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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA (Las Vegas)

ADRIAN ARTURO VILORIA AVILES

Petitioner,

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;

Case No.: 2:25-cv-00611-GMN-DJA

AMENDED VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS PURSUANT TO 28 U.S.C. § 2241

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

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

U.S. DEPARTMENT OF HOMELAND SECURITY

TODD LYONS,
in his official capacity as Acting Director and Senior Official Performing the Duties of the Director for U.S. Immigration and Customs Enforcement, 500 12th Street, SW, Washington, DC 20536;

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

MARCO RUBIO,
in his official capacity as Secretary, U.S. Department of State, 2201 C Street, NW, Washington, DC 20520;

U.S. DEPARTMENT OF STATE

PETE HEGSETH,
in his official capacity as Secretary, U.S. Department of Defense, 1000 Defense Pentagon, Washington, DC 20301-1000

U.S. DEPARTMENT OF DEFENSE

JASON KNIGHT,
in his official capacity as Acting Field Office Director, Salt Lake City Field Office Director, U.S. Immigration &

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CHRISTOPHER CHESTNUT,
in his official capacity as Warden, Nevada Southern Detention Facility, 2190 E. Mesquite Ave. Pahrump, NV 89060

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INTRODUCTION

1. Adrian Arturo Viloria Aviles ("Petitioner") brings this petition for a writ of habeas corpus ("Petition") pursuant to 28 U.S.C. § 2241, the All Writs Act, 28 U.S.C. § 1651, and Article I, Section 9, of the Constitution of the United States to protect him from summary removal

before he has had due process under normal immigration procedures established under U.S. law.

2. Petitioner is a citizen of Venezuela, where he fears persecution by Venezuelan intelligence agencies. He is currently detained at Bluebonnet detention facility in Texas. He is in removal proceedings under Title 8, through the usual process for administrative adjudication of immigration cases. The Department of Homeland Security ("DHS") found he has a credible fear of persecution or torture in Venezuela, and he is applying for asylum and related forms of relief. If that was all there was to his case, he would not bring this Petition to this Court.

3. But this is no longer a routine removal or asylum case. Absent action by this Court, he may never get the opportunity to have his asylum application heard in any court. He may be expelled with little warning to a foreign prison instead.

4. DHS has labeled Petitioner as an active member of the Tren de Aragua ("TdA") gang. Exhibit A, I-213, Record of Deportable/Inadmissible Alien at 4. DHS has offered no evidence for the allegation that Petitioner is a TdA member. Petitioner denies the allegation and would contest it if he is ever given the opportunity.

5. The President has issued a Proclamation declaring that members of the TdA should be considered part of an "invasion" under the Alien Enemies Act ("AEA"), and should be removed from the United States immediately. Since the President issued his proclamation, Respondents have moved to use it to remove people from the United States with either no notice and hearing at all, or with as little as 12-hours' notice. Others like Petitioner have already been taken out of the country to a Salvadoran prison notorious for cruelty and abuses.

6. Petitioner has not had any opportunity to challenge the TdA allegation in immigration court. If he were to be designated under the AEA Proclamation, under current policies he would not be afforded any opportunity to contest the designation in immigration court.

7. On April 16th, this court issued a preliminary injunction against Petitioner's removal until June 20th. The very next day, on April 17th, Venezuelan men at Bluebonnet who appear to have been identically situated to Petitioner were given papers in English stating they would be immediately removed under the AEA. Exhibit B, Declaration of Ashley Harris at 9-10. No notice was given to any attorneys. The only thing separating those men and the Petitioner is that a preliminary injunction prohibiting the Petitioner's removal from the country was issued by this Court. On April 18th, less than 24 hours after distributing the "notices," the men were loaded onto buses, which departed the detention center for a nearby airport. *Id*. at 10-11. If not for this Court's April 16th Preliminary Injunction, Petitioner likely would have been on those buses.

8. Late in the evening on April 18th (after midnight in Washington, D.C.) the Supreme Court issued an order blocking removal of a putative class of Venezuelan detainees at Bluebonnet. *See A.A.R.P. v. Trump*, 145 S.Ct. 1034 (2025); Exhibit C, Vaughn Hillyard et al., *As Legal Fight Raged, ICE Buses Filled with Venezuelans Heading Toward Airport Turned Around, Video Shows*, NBC News (Apr. 20, 2025) at 14. As these events show, for Venezuelans like Petitioner, judicial intervention is the only thing holding back arbitrary expulsion to a foreign prison without a hearing.

9. On April 23, 2025, the government made clear its new position that someone could be designated under the AEA and removed as soon as *12 hours* after the designation under the AEA Proclamation. *See* Exhibit D, Carlos Cisneros Declaration at 22, para. 11. Moreover,

not only has the government now stated that a mere 12 hours is the required notice, but it has continued to use English-only notice forms that do not tell the recipient that they can contest their designation, much less tell them how to do so or even that they only have 12 hours to do so. *See* Exhibit E (AEA 21-B Form) at 25. There is no conceivable way that such a process complies with what the Supreme Court has held is required: Notice "within a reasonable time and in such a manner as will allow them to *actually* seek habeas relief." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (per curiam) (emphasis added).

10. Petitioner does not want to be an exceptional case. He does not ask this Court to adjudicate his asylum case, for which an established, lawful process exists. He asks this court to protect him from a sudden designation under the AEA that would thwart his opportunity to have his asylum case heard through the normal process and would put him in imminent danger of indefinite detention in a foreign country. At a minimum, he wants to make sure that if the AEA is used against him, he would have notice and a right to contest its application, something that he cannot have in immigration court.

11. Petitioner thus petitions this Court to determine that the use of the AEA is unlawful, or in the alternative that it does not apply to him, or at the very least to protect him from being expelled under the AEA without reasonable notice or without a hearing.

JURISDICTION AND VENUE

12. This case arises under the Alien Enemies Act ("AEA"), 50 U.S.C. §§ 21-24; 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.

13. 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 respondent), 28 U.S.C. § 1361 (mandamus), and 28 U.S.C. § 1651 (All Writs Act).

14. The Supreme Court has made clear that District Courts have jurisdiction via habeas to adjudicate claims under the AEA. *J. G. G.*, 145 S. Ct. at 1005.

15. 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.

16. Venue is proper in this District under 28 U.S.C. § 2241; 28 U.S.C. § 1391(b); and 28 U.S.C. § 1391(e)(1) because when this Petition was filed Petitioner was detained at Nevada Southern Detention Center, 2190 E Mesquite Ave, Pahrump, NV 89060 ("NSDC"); which is within the geographic jurisdiction of the District of Nevada (Las Vegas), and a substantial part of the events or omissions giving rise to the claim occurred in this district. *See* 28 U.S.C. § 1391(e).

PARTIES

17. Petitioner Adrian Arturo Viloria Aviles is a citizen of Venezuela who is at present detained at 400 E. 2nd St., Anson, TX 79501 ("Bluebonnet"). Petitioner entered the U.S. in August 2023 and was released under parole. Petitioner was residing in Utah when Immigration Customs & Enforcement ("ICE") detained him and then transferred him to NSDC.

18. Respondent 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 AEA.

19. Respondent 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.

20. Respondent 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, Respondent Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

21. Respondent 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"). Respondent DHS is a legal custodian of Petitioner.

22. Respondent Todd Lyons is the Acting Director and Senior Officer Performing the Duties of the Director of ICE. Respondent Lyons is responsible for ICE's policies, practices, and procedures, including those relating to the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in her official capacity.

23. Respondent ICE is the subagency of DHS that is responsible for carrying out removal orders and overseeing immigration detention. Respondent ICE is a legal custodian of Petitioner.

24. Respondent Marico Rubio is the Secretary of State at the U.S. Department of State. He is sued in his official capacity.

25. Respondent U.S. Department of State is a cabinet-level department of the United States federal government.

26. Respondent Pete Hegseth is the U.S. Secretary of Defense. He is sued in his official capacity. In that capacity, he is responsible for the operations of the U.S. Department of Defense.

27. Respondent U.S. Department of Defense ("DOD") is a cabinet-level department of the United States federal government. Since March 15, Respondent DOD has operated at least one flight transporting individuals from the United States to CECOT in El Salvador. Several of those individuals were alleged to be affiliated with TdA.

28. Respondent Jason Knight, is the Acting Director of the Salt Lake City Field Office of ICE Enforcement and Removal Operations, a federal law enforcement agency within the Department of Homeland Security ("DHS"). ERO is a directorate within ICE whose responsibilities include operating the immigration detention system. In his capacity as ICE ERO Salt Lake City, Acting Field Office Director, Respondent Knight exercises control over and is a custodian of immigration detainees held at NSDC. At all times relevant to this Complaint, Respondent Knight was acting within the scope and course of his employment with ICE. He is sued in his official capacity.

29. Respondent Christopher Chestnut, the Warden of NSDC which detains individuals suspected of civil immigration violations pursuant to a contract with ICE. Respondent Chestnut exercises physical control over immigration detainees held at NSDC. Respondent Chestnut is sued in his official capacity.

30. Respondents individually and collectively will be referred to as "Respondents."

BACKGROUND

Petitioner's Title 8 Removal Procedures

31. Federal District Courts do not normally hear removal and asylum cases under Title 8, the Immigration and Nationality Act, and Petitioner does not ask this Court to do so. By way of background, normal Title 8 removal procedures are governed by 8 U.S.C. § 1229a. They begin in Immigration Court, which is part of the Department of Justice. In these removal proceedings, a respondent may apply for relief from removal. *See* 8 U.S.C. § 1229a(c)(4).

32. In Immigration Court, Petitioner is seeking relief from removal based on fear of persecution or torture. In Petitioner's situation, there are three alternative forms of relief for which a person can apply: Asylum, Withholding of Removal or protection under the Convention against Torture. *See* 8 U.S.C. § 1158 (governing asylum applications); 8 U.S.C. § 1231(b)(3) (withholding of removal); 8 C.F.R. § 1208.18 (Convention against Torture). Each has slightly different eligibility criteria, but all three are typically considered simultaneously by immigration courts and are included on the same application, known as the I-589.

33. For ease of reference, when this Petition refers to "asylum" or "applying for asylum" it should be understood as inclusive of all of these forms of relief. None of these applications are being pursued in this court on their merits, nor is the Court being asked to review any aspects of those applications.

34. On April 3rd, when this Petition was first filed, Petitioner was detained by DHS at NSDC. At that time, he had a bond hearing scheduled with a Las Vegas immigration judge on April 9th. He also had an individual hearing on the merits of his asylum application scheduled for April 16th ("Individual Hearing"), also at the Las Vegas Immigration Court. Had DHS not disrupted the regular immigration court process, Petitioner might already have a decision from an immigration judge on his asylum case.

35. But the normal process has been disrupted. The day after this Petition was filed, DHS moved Petitioner to a different ICE detention center in Otero, New Mexico. On April 9th, the Las Vegas Immigration Judge decided she no longer had jurisdiction to hear his bond application on the merits. Exhibit F, *Order of the Immigration Judge* (April 9, 2025) at 27 (denied because "court lacks jurisdiction"). DHS moved to change venue and the April 16th Individual Hearing on Petitioner's asylum case was cancelled.

36. In the early morning hours of April 14, 2025, DHS again transferred Petitioner to the detention center in Bluebonnet, Texas, where dozens of similarly situated Venezuelan men were being gathered. Alarmed that removal under the AEA was imminent, Petitioner moved this Court for an emergency Temporary Restraining Order, leading to the preliminary injunction that this court issued on April 16.

37. As currently scheduled, an immigration court in Otero will hold an Individual Hearing on Petitioner's asylum application on June 20th. Separately, the Otero immigration court will hold a bond hearing concerning Petitioner on May 6, 2025.

Alien Enemies Act

38. The AEA, enacted in 1798, provides the President with wartime authority. Before this year, it had been used only three times in our Nation's history: the War of 1812, World War I and World War II.

39. 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.

40. The AEA can 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.

41. The AEA may not be used against a criminal gang or during peacetime.

42. 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.*

43. Section 21 of the AEA provides that noncitizens must be afforded a right of voluntary departure. Only noncitizens who "refuse or neglect to depart" are subject to removal. *Id.* § 21. The AEA 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.

44. 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.

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

46. The AEA was invoked again during World War II. On December 7, 1941, after Japan attacked 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.

47. 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. 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. 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).

48. In World War II, 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). However, it was never used as a widespread method of removal.

Systematic Overhaul of Immigration Laws in 1952

49. Today, the AEA must be read in the context of subsequent statutes that comprehensively govern removal of noncitizens from the United States. 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"). 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.

50. The INA now provides the exclusive procedure by which the government may determine whether to remove an individual. 8 U.S.C. § 1229a(a)(3).

51. 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, as discussed *supra* at paras. 32-33. Importantly, 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). With limited exceptions, the INA also bars 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). In addition, 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. There is no exception to CAT relief.

President Trump's Proclamation Invoking the AEA

52. On March 14, 2025, President Trump signed a proclamation invoking the AEA against members of the Tren de Aragua ("TdA") gang. *See Invocation of the Alien Enemies Act*

Regarding the Invasion of The United States by Tren de Aragua, 90 Fed. Reg. 13033, signed March 14, 2025.

53. The Proclamation characterizes TdA as a "hybrid criminal state" engaged in an invasion and predatory incursion into the United States as a basis to invoke the AEA. *Id*. It characterizes TdA, a criminal organization, as a foreign nation or government, and does not name Venezuela itself as the "foreign government" as the target of the AEA invocation. The Proclamation alleges that TdA is "perpetrating an invasion of and predatory incursion into the United States, and which poses a substantial danger to the United States." It alleges 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." *Id.*

54. The Proclamation alleges 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 Proclamation asserts that "all such members of TdA are, by virtue of their membership in that organization, chargeable with actual hostility against the United States and are therefore ineligible for the benefits of 50 U.S.C. 22. I further find and declare that all such members of TdA are a danger to the public peace or safety of the United States." *Id.*

55. The Proclamation fails to assert that any "foreign nation or government" within the meaning of the Act is invading the United States. TdA, a criminal organization, is not a nation or foreign government and is not part of the Venezuelan government. Instead, the Proclamation asserts that "[o]ver the years," the Venezuelan government has "ceded

ever-greater control over their territories to transnational criminal organizations." But the Proclamation notably does *not* say that TdA operates as a government in those regions. In fact, the Proclamation does not even specify that TdA currently controls *any* territory in Venezuela.

56. The United States is not in a declared war with Venezuela. The United States cannot declare war against TdA because it is not a country or nation. 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"). *Venezuela* has natives, citizens, and subjects, but TdA (not Venezuela) is designated under the Proclamation.

57. Petitioners have challenged the invocation in courts across the country. On May 1, 2025 Judge Rodriguez of the Southern District of Texas granted a writ of habeas corpus and issued a permanent injunction against Respondents "detaining, transferring, or removing" members of a class of Venezuelans in the Southern District of Texas[1] based on the AEA Proclamation. *J.A.V. v. Trump*, No. 1:25-CV-072, 2025 WL 1257450, at *20 (S.D. Tex. May 1, 2025). The court found that "invasion" or "predatory incursion" in the AEA requires "a military force or an organized, armed force entering a territory" with intent either to conquer and control territory or to "destroy property, plunder, and harm individuals." *Id.* at *16. While TdA is certainly harmful to society, the court found that even taking the

[1] Bluebonnet detention facility is in the Northern District of Texas.

President's factual assertions about the gang as true "they do not fall within the plain, ordinary meaning of 'invasion' or 'predatory incursion for purposes of the AEA." *Id*. at *18.

58. Other courts have issued temporary restraining orders and are currently considering preliminary injunctions. *See, e.g.*, *D.B.U. v. Trump*, No. 1:25-cv-01163 (D.Colo.); *A.S.R. v. Trump*, No. 3:25-cv-00113 (W.D.Pa.); *G.F.F. v. Trump*, No, 1:25-cv-02886 (S.D.N.Y.).

Lack of Due Process Under President Trump's Proclamation

59. By contrast to appeals under regular Title 8 removal procedures, "[c]hallenges to removal under the AEA … must be brought in habeas." *J. G. G.*, 145 S. Ct. at 1005. In *J.G.G.*, the Supreme 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 relief" before removal. *Id*. at 1006.

60. Even assuming that the AEA can be applied to TdA, the Proclamation provides no means or process for individuals to contest that they are members of the TdA and therefore do not 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. Noncitizens subject to the Proclamation are not afforded the procedural or substantive protection under the INA, including under Convention Against Torture.

61. When the Proclamation was first issued, a memorandum from the Attorney General declared that there would be "no entitlement to hearings." Exhibit G, Office of the Attorney General, *Memorandum: Guidance for Implementing the Alien Enemies Act* at 34 (March 15, 2025). The Attorney General at that point declared that "[a]n alien determined to be an Alien Enemy … is not entitled to a hearing before an immigration judge, to an appeal, of the removal order to the Board of Immigration Appeals, or to judicial review of the removal

order in any court of the United States." *Id*. According to Respondents, Petitioner could be removed under the AEA before he has had a final decision on his asylum application; or an Immigration Judge could grant him asylum and he could still be removed under the AEA without a hearing.

62. On March 15, 2025, at least 137 Venezuelan men were removed under the Proclamation and are now in El Salvador in one of the most notorious prisons in the world, where they may remain incommunicado for the rest of their lives according to the Salvadoran President.

63. The President had signed the Proclamation the day prior, on March 14. Yet, although the AEA calls for a "public proclamation," 50 U.S.C. § 21, Respondents did not make the invocation public until around 3:53 p.m. EDT on March 15, despite making extensive preparations and attempts to remove these individuals under the Act.

64. These individuals were sent to this brutal prison without any court having had an opportunity to review the threshold questions of whether a criminal gang can be deemed a "foreign government or nation" within the meaning of the AEA, or whether criminal activity and migration can constitute a military "invasion or predatory incursion" of the "territory of the United States" under the Act.

65. These individuals were also given no opportunity to contest their designation as members of the TdA gang; they may not even fall within the terms of the Proclamation. More and more evidence is emerging that many (perhaps most) of these individuals lacked any ties to the gang and were mistakenly placed under the Proclamation.

66. Whether most (or perhaps all) of the men removed on March 15 have any actual ties to TdA is in serious doubt because the government secretly rushed the men out of the country and has provided no information about them. The government employs a standardized check

list, the "Alien Enemy Validation Guide," to determine who is an "alien enemy" subject to the Proclamation. An ICE officer completes the form, tallying points for different categories of alleged TdA membership characteristics. The checklist's methodology relies on several dubious criteria, including physical attributes like tattoos, hand gestures, symbols, logos, graffiti, and manner of dress. *See* Exhibit G, Office of the Attorney General, *Memorandum: Guidance for Implementing the Alien Enemies Act* at 38-39. Experts who study the TdA have explained how none of these physical attributes are reliable ways of identifying members of the TdA.

67. These rapid removals are being used to thwart access to the normal removal and asylum adjudication procedures in immigration court. For example, in one case involving a Venezuelan asylum-seeker removed under the AEA on March 15, a hearing in immigration court was actually scheduled for one month later. Exhibit H, Declaration of Andreana Sarkis (attorney) at 44, para. 20. The AEA removal prevented that from happening. As of April 18, DHS had yet to produce evidence or an explanation for the claim that the man belonged to TdA. *Id.* at 43-44, paras. 4, 24. And yet, because the person had already been expelled under the AEA Proclamation, an immigration judge issued a removal order against him *in absentia*. *Id*. at 44, para. 20. That means that even if he were to somehow return to the United States, DHS could try to remove him again pursuant to this removal order, and despite it being issued because of his absence outside of his control, he still would not have the chance to have a hearing on his asylum case.

68. Respondents attempted further AEA removals in the April 17-18 events at Bluebonnet, as described *supra* at paras 7-8. That led to the Supreme Court's late night order blocking removals for a putative class of detainees in the Northern District of Texas. However, that

was only a temporary order subject to further briefing. Respondents have asked the Supreme Court to dissolve its administrative stay on removals.

69. In a statement dated April 23, 2025 and filed with a different federal district court, Respondents have detailed a procedure under which subject individuals would be given notice in English, with just 12 hours to make a phone call and to declare an intent to seek habeas review, and just 24 hours to get a habeas petition drafted and filed. *See* Exhibit D, Carlos Cisneros Declaration at 22, para. 11.

70. ICE plans to serve people notice of imminent removal under the AEA on a form known as the AEA 21-B. Exhibit E, AEA 21-B Form at 25. *See also* Exhibit D, Cisneros Declaration at 22, para. 11. The form states that a person has been "determined to be" subject to the President's AEA Proclamation, but gives no information about why. It only states the person's name. Exhibit E, AEA 21-B Form at 25.

71. That procedure plainly does not provide notice "within a reasonable time and in such manner as will allow [individuals] to actually seek habeas relief before removal." *J.G.G.*, 145 S. Ct. at 1006. Respondents' pattern, practice, and stated policy is to attempt nearly immediate removals from the country so quickly it is practically impossible for a detained person to file a habeas petition and obtain review by a court.

72. Indeed, Respondents' attempt to use this procedure on April 17 and 18 at Bluebonnet led to the Supreme Court's late-night order temporarily blocking removals for a putative class of detainees in the Northern District of Texas. *See A.A.R.P. v. Trump*, 145 S.Ct. 1034 (2025).

73. As a result of the Respondents' policies and practices, Petitioner is at imminent risk of removal pursuant to the Proclamation without any hearing or meaningful review, regardless

of the absence of any ties to TdA or the availability of claims for relief from and defenses to removal.

HARM TO PETITIONER

74. Respondents have accused Petitioner of meeting every criteria for designation under the Proclamation. *See* Exhibit A, I-213 Form at 3-5.

75. DHS's allegations that Petitioner meets the criteria for designation as an alien enemy put him at immediate risk of summary removal under the Proclamation. Moreover, on information and belief, he is at risk of being deported to El Salvador, where he is at risk of being detained indefinitely and tortured.

76. Respondents continue to engage in a pattern and practice of pursuing immediate removals of Venezuelan men accused, rightly or wrongly, of TdA affiliation, without enough notice to "allow them to *actually* seek habeas relief" as required by the Supreme Court. *J. G. G.*, 145 S.Ct. at 1006. Moreover, Respondents have taken the position that once a person is removed to the Salvadoran prison, U.S. courts lose jurisdiction.

77. Respondent's 12-hour notice period, and 24 hours to file a habeas petition, is not remotely sufficient to give a detainee time to notify an attorney, for the attorney to draft a habeas petition and a motion for a temporary restraining order, for the petition and motion to be filed, for a court to take action on the emergency motion, and for relevant ICE officials to be notified in time for an imminent removal to be reversed. It is, bluntly, an invitation for chaos in the courts and tragedy for impacted people. It is very much not the "reasonable time" demanded by the Supreme Court. *Id*.

78. Before this court on April 16th, Respondents' counsel stated that Petitioner had not yet been designated for removal under the AEA, but made no commitments that the Government

would not do so in the future. Respondents stated only that "at this time, Federal Respondents intend" to continue regular removal proceedings under Title 8. ECF 10 at 3. Respondents made no promises that the government's intentions vis-à-vis Petitioner would not change at any moment, they had no explanation for why he had been accused of TdA affiliation, and they made no commitments about what kind of notice or opportunity for a hearing might be provided if he were to be designated under the AEA. *Id*.

79. Thirty days would be a reasonable minimum notice period under the AEA. During World War II, foreign nationals were given thirty days notice under the AEA. *See* 10 Fed. Reg. 12189 (Sept. 28, 1945) (involuntary removal only if the person fails to depart during the thirty-day period). Thirty days is also the established notice period for immigration appeals. A decision by an Immigration Judge, including an order of removal, does not become final for thirty days unless both the respondent and DHS waive appeal. *See* 8 C.F.R. §§ 1003.38(b) (thirty-day timeline for appeals); 1003.39 (decisions of the Immigration Court not final until appeal waived). If the BIA affirms an order of removal, the non-citizen has thirty days to petition a circuit court of appeals for review. *See* 8 U.S.C. § 1252.

CAUSES OF ACTION[2]

FIRST CLAIM FOR RELIEF
***Ultra Vires*, Violation of 50 U.S.C. § 21, *et seq*.**
(All Respondents)

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

81. 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

[2] Insofar as a cause of action seeks to enjoin Respondents, Petitioners do not seek such relief against the President.

incursion" into the United States by a "foreign nation or government." *See* 50 U.S.C. § 21. The Proclamation does not satisfy these statutory preconditions.

82. Additionally, the AEA permits removal only where noncitizens alleged to be "alien enemies" "refuse or neglect to depart" from the United States. 50 U.S.C. § 21. The AEA also requires 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.

83. However, Petitioner is at risk of being subject to forced removal without being afforded the privilege of voluntary departure, let alone any notice or an opportunity to respond to the designation of alien enemy.

84. The application of the AEA to Petitioner is therefore *ultra vires*.

SECOND CLAIM FOR RELIEF
Violation of 8 U.S.C. § 1101, *et seq.*
(All Respondents)

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

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

87. 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).

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

89. As a result, the application of the AEA to Petitioner outside of the Title 8 procedures, which would result in his removal from the United States, is contrary to law.

THIRD CLAIM FOR RELIEF
Violation of 8 U.S.C. § 1158, Asylum
(All Respondents)

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

91. The INA provides, with certain exceptions, that "[a]ny [noncitizen] 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 [a noncitizen] 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).

92. Respondents' application of the AEA Process to Petitioner would prevent him from applying for asylum in accordance with 8 U.S.C. § 1158(a)(1), or would prevent him from being protected by a future decision to grant him asylum, and is therefore contrary to law.

FOURTH CLAIM FOR RELIEF
Violation of 8 U.S.C. § 1231(b)(3), Withholding of Removal
(All Respondents)

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

94. 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.

95. Respondents' removal of Petitioner under the AEA would violate the INA because it would prevent him from applying for withholding of removal based on likelihood of threats to his life or freedom in the country to which he would be removed. As a result, Respondents' use of the AEA against Petitioner would be contrary to law.

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 Respondents)

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

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

98. Respondents' application of the AEA to Petitioner would violate FARRA because it would not provide adequate safeguards to ensure that Petitioner is not returned to a country where it is more likely than not that he would face torture. As a result, Respondents' actions against Petitioner would be contrary to law.

SIXTH CLAIM FOR RELIEF
Violation of 50 U.S.C. § 22
(All Respondents)

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

100. 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 Petitioner any time under Section 22 to settle his affairs, because it declares everyone subject to the Proclamation to be "chargeable with actual hostility" and to be a "danger to public safety."

101. The government cannot invoke that exception categorically, without individualized assessments. Each noncitizen must specifically be "chargeable with actual hostility" or a crime against public safety to lose eligibility for the full time stipulated by treaty, or a reasonable time consistent with national hospitability, to settle their affairs and depart.

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

103. The application of the AEA Process to Petitioner would be contrary to law.

SEVENTH CLAIM FOR RELIEF
Violation of Due Process under the Fifth Amendment
(All Respondents)

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

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

106. In denying Petitioner sufficient notice and meaningful procedural protections to challenge his removal, the Proclamation violates due process.

EIGHTH CLAIM FOR RELIEF
Violation of Habeas Corpus
(All Respondents)

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

108. 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.

109. Detention and removal of Petitioner under the Alien Enemies Act would violate his right to habeas corpus. *See* U.S. Const. art. I, § 9, cl. 2 (Suspension Clause); 28 U.S.C. § 2241.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully pray this Court to:

a. Assume jurisdiction over this matter;

b. Enjoin Respondents, except for the President, from removing Petitioner pursuant to the Alien Enemies Act Proclamation;

c. Grant a writ of habeas corpus to Petitioner that enjoins Respondents, except for the President, from removing him pursuant to the Proclamation;

d. Declare unlawful the Proclamation;

e. Enjoin Respondents, except for the President, from applying the Proclamation to Petitioner without providing at least 30-day notice to Petitioner and his counsel and an opportunity to respond to the designation prior to removal;

f. Order Respondents to return Petitioner to the District of Nevada;

g. Award Petitioner's 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: May 5, 2025

Respectfully Submitted,

/s/Michael Kagan
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28 U.S.C. § 2242 VERIFICATION STATEMENT

I am submitting this verification on behalf of the Petitioner because I am one of the Petitioner's attorneys. I have discussed with the Petitioner the events described in this Petition. On the basis of those discussions, I hereby verify that the statements made in this Verified Amended Petition for Writ of Habeas Corpus are true and correct to the best of my knowledge.

Dated: May 5, 2025

/s/Melissa Corral
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