainees at Bluebonnet Detention Center in Texas an English-only AEA designation form, not provided to any attorney, which nowhere mentioned the right to contest the designation or removal. *See* Emergency Appl. for an Emergency Inj. or Writ of Mandamus at 4–8, *A.A.R.P. v. Trump*, 145 S. Ct. 1034 (Mem.) (filed Apr. 18, 2025). ICE officers told detainees that they would be removed on April 18. *Id.* at 5; *see also* Ex. 1, Ex. to Cisneros Decl., *J.A.V. v. Trump*, No. 1:25-cv-00072 (S.D. Tex. filed Apr. 24, 2025), ECF No. 49-1 (the notice form).

Petitioners' counsel in that case sought relief from the district court, the Fifth Circuit, and the Supreme Court. The government stated that it would not remove anyone under AEA that day,

but it reserved the right to do so the next day.[2] Then, at 12:51 a.m. on Saturday, April 19, the Supreme Court directed the government not to remove any member of the putative class at Bluebonnet. *A.A.R.P.*, 145 S. Ct. at 1034. That order remains in place, but it does not bar AEA removals without due process of people in other jurisdictions, including this district.

After that order was entered, Respondents' process for providing notice of AEA designations was made public. *See* Ex. 2, Decl. of Carlos D. Cisneros, *J.A.V.*, No. 1:25-cv-00072 (filed Apr. 24, 2025), ECF No. 49. Under that process, individuals receive Form AEA-21B. *See* Ex. 1. They must express a desire to file a habeas petition challenging their designation as "alien enemies" within the first 12 hours or they can be removed; if they express an intent to file a habeas petition, they are given 24 hours to actually file that petition, Ex. 2 ¶¶ 11.

Petitioner filed this habeas action following the Supreme Court's order that those designated as "alien enemies" must receive due process and the government's subsequent actions to designate individuals as alien enemies and rapidly remove them without meaningful notice. The Proclamation is invalid under the AEA for multiple reasons outlined below.

Accordingly, Petitioner moves the Court for a TRO for himself barring his summary removal under the AEA and barring Respondents from relocating him outside of this District pending this litigation.[3] Immediate intervention by this Court is required given the government's policy to provide a mere 12 hours' notice to state an intent to challenge the designation, with a mere 24 hours to file such a petition. And if there is an unlawful removal, the government has

[2] *Supreme Court temporarily blocks new deportations under Alien Enemies Act*, CBS News (Apr. 20, 2025), https://www.cbsnews.com/news/supreme-court-temporarily-blocks-new-deportations-under-alien-enemies-act/.

[3] Petitioner does not seek to enjoin the President but the President remains a proper respondent because, at a minimum, Petitioner 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) (court had jurisdiction to issue writ of mandamus against the President but "opt[ed] instead" to issue declaration).

taken the position that the courts would lose jurisdiction and there would be no way to correct any erroneous removal. And there were many erroneous removals. Indeed, in the government's rush to transfer individuals to El Salvador, the government has mistakenly deported at least one Salvadoran man without legal basis and claims that individual cannot be returned. *See Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (Apr. 10, 2025). At least one other individual was removed to El Salvador on March 15 *in violation of a binding settlement agreement. J.O.P. v. U.S. DHS*, --- F.3d ---, 2025 WL 1180191 (D. Md. Apr. 23, 2025). Declarations and news accounts suggest that many, if not most, of the alleged TdA members sent to El Salvador pursuant to the Proclamation at issue here were not in fact TdA members. *See* Ex. 3, Decl. of Rebecca M. Cassler, at Exs. 4–16(collecting stories of such errors).

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

LEGAL AND FACTUAL BACKGROUND

I. The Alien Enemies Act

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

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

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

II. Congress's Comprehensive Reform of Immigration Law

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

As part of that reform and other subsequent amendments, Congress prescribed safeguards for noncitizens seeking protection from persecution and torture, which codify the humanitarian framework adopted by the United Nations in response to World War II. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 432–33, 436–41 (1987). First, the asylum statute, 8 U.S.C. § 1158, provides that any noncitizen in the U.S. has a right to apply for asylum. Second, the withholding of removal statute, 8 U.S.C. § 1231(b)(3), provides that noncitizens "may not" be removed to a country where their "life or freedom" would be threatened based on a protected ground. *See INS v. Aguirre-Aguirre*, 526 U.S. 415, 420 (1999) (withholding is mandatory upon meeting statutory criteria). Third, protections under the Convention Against Torture ("CAT") prohibit returning

[4] 50 U.S.C. § 21 (providing for removal of only those "alien enemies" who "refuse or neglect to depart" from the U.S.); *id*. § 22 (granting time for departure in accordance with treaty stipulation or "where no such treaty exists, or is in force," a "reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality").

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. 105-277, div. G., Title XXII, 112 Stat. 2681 (codified at 8 U.S.C. § 1231 note); 8 C.F.R. § 1208.16–18.

III. The AEA Proclamation and the Unlawful Removals

On March 14, the President signed the AEA Proclamation at issue here. It provides that "all Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies." *See* Proclamation. Although the AEA calls for a "public proclamation," 50 U.S.C. § 21, the administration did not make the invocation public until around 3:53 p.m. EDT on March 15. Even prior to the Proclamation's publication the government sought to remove individuals. Ex. 4, Decl. of Robert L. Cerna, ¶ 5, *J.G.G.* (D.D.C. filed Mar. 18, 2025), ECF No. 28-1; *J.G.G.*, 2025 WL 890401, at *3 (D.D.C. Mar. 24, 2025) (noting that prior to publication of Proclamation, and after a lawsuit was filed against the summary removals, it appeared that "the Government . . . was nonetheless moving forward with its summary-deportation plans").

In addition to claiming that a *criminal gang* during *peacetime* satisfies the AEA's statutory predicates, the Proclamation does not provide any process for individuals to contest that they are members of the TdA and do not therefore fall within the terms of the Proclamation. The Proclamation also supplants the removal process under the congressionally enacted immigration laws, which, among other things, provide a right to seek protection from persecution and torture. *See, e.g.*, 8 U.S.C. §§ 1158, 1231(b)(3), 1231 note.

To date, at least 137 Venezuelans have been removed under the Proclamation and are now in El Salvador in one of the most notorious prisons in the world, possibly for the rest of their lives.

Whether most (or perhaps all) of the nationwide class lacks ties to TdA remains to be seen, because Respondents secretly rushed them 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* Ex. 3, at Exs. 4–16 (media reports regarding evidence contradicting gang allegations). Many of the individuals removed to El Salvador under the Proclamation were in the middle of seeking asylum or other humanitarian relief, just like Petitioner. Ex. 5, Decl. of Y.A.P.A., ¶¶ 7, 19.

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. Ex. 3 at Ex. 1. The guide relies on dubious criteria, including physical attributes like "tattoos denoting membership/loyalty to TDA" and hand gestures, symbols, logos, graffiti, or manner of dress. *Id.* Experts who study the TdA have explained how none of these physical attributes are reliable ways of identifying gang members. Ex. 6, Decl. of Rebecca Hanson, ¶¶ 21–24, 27,; Ex. 7, Decl. of Andres Antillano, ¶ 14,; Ex. 8, Decl. of Steven Dudley ¶ 25.

Experts on El Salvador have also explained how those removed there face grave harm and torture at the Salvadoran Terrorism Confinement Center ("CECOT"), including electric shocks, beating, waterboarding, and use of implements of torture on detainees' fingers. *See J.G.G.*, 145 S. Ct. at 1010–11 (Sotomayor, J., dissenting); *see also* Ex. 9, Decl. of Sarah C. Bishop ¶¶ 21, 33, 37, 39, 41, ; Ex. 10, Decl. of Juanita Goebertus ¶¶ 8, 10, 17. These abusive conditions are life threatening, as demonstrated by the hundreds of people who have died in Salvadoran prisons. Ex. 10 ¶ 5; Ex. 9 ¶¶ 43–50. Worse, those removed and detained at CECOT face indefinite detention. Ex. 10 ¶ 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)").[5]

IV. Petitioner

Petitioner Y.A.P.A. is a Venezuelan national detained at Stewart Detention Center. Ex. 5 ¶¶ 2–3. Y.A.P.A. fled Venezuela in 2022 to seek asylum in the United States. *Id.* ¶¶ 5–7. He is in immigration removal proceedings and has sought asylum, withholding of removal, and protection under CAT. *Id.* ¶¶ 7, 13–14, 19. His next hearing is May 28, 2025, in Stewart Immigration Court. *Id.* ¶ 19. ICE arrested Y.A.P.A. on February 22, 2025. An I-213 later filed in immigration court states that his was a "targeted for arrest by [Homeland Security Investigations] for being a known associate of the Tren De Aragua Venezuelan gang." Exhibit 11, Form I-213, at 2. The I-213 later states that Y.A.P.A. "has ties to" TdA. Nowhere does the document state that the factual basis for these allegations, nor does it state that Y.A.P.A. is a member of TdA. *Id.* However, from the little information publicly available about whom the government has designated as "alien enemy," the government has deemed similarly vague allegations sufficient to justify such designation. *See Sanchez Puentes*, 2025 WL 1203179, at *14–15 (recounting ICE official testimony that the government designated a petitioner an "alien enemy" because ICE alleged he was "an associate of Tren de Aragua," and rejecting this "guilt[] by association"). Y.A.P.A. is fearful that he will be classified as an alien enemy and summarily deported under the Proclamation without due process, given the TdA allegations in the I-213 and the fact that he has two tattoos (his name and scorpion, representing his astrological sign), which are wholly unrelated to any gang. Ex. 5 ¶ 18.

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

ARGUMENT

I. Legal Standard

To obtain a TRO, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008); *see Ingram v. Ault*, 50 F.3d 898, 900 (11th Cir. 1995).

II. Petitioner is 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 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).

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

The Proclamation fails, on its face, to satisfy an essential statutory requirement: that there be an "invasion or predatory incursion" directed "against the territory of the United States." 50 U.S.C. § 21. The text and history of the AEA make clear that it uses these terms to refer to military actions indicative of an actual or impending war. At the time of enactment, an "invasion" was a large-scale military action by an army intent on territorial conquest. *See Invasion*, Webster's Dict. (1828) ("invasion" is a "hostile entrance into the possession of another; particularly, the entrance of a hostile army into a country for purpose of conquest or plunder, or the attack of a military force"); *see also J.G.G.*, 2025 WL 914682, at *9 (Henderson, J., concurring) (in the Constitution, "invasion" "is used in a military sense" "*in every instance*" (emphasis in original)). "Predatory

incursion" referred to smaller-scale military raids aimed at destroying military structures or supplies, or to otherwise sabotage the enemy, often as a precursor to invasion and war. *See Incursion*, Webster's Dict. (1828) ("incursion . . . applie[s] to the expeditions of small parties or detachments of an enemy's army, entering a territory for attack, plunder, or destruction of a post or magazine"); *J.G.G.*, 2025 WL 914682, at *10 (Henderson, J., concurring) ("predatory incursion" is "a form of hostilities against the United States by another nation-state, a form of attack short of war"). The interpretive canon of *noscitur a sociis* confirms that the AEA's powers extended beyond an existing war only when war was imminent. *Cf. Ludecke v. Watkins*, 335 U.S. 160, 169 n.13 (1948) ("[T]he life of [the AEA] is defined by the existence of a war"). Reading "invasion" and "predatory incursion" in light of the neighboring term, "declared war," highlights the express military nature of their usage here. *See Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961).

The AEA's historical context reinforces what Congress meant by "predatory incursion" and "invasion." At the time, French ships were already attacking U.S. merchant ships in U.S. waters. *See, e.g.*, 7 Annals of Cong. 58 (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"); An Act Further to Protect the Commerce of the United States, § 1, 1 Stat. 578, 578 (1798) (authorizing U.S. ships to seize "any armed French vessel …found within the jurisdictional limits of the United States"). Congress worried these attacks against U.S. territory 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 part, to the AEA. *See* An Act to Declare the Treaties Heretofore Concluded with France, No Longer Obligatory on the United States, 1 Stat. 578, 578 (1798) ("[W]hereas, under authority of the French

government, there is yet pursued against the United States, a system of predatory violence").[6]

"Mass illegal migration" or criminal activities, as described in the Proclamation, 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 it assert that TdA is acting with an intent to gain a territorial foothold in the U.S. for military purposes. And the Proclamation makes no suggestion that the 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 that term is referring to "mass illegal migration" and "crimes"—neither of which constitute war within the Founding Era understanding. It asserts that TdA "commits brutal crimes" with the goal of "harming United States citizens, undermining public safety, and . . . destabilizing democratic nations." But these actions are not "against the territory" of the United States.

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. The Proclamation never finds TdA is a foreign "nation" or "government." Instead, it asserts that "[o]ver the years," the Venezuelan government has "ceded ever-greater control over their territories to transnational criminal organizations, including TdA." But the Proclamation does *not* say that TdA operates as a government in those regions. It does not even specify that TdA currently controls *any* territory in Venezuela.

[6] At the same time, 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." An Act Authorizing the President of the United States to Raise a Provisional Army, § 1, 1 Stat. 558, 558 (1798). As Judge Henderson noted, "[t]his language bears more than a passing resemblance to the language of the AEA, which Congress enacted a mere thirty-nine days later. *J.G.G.*, 2025 WL 914682, at *9. As such, the historical context makes plain that Congress was concerned about *military* incursions by the armed forces of a foreign nation that constitute or imminently precede acts of war.

Moreover, when a "nation or government" is designated under the AEA, the statute unlocks power over that nation or government's "natives, citizens, denizens, or subjects." 50 U.S.C. § 21. *Countries* have "natives, citizens, denizens, or subjects." By contrast, criminal organizations, in the Proclamation's own words, have "members." Proclamation § 1 ("members of TdA"). And it designates TdA "members" as subject to AEA enforcement—but "members" are not "natives, citizens, denizens, or subjects." That glaring mismatch underscores that Respondents are attempting not only to use the AEA in an unprecedented way, but also in a way that Congress never permitted—as a mechanism to address, in the government's own words, a *non*-state actor. *Venezuela* has natives, citizens, and subjects, but TdA (not Venezuela) is designated under the Proclamation.[7] Even as the Proclamation singles out certain Venezuelan nationals, it does not claim that *Venezuela* is invading the United States. The AEA requires the President to identify a "foreign nation or government" that is invading or engaging in an invasion or incursion. 50 U.S.C. § 21. Because it does not, the Proclamation fails on its face.

The AEA's historical record confirms that it was intended to address conflicts with foreign sovereigns, not criminal gangs like TdA. *See* 5 Annals of Cong. 1453 (1798) ("[W]e may very shortly be involved in war[.]"); John Lord O'Brian, Special Ass't to the Att'y Gen. for War Work, Civil Liberty in War Time, 8 (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

[7] Moreover, the AEA presumes that a designated nation possesses treaty-making powers. *See* 50 U.S.C. § 22 ("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.*, *Medellín v. Texas*, 552 U.S. 491, 505, 508 (2008) ("A treaty is 'a compact between independent nations' [and] an agreement among sovereign powers"(quoting *Holmes v. Jennison*, 39 U.S. 540, 570-72 (1840))).

(2014) (Congress has never issued a declaration of war against a nonstate actor). If Respondents could designate any group as a foreign government, without judicial review, this would lead to an untenable and overbroad application of the AEA.

The Proclamation half-heartedly attempts to link TdA to Venezuela by suggesting only that TdA is "supporting," "closely aligned with," or "has infiltrated" the Maduro regime. *See* Proclamation. But those characterizations, even if accepted, are insufficient to establish that a "foreign government or nation" is itself invading the United States. Thus, this court need not go beyond the face of the Proclamation to find that it fails to satisfy the statutory preconditions of the AEA. In any event, experts are in accord that it is "absolutely implausible that the Maduro regime controls TdA or that the Maduro government and TdA are intertwined." Ex. 6 ¶17; Ex. 7 ¶ 13; Ex. 8 ¶¶ 2, 21. As one expert who has done numerous projects for the U.S. government, including on the topic of TdA, explained, the Proclamation's characterization of the relationship between the Venezuelan state and TdA with respect to TdA's activities in the United States is "simply incorrect." Ex. 8 ¶¶ 5, 17–18. The President's own intelligence agencies reached that same conclusion prior to his invocation of the AEA. *See* Ex. 3 at Ex. 12, p. 1 ("shared judgment of the nation's spy agencies" is "that [TdA] was not controlled by the Venezuelan government").

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

As the Supreme Court has now made clear, the government must provide Petitioner notice "within a reasonable time and in such a manner as will allow [him] to actually seek" relief from summary removal under the Proclamation. *J.G.G.*, 145 S. Ct. at 1005 ("detainees subject to removal orders under the AEA are entitled to notice and an opportunity to challenge their removal."). The government has now revealed a wholly inadequate notice process. It has created

an English-only "notice" of "alien enemy" designation, which does not indicate there is a right to challenge the designation or even consult with an attorney. Ex. 1. The government maintains this document need only be given 12 hours before removal to satisfy the Supreme Court's command for due process and "reasonable time." The government believes it may proceed with removal after 12 hours, unless a person "indicate[s] or express[es] an intent to file a habeas petition." Ex. 2 ¶ 11. If a person who indicates such an intent "does not file such a petition within 24 hours, then ICE may proceed with the removal." *Id.* Furthermore, even when a person *does* file such a petition, the government *still* does not agree to wait for those proceedings to conclude before removal *absent a TRO from the reviewing court*. *Id.* ¶ 12 ("Although there may be fact-specific exceptional cases, in a general case, ICE will not remove under the AEA an alien who has filed a habeas petition while that petition is pending. However, ICE may reconsider that position in cases where a TRO has been denied and the habeas proceedings have not concluded within a reasonable time.").

"It is well established that the Fifth Amendment entitles [noncitizens] to due process of law' in the context of removal proceedings." *J.G.G.*, 145 S. Ct. at 1006. This notice process appears designed to deprive designated individuals of a meaningful opportunity to challenge their designations. The timeframe alone makes it effectively impossible to challenge an AEA designation without an attorney, since, as this Court well knows, pro se habeas petitioners must litigate their cases by mail. And the government will only pause removal plans if a designated individual says they would like to file "habeas," an esoteric legal proceeding that is not mentioned by name anywhere on the notice. For represented individuals, including Petitioner, there is apparently no requirement that such notice to be served on counsel.

At a minimum, the notice must be in a language that individuals can understand, (for Petitioner, Spanish). There must be sufficient time for individuals to seek review. As during World

War II, that notice must be at least 30 days in advance of any attempted removal. And in the case of Petitioner, it must be provided to undersigned counsel so that he is not mistakenly removed. *See*, *e.g.*, *Noem v. Abrego Garcia*, 145 S. Ct. 1017, 1018 (2025).

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

The Proclamation is unlawful for an independent reason: it overrides statutory protections for noncitizens seeking relief from torture by subjecting them to removal without meaningful consideration of their claims. Congress codified CAT to ensure that noncitizens have meaningful opportunities to seek protection from torture. *See* 8 U.S.C. § 1231 note; 8 C.F.R. §§ 208.16-.18. CAT categorically prohibits returning a noncitizen to any country where they would more likely than not face torture. 8 U.S.C. §1231 note. CAT applies regardless of the mechanism for removal. In *Huisha-Huisha v. Mayorkas*, the D.C. Circuit reconciled the Executive's authority under a public-health statute, 42 U.S.C. § 265, with CAT's protections. 27 F.4th 718, 721–22 (D.C. Cir. 2022). Because § 265 was silent about where noncitizens could be expelled, and CAT explicitly addressed that question, the court held no conflict existed. *Id*. Both statutes could—and therefore must—be given effect. *Id.* at 721, 731-32. Similarly, here the AEA and CAT must be harmonized by applying CAT's protections to AEA removals. Despite this clear statutory framework, the Proclamation overrides all of the INA's protections and deprives those designated under the Proclamation with any opportunity to seek protection against being sent to a place where they will be tortured. *See J.G.G.*, 2025 WL 890401, at *15 ("CAT could stand as an independent obstacle" to "potential torture should Plaintiffs be removed to El Salvador and incarcerated there.")

The AEA can similarly be harmonized with other subsequently enacted statutes specifically designed to protect noncitizens seeking asylum and withholding. *See* Refugee Act of 1980, Pub. L. No. 96-212, §§ 202, 208, 94 Stat. 102, 105-06 (1980) (asylum and withholding); 8 U.S.C. §§

1158 (asylum), 1231(b)(3) (withholding of removal). Congress has unequivocally declared that "[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum." 8 U.S.C. § 1158(a)(1). Likewise, the withholding of removal statute explicitly bars returning a noncitizen to a country where their "life or freedom" would be threatened based on a protected ground. *Id.* § 1231(b)(3)(A). A President invoking the AEA cannot simply sweep away these protections.

D. The Proclamation Violates the Procedural Requirements of the INA

After the last AEA invocation more than 80 years ago, Congress carefully specified procedures for removal. The INA 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 . . . 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."). Congress intended the INA to "supersede all previous laws with regard to deportability." S. Rep. No. 82-1137, at 30 (1952).[8]

Congress was aware that alien enemies were subject to removal in times of war or invasion when it enacted the INA. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (courts presume Congress drafts statutes with full knowledge of existing law). Indeed, the AEA was invoked just a few years before passage of the 1952 INA. With this awareness, Congress provided that the INA contains the "sole and exclusive" procedures for removal and declined to carve out AEA removals from standard immigration procedures, even as it expressly excepted other groups of noncitizens,

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

including those who pose security risks. *See, e.g.*, 8 U.S.C. § 1531 *et seq.* (establishing fast-track proceedings for noncitizens posing national security risks). By ignoring the INA's role as the "sole and exclusive" procedure for determining whether a noncitizen may be removed, the Proclamation unlawfully bypasses the mandated congressional scheme and usurps Congress's Article I power.

III. Petitioner Faces Imminent Irreparable Harm.

In the absence of a TRO, Petitioner—who is detained and whom Respondents have already alleged, incorrectly, to be a "known associate" of Tren de Aragua—is at imminent risk of summary removal to places, such as El Salvador, where he faces life-threatening conditions, persecution, and torture. *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 Duran-Ortega v. U.S. Att'y Gen.*, No. 18-14563-D (11th Cir. Nov. 29, 2018) (Martin, J., concurring) (irreparable harm where petitioner would likely "be physically harmed if . . . removed to El Salvador"); *Antonio v. Garland*, 38 F.4th 524, 527 (6th Cir. 2022) (irreparable harm where petitioner faced likely torture if removed); *Huisha-Huisha*, 27 F.4th at 733 (irreparable harm exists where petitioners "expelled to places where they will be persecuted or tortured"). And Petitioner may never get out of these prisons, particularly considering the government's position that once it sends a person to CECOT, even though detention there continues at the government's request, the government is powerless to secure their release and return. *See J.G.G.*, 145 S. Ct. at 1101 (Sotomayor, J., dissenting) (noting government's position that "even when it makes a mistake, it cannot retrieve individuals from the Salvadoran prisons to which it has sent them"); *Arguelles v. U.S. Att'y Gen.*, 661 F. App'x 694, 716 (11th Cir. Nov. 23, 2016) ("[I]n *Nken*[*v. Holder*, 556 U.S. 418 (2009)], the Supreme Court told us removal from the United States [after entry of a removal order] is not categorically irreparable because

removed petitioners 'who prevail [in a petition for review] can be afforded effective relief by facilitation of their return.' 556 U.S. 418, 435. But . . . it is implicit in this rule that removal *does* constitute irreparable harm when facilitation of a removed petitioner's return will *not* be possible." (emphasis in original)).

Even if the government removes Petitioner to Venezuela, he faces serious harm there, too. Many fled Venezuela for the very purpose of escaping persecution there, and have pending asylum cases on that basis, including Y.A.P.A. Ex. 5 ¶¶ 5–7. And returning to Venezuela labeled as a gang member by the U.S. government only increases the danger, as he will face heightened scrutiny from Venezuela's security agency, and possibly even violence from rivals of TdA. Ex. 6 ¶ 28.

Not only does Petitioner face grave harm, thus far the government has tried to execute removals without any due process. *See Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146, 172 (D.D.C. 2021) (irreparable harm where plaintiffs "face the threat of removal prior to receiving any of the protections the immigration laws provide"), *aff'd in part and rev'd in part*, 27 F.4th 718 (D.C Cir. 2022). Although the Supreme Court has now made clear that meaningful notice is required under the AEA, *J.G.G.*, 2025 WL 1024097, at *2, Respondents take the position that they may provide English-only, plainly inadequate notice on a Friday night and execute removal—without a removal order—before the end of the weekend unless a designated individual has counsel available to file a habeas petition while the Court is closed. *See* Ex. 2 ¶¶ 11-12. As such, there remains an unacceptably high risk that the government will deport individuals who are not in fact members of TdA, including Petitioner.

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

The balance of equities and public interest merge in cases against the government. *See Nken v. Holder*, 556 U.S. 418, 435 (2009); *Swain v. Junior*, 958 F.3d 1081, 1091 (11th Cir. 2020).

Here, the balance overwhelmingly favors Petitioner. 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 Hisp. Int. Coal. of Ala. v. Governor of Ala.,* 691 F.3d 1236, 1249 (11th Cir. 2012) (no government interest in enforcing unconstitutional law); *KH Outdoor, LLC v. City of Trussville*, 458 F.3d 1261, 1272 (11th Cir. 2006) (same). That is especially so given the government's position that it will not, and cannot be forced by court order, to obtain the release of individuals mistakenly sent to the notorious Salvadoran prison.

Petitioner does not contest Respondents' ability to prosecute criminal offenses or detain and remove noncitizens under the immigration laws. *Cf. J.G.G.*, 2025 WL 914682, at *30 (Henderson, J., concurring) ("The Executive remains free to take TdA members off the streets and keep them in detention [or] deport alleged members of TdA under the INA[.]"). Thus, Respondents cannot show how the government's interests overcome irreparable injury to Petitioner.

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

In addition to this Court's equitable powers, this is a textbook case for use of the All Writs Act ("AWA"), which allows courts to "maintain the status quo by injunction pending review of an agency's action through the prescribed statutory channels." *F.T.C. v. Dean Foods Co.*, 384 U.S. 597, 604 (1966); 28 U.S.C. § 1651(a); *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1099–101 (11th Cir. 2004) (an AWA injunction may issue when it is "calculated in [the court's] sound judgment to achieve the ends of justice entrusted to it" (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942))); *J.A.V.*, 2025 WL 1226023, at *1 (AWA injunction may issue "even before the court's jurisdiction has been established"). If Petitioner is illegally sent to a foreign country, the government will argue, as it already has, that this Court will no longer have jurisdiction to remedy the unlawful use of the AEA.

Whereas a traditional TRO requires a party to state a claim, an injunction based on the AWA requires only that a party identify a threat to the integrity of an ongoing or prospective proceeding, or of a past order or judgment. *See Klay*, 376 F.3d at 1100; *ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir. 1978) (court may enjoin "conduct which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion"). Courts have explicitly relied upon the AWA in order to prevent even a risk that a respondent's actions will diminish the court's capacity to adjudicate claims before it. *See Michael v. INS*, 48 F.3d 657, 664 (2d Cir. 1995) (staying an order of deportation "to safeguard the court's appellate jurisdiction" and preserve its ability to hear subsequent appeals by the petitioner).

VI. The Court Should Not Require Petitioner to Provide Security.

Rule 65(c) of the F.R.C.P. vests this Court with discretion as to the amount of security required and whether to waive the requirement altogether. *See BellSouth Telecomms., Inc. v. MCIMetro Access Transmission Servs., LLC*, 425 F.3d 964, 971 (11th Cir. 2005). In cases involving constitutional rights and indigent individuals, district courts routinely waive the bond requirement. *See Complete Angler, LLC v. City of Clearwater*, 607 F. Supp. 2d 1326, 1335 (M.D. Fla. 2009) (infringement of a fundamental constitutional right); *Machado v. Mayorkas*, No. 6:24-CV-1262-PGB-EJK, 2024 WL 4188392, at *3 n.6 (M.D. Fla. Sept. 13, 2024) (financial status of plaintiff). This Court should do the same here.

CONCLUSION

The Court should grant a TRO as to the Petitioner.

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Respectfully submitted,

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