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**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA**

Y.G.H,

*Petitioner-Plaintiff,*

v.

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

*Respondents-Defendants.*

Case No. \_\_\_\_\_

**MEMORANDUM OF LAW IN  
SUPPORT OF PETITIONER'S  
MOTION FOR TEMPORARY  
RESTRAINING ORDER**

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1 INTRODUCTION

2 Petitioner-Plaintiff (“Petitioner”) respectfully requests an immediate Temporary  
3 Restraining Order (“TRO”) to avoid irreparable harm and to ensure that this Court is not  
4 permanently deprived of jurisdiction.

5  
6 In a Proclamation signed on March 14 and made public a day later after the government  
7 had already begun relying on it, the President invoked a war power, the Alien Enemies Act of 1798  
8 (“AEA” or the “Act”), to summarily remove noncitizens from the U.S. and bypass the immigration  
9 laws Congress has enacted. *See* Invocation of the Alien Enemies Act (Mar. 15, 2025)  
10 (“Proclamation”).<sup>1</sup> The AEA permits the President to invoke the AEA only where the United  
11 States is in a “declared war” with a “foreign government or nation” or a “foreign government or  
12 nation” is threatening to, or has engaged in, an “invasion or predatory incursion” against the  
13 “territory of the United States.” The Proclamation targets Venezuelan noncitizens accused of being  
14 part of Tren de Aragua (“TdA”), a criminal gang, and claims that the gang is engaged in an  
15 “invasion and predatory incursion” within the meaning of the AEA.

16  
17 On the evening of March 15, the District Court for the District of Columbia issued an order  
18 temporarily pausing removals pursuant to the Proclamation for a provisionally certified nationwide  
19 class. *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at \*2 (D.C. Cir. Mar. 26, 2025). The D.C.  
20 Circuit denied the government’s motion to vacate that TRO. On April 7, in a 5-4 decision, the  
21 Supreme Court granted the government’s application to vacate the TRO order on the basis that the  
22 named *J.G.G.* petitioners had to proceed through habeas jurisdiction. The court declined to reach  
23 the merits of whether the Proclamation exceeds the President’s power under the AEA. In doing so,  
24 however, the Court emphasized that individuals who are designated under the AEA Proclamation  
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28 <sup>1</sup> <https://perma.cc/ZS8M-ZQHJ>.

1 are “entitle[d] to due process” and notice “within a reasonable time and in such manner as will  
2 allow them to actually seek habeas relief” before removal. *Trump v. J.G.G.*, No. 24A931, 2025  
3 WL 1024097, at \*2 (U.S. Apr. 7, 2025).

4 To date, the government has not indicated the type of notice they intend to provide or how  
5 much time they will give individuals to seek review before seeking to remove them under the  
6 AEA. However, in a hearing in the Southern District of Texas on Friday, April 11, 2025, the  
7 government said they had not ruled out the possibility that individuals will receive no more than  
8 24 hours’ notice; the government did not say whether it was considering providing even less than  
9 24 hours. Moreover, if Petitioner is transferred out of this District, it is possible that Petitioner  
10 would only receive notice from the government in a faraway detention center under circumstances  
11 where it would be difficult or impossible to communicate with undersigned counsel to seek habeas  
12 relief.  
13

14 After the Supreme Court’s ruling in *J.G.G.*, all five of the original petitioners in the D.C.  
15 litigation filed class habeas petitions in the districts where they are detained, along with motions  
16 for temporary restraining orders for the putative classes they represent. The first was filed on April  
17 8, 2025, in the Southern District of New York on behalf of two of the five individual petitioners;  
18 and the second on April 9, 2025, in the Southern District of Texas on behalf of the other three.  
19 Within hours, both district courts granted *ex parte* requests for TROs, ordering that the government  
20 is prohibited from removing the named petitioners and putative class members from the United  
21 States or transferring them out of their respective districts. *See G.F.F. v. Trump*, No. 25-cv-2886  
22 (S.D.N.Y. Apr. 9, 2025), ECF No. 31, *as amended*, ECF No. 35 (S.D.N.Y. Apr. 11, 2025); *J.A.V.*  
23 *v. Trump*, No. 25-cv-72 (S.D. Tex. Apr. 9, 2025), ECF No. 12, *as amended*, ECF No. 34 (S.D. Tex.  
24 Apr. 11, 2025). Both courts subsequently held TRO hearings, extended the TROs, and scheduled  
25 preliminary injunction hearings, S.D.N.Y. on April 22 and S.D. Tex. on April 24. In response to  
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1 another class habeas petition and *ex parte* TRO request filed in the District of Colorado over this  
2 past weekend, a court issued equivalent *ex parte* emergency relief. *See D.B.U. v. Trump*, No. 25-  
3 cv-1163 (D. Colo. Apr. 14, 2025), ECF No. 14.

4 Turning to the Proclamation, it is invalid under the AEA for at least three reasons. First,  
5 the Proclamation fails to the AEA’s statutory predicates because TdA is not a “foreign nation or  
6 government,” nor is TdA engaged in an “invasion” or “predatory incursions” within the meaning  
7 of the AEA. Thus, the government’s attempt to summarily remove Venezuelan noncitizens  
8 exceeds the wartime authority that Congress delegated in the AEA. Second, the Proclamation  
9 violates both the AEA and due process by failing to provide notice and a meaningful opportunity  
10 for individuals to challenge their designation as alien enemies. Third, the Proclamation violates  
11 the process and protections that Congress has prescribed for the removal of noncitizens in the  
12 immigration laws, including protection against being sent to a country where they will be  
13 persecuted or tortured.  
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16 Accordingly, Petitioner moves the Court for a TRO barring his summary removal under  
17 the AEA and barring Respondents from relocating him outside of this District pending resolution  
18 of this litigation.<sup>2</sup> Immediate intervention by this Court is required given the Supreme Court’s  
19 vacatur of the D.C. District Court’s TRO and the government’s failure to specify how much notice  
20 they intend to provide individuals. And if there is an unlawful removal, the government has taken  
21 the position that the courts would lose jurisdiction and there would be no way to correct any  
22 erroneous removal. Indeed, in the government’s rush to transfer individuals to El Salvador, the  
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26 <sup>2</sup> Petitioner does not seek to enjoin the President, but the President remains a proper defendant-  
27 respondent because, at a minimum, Petitioner may obtain declaratory relief against him. *See,*  
28 *e.g., Nat’l Treasury Emps. Union v. Nixon*, 492 F.2d 587, 616 (D.C. Cir. 1974) (concluding that  
court had jurisdiction to issue writ of mandamus against the President but “opt[ing] instead” to  
issue declaration).

1 government has mistakenly deported at least one Salvadoran man without legal basis and claims  
2 that individual cannot be returned. *See Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1077101,  
3 at \*1 (U.S. Apr. 10, 2025). And declarations and news accounts suggest that many of the alleged  
4 Venezuelan TdA members sent to El Salvador pursuant to the Proclamation at issue here were not  
5 in fact TdA members. *See* Plfs’ Mot. for Prelim. Injunction, *J.G.G.*, No. 25-cv-766-JEB (D.D.C.  
6 Mar. 28, 2025), EF No. 67-1 at 3–7 (describing accounts and evidence of individuals without ties  
7 to TdA).  
8

9 The TRO sought here does not seek release from immigration detention or to prohibit the  
10 government from removing Petitioner consistent with the immigration laws.

11 **LEGAL AND FACTUAL BACKGROUND**

12 **I. The Alien Enemies Act**

13 The AEA is a wartime authority that grants the President specific powers with respect to  
14 the regulation, detention, and deportation of enemy aliens. Passed in 1798, the AEA, as codified  
15 today at 50 U.S.C. § 21, provides:  
16

17 Whenever there is a declared war between the United States and any foreign nation  
18 or government, or any invasion or predatory incursion is perpetrated, attempted, or  
19 threatened against the territory of the United States by any foreign nation or  
20 government, and the President makes public proclamation of the event, all natives,  
21 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.

22 This Act has been used only three times in the country’s history and each time in a period of  
23 war—the War of 1812, World War I, and World War II.  
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1 The Act also provides that individuals designated as enemy aliens will generally have time  
2 to “settle affairs” before removal and the option to voluntarily “depart.”<sup>3</sup> *See, e.g., United States*  
3 *ex rel. Dorfler v. Watkins*, 171 F.2d 431, 432 (2d Cir. 1948) (“An alien must be afforded the  
4 privilege of voluntary departure before the [AG] can lawfully remove him against his will.”).

## 5 **II. Congress’s Comprehensive Reform of Immigration Law**

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

11 As part of that reform and other subsequent amendments, Congress prescribed safeguards  
12 for noncitizens seeking protection from persecution and torture. These protections codify the  
13 humanitarian framework adopted by the United Nations in response to the humanitarian failures  
14 of World War II. *See INS v. Cardoza-Fonseca*, 480 U.S. 421, 439-40 (1987); *Aliyev v. Mukasey*,  
15 549 F.3d 111, 118 n.8 (2d Cir. 2008) (“It is no accident that many of our asylum laws sprang forth  
16 as a result of events in 1930s Europe.”). First, the asylum statute, 8 U.S.C. § 1158, provides that  
17 any noncitizen in the U.S. has a right to apply for asylum. Second, the withholding of removal  
18 statute, 8 U.S.C. § 1231(b)(3), provides that noncitizens “may not” be removed to a country where  
19 their “life or freedom” would be threatened based on a protected ground. *See INS v. Aguirre-*  
20 *Aguirre*, 526 U.S. 415, 420 (1999) (withholding is mandatory upon meeting statutory criteria).  
21 Third, protections under the Convention Against Torture (“CAT”) prohibit returning noncitizens  
22  
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26 <sup>3</sup> 50 U.S.C. § 21 (providing for removal of only those “alien enemies” who “refuse or neglect to  
27 depart” from the U.S.); *id.* § 22 (granting time for departure in accordance with treaty stipulation  
28 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”).

1 to a country where it is more likely than not that they would face torture. *See* Foreign Affairs  
2 Reform and Restructuring Act of 1998 (“FARRA”) § 2242(a), Pub. L. No. 105-207, Div. G. Title  
3 XXI, 112 Stat. 2681 (codified at 8 U.S.C. § 1231 note); 8 C.F.R. §§ 1208.16-.18.

### 4 **III. The AEA Proclamation and the Unlawful Removals**

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

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

23 To date, at least 137 Venezuelan men have been removed under the Proclamation and are  
24 now in El Salvador in one of the most notorious prisons in the world, possibly for the rest of their  
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1 lives. Respondents secretly rushed the men out of the country and have provided no information  
2 about them. But evidence since these individuals were sent to El Salvador flights on March 15  
3 increasingly shows that many were not “members” of TdA. *See J.G.G.*, No. 1:25-cv-766-JEB,  
4 ECF No. 67-21 (Sarabia Roman Decl., Exhs. 4-20) (media reports regarding evidence  
5 contradicting gang allegations).

6  
7 The government’s errors are unsurprising, given the methods it is employing to identify  
8 members of TdA. The “Alien Enemy Validation Guide” that the government has used to ascertain  
9 alien enemy status, requires ICE officers to tally points for different categories of alleged TdA  
10 membership characteristics. *J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 67-21 (Sarabia Roman Decl.,  
11 Exh. 1). The guide relies on a number of dubious criteria, including physical attributes like “tattoos  
12 denoting membership/loyalty to TDA” and hand gestures, symbols, logos, graffiti, or manner of  
13 dress. But experts who study the TdA have explained how none of these physical attributes are  
14 reliable ways of identifying gang members. *Id.* at 67-3 (Hanson Decl.) ¶¶ 22-24, 27; *id.* at 67-4  
15 (Antillano Decl.) ¶ 14; *id.* at 67-12 (Dudley Decl.) ¶ 25.

16  
17 Experts on El Salvador have also explained how those removed there face grave harm and  
18 torture at the Salvadoran Terrorism Confinement Center (“CECOT”), including electric shocks,  
19 beating, waterboarding, and use of implements of torture on detainees’ fingers. *See J.G.G.*, 2025  
20 WL 1024097, at \*9 (U.S. Apr. 7, 2025) (Sotomayor, J., dissenting); *see also J.G.G.*, No. 1:25-cv-  
21 766-JEB, ECF No. 44-4 (Bishop Decl.) ¶¶ 21, 33, 37, 39, 41; *id.* at 44-3 (Goebertus Decl.) ¶¶ 8,  
22 10, 17. These abusive conditions are life threatening, as demonstrated by the hundreds of people  
23 who have died in Salvadoran prisons. *J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 44-3 (Goebertus  
24 Decl.) ¶ 5; *id.* at 44-4 (Bishop Decl.) ¶¶ 43–50. Worse, those removed and detained at CECOT  
25 face indefinite detention. *Id.* at 44-3 (Goebertus Decl.) ¶ 3 (quoting the Salvadoran government  
26 that people held in CECOT “will never leave”); Nayib Bukele, X.com post (Mar. 16, 2025,  
27  
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1 5:13AM ET) (detainees “were immediately transferred to CECOT . . . for a period of one year  
2 (renewable)”<sup>4</sup>).

3 **IV. Petitioner-Plaintiff Y.G.H.**

4 Petitioner Y.G.H. is a twenty-two-year-old Venezuelan national who entered the United  
5 States at a port of entry, presented his Venezuelan identification card to Customs and Border  
6 Protection, and was paroled into the United States on or around September 13, 2023, for a two-  
7 year period and placed into removal proceedings. Prior to his detention, he was performing  
8 agricultural work in California’s Central Valley. His next immigration court hearing is scheduled  
9 for May 8, 2025 before the Adelanto Immigration Court in California. He has not yet been able to  
10 retain immigration counsel. He is eligible for asylum and withholding of removal and, on  
11 information and belief, has viable claims based on violence perpetrated against his family by gang  
12 members in Venezuela. On or around March 25, some forty days after taking Y.G.H. into ICE  
13 custody, the agency touted its detention of him as a “TdA ARREST” and superimposed those  
14 words over a photo of him on Facebook, along with his name and a reference to charges that, upon  
15 information and belief, are pending against him in Fresno County for robbery and assault with a  
16 firearm. Y.G.H. has tattoos.

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19 **LEGAL STANDARD**

20 To obtain a TRO, a plaintiff “must establish that he is likely to succeed on the merits, that  
21 he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of  
22 equities tips in his favor, and that an injunction is in the public interest.” *Winter v. Nat. Res. Def.*  
23 *Council, Inc.*, 555 U.S. 7, 20 (2008). A temporary restraining order may likewise issue where  
24 “serious questions going to the merits [are] raised and the balance of hardships tips sharply in  
25

26  
27  
28 <sup>4</sup> <https://perma.cc/52PT-DWMR>.

1 [plaintiff's] favor." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011)  
2 (citation omitted). To succeed under the latter test, "plaintiffs must show that they are likely to  
3 suffer irreparable injury and that an injunction is in the public's interest." *Id.* at 1132.

## 4 ARGUMENT

### 5 I. Petitioner is Likely to Succeed on the Merits.

#### 6 A. The Proclamation Does Not Satisfy the AEA.

7  
8 The Proclamation is unprecedented, exceeding the President's statutory authority in three  
9 critical respects: there is no invasion or predatory incursion; no foreign government or nation;  
10 and no process to contest whether an individual falls within the Proclamation. When the  
11 government asserts "an unheralded power" in a "long-extant statute," courts "greet its  
12 announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324  
13 (2014). That skepticism is warranted here. As Judge Henderson stressed in denying the  
14 government's request for a stay of a TRO, a gang's criminal activities do not constitute an  
15 "invasion or predatory incursion" under the AEA and the Act is a wartime authority meant to  
16 address "military" attacks. *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at \*1-13 (D.D.C.  
17 Mar. 26, 2025).

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

19  
20 The Proclamation fails, on its face, to satisfy an essential statutory requirement: that there  
21 be an "invasion or predatory incursion" directed "against the territory of the United States." The  
22 text and history of the AEA make clear that it uses these terms to refer to military actions indicative  
23 of an actual or impending war. At the time of enactment, an "invasion" was a large-scale military  
24 action by an army intent on territorial conquest. *See Webster's Dict., Invasion* (1828) ("invasion"  
25 is a "hostile entrance into the possession of another; particularly, the entrance of a hostile army  
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1 into a country for purpose of conquest or plunder, or the attack of a military force”); *see also*  
2 *J.G.G.*, 2025 WL 914682, at \*20 (in the Constitution, “invasion” “is used in a military sense” “*in*  
3 *every instance*”). And “predatory incursion” referred to smaller-scale military raids aimed to  
4 destroy military structures or supplies, or to otherwise sabotage the enemy, often as a precursor to  
5 invasion and war. *See Webster’s Dict., Incursion* (1828) (“incursion . . . applies to the expeditions  
6 of small parties or detachments of an enemy’s army, entering a territory for attack, plunder, or  
7 destruction of a post or magazine”); *J.G.G.*, 2025 WL 914682, at \*10 (“predatory incursion” is “a  
8 form of hostilities against the United States by another nation-state, a form of attack short of war”).  
9 The interpretive canon of *noscitur a sociis* confirms that the AEA’s powers extended beyond an  
10 existing war only when war was imminent. *Ludecke v. Watkins*, 335 U.S. 160, 169 n.13 (1948)  
11 (“[T]he life of [the AEA] is defined by the existence of a war”). Reading “invasion” and “predatory  
12 incursion” in light of the neighboring term, “declared war,” highlights the express military nature  
13 of their usage here. *See Jarecki v. G.D. Searle & Co.*, 367 U.S. 303, 307 (1961).

14  
15  
16 The historical context in which the AEA was passed reinforces what Congress meant by  
17 “predatory incursion” and “invasion.” At the time of passage, French ships were already attacking  
18 U.S. merchant ships in U.S. *See, e.g.*, 7 Annals of Cong. 58 (May 1797) (promoting creation of a  
19 Navy to “diminish the probability of . . . predatory incursions” by French ships while recognizing  
20 that distance from Europe lessened the chance of “invasion”); Act of July 9, 1798, ch. 68, 1 Stat.  
21 578, 578 (authorizing US ships to seize “any armed French vessel” “found within the jurisdictional  
22 limits of the United States”). Congress worried that these attacks against the territory of U.S. were  
23 the precursor to all-out war with France. *J.G.G.*, 2025 WL 914682, at \*1 (“In 1798, our fledgling  
24 Republic was consumed with fear . . . of external war with France.”). This “predatory violence”  
25 by a sovereign nation led, in part, to the AEA. *See Act of July 7, 1798, ch. 67, 1 Stat. 578, 578*  
26  
27  
28

1 (“[W]hereas, under authority of the French government, there is yet pursued against the United  
2 States, a system of predatory violence”).<sup>5</sup>

3 “Mass illegal migration” or criminal activities, as described in the Proclamation, plainly do  
4 not fall within the statutory boundaries. On its face, the Proclamation makes no findings that TdA  
5 is acting as an army or military force. Nor does the Proclamation assert that TdA is acting with an  
6 intent to gain a territorial foothold in the U.S. for military purposes. And the Proclamation makes  
7 no suggestion that the U.S. will imminently be at war with Venezuela. The oblique references to  
8 the TdA’s ongoing “irregular warfare” within the U.S. do not suffice because the Proclamation  
9 makes clear that that term is referring to “mass illegal migration” and “crimes”—neither of which  
10 constitute war within the Founding Era understanding. It asserts that TdA “commits brutal crimes”  
11 with the goal of “harming United States citizens, undermining public safety, and . . . destabilizing  
12 democratic nations.” But these actions are not “against the territory” of the U.S. Indeed, if mass  
13 migration or criminal activities by some members of a particular nationality could qualify as an  
14 “invasion,” then virtually any group, hailing from any country, could be deemed enemy aliens. *See*  
15 *J.G.G.*, 2025 WL 914682, at \*10 (observing that “[m]igration alone [does] not suffice” to establish  
16 an “invasion” or “predatory incursion under the AEA).  
17  
18

19 **2. The Purported Invasion Is Not by a “Foreign Nation or Government.”**

20 The Proclamation also fails to assert that any “foreign nation or government” within the  
21 meaning of the Act is invading the United States. Put simply, the Proclamation never finds that  
22  
23

24 <sup>5</sup> At the same time, the 1798 Congress authorized the President to raise troops “in the event of a  
25 declaration of war against the U.S., or of an actual invasion of their territory, by a foreign power,  
26 or of imminent danger of such invasion.” Act of May 28, 1798, ch. 47, 1 Stat. 558. As Judge  
27 Henderson noted, “[t]his language bears more than a passing resemblance to the language of the  
28 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.

1 TdA is a foreign “nation” or “government.” Instead, the Proclamation asserts that “[o]ver the  
2 years,” the Venezuelan government has “ceded ever-greater control over their territories to  
3 transnational criminal organizations.” But the Proclamation notably does *not* say that TdA operates  
4 as a government in those regions. In fact, the Proclamation does not even specify that TdA  
5 currently controls *any* territory in Venezuela.  
6

7 Moreover, when a “nation or government” is designated under the AEA, the statute  
8 unlocks power over that nation or government’s “natives, citizens, denizens, or subjects.” 50  
9 U.S.C. § 21. Countries have “natives, citizens, denizens, or subjects.” By contrast, criminal  
10 organizations, in the Proclamation’s own words, have “members.” Proclamation § 1 (“members  
11 of TdA”). And it designates TdA “members” as subject to AEA enforcement—but “members”  
12 are not “natives, citizens, denizens, or subjects.” That mismatch underscores that Respondents  
13 are attempting not only to use the AEA in an unprecedented way, but also in a way that Congress  
14 never permitted—as a mechanism to address, in the government’s own words, a non-state actor.  
15 Venezuela has natives, citizens, and subjects, but TdA (not Venezuela) is designated under the  
16 Proclamation.<sup>6</sup> Even as the Proclamation singles out certain Venezuelan nationals, it does not  
17 claim that Venezuela is invading the United States. And, as the President’s own CIA Director  
18 recently testified, the intelligence community has no assessment that says the U.S. is at war with  
19 or being invaded by Venezuela. Ryan Goodman, Bluesky (Mar. 26, 2025).<sup>7</sup> The AEA requires  
20  
21

22  
23 <sup>6</sup> Moreover, the AEA presumes that a designated nation possesses treaty-making powers. *See* 50  
24 U.S.C. § 22 (“stipulated by any treaty . . . between the United States and the hostile nation or  
25 government”). Nations—not criminal organizations—are the entities that enter into treaties. *See*,  
26 *e.g.*, *Medellin v. Texas*, 552 U.S. 491, 505, 508 (2008) (treaty is “a compact between independent  
nations” and “agreement among sovereign powers”); *Holmes v. Jennison*, 39 U.S. 540, 570-72  
(1840) (similar).

27 <sup>7</sup> <https://bsky.app/profile/rgoodlaw.bsky.social/post/3llc4wzbkr22k> (Q: “Does the intelligence  
28 community assess that we are currently at war or being invaded by the nation of Venezuela?” A:  
“We have no assessment that says that.”).

1 the President to identify a “foreign nation or government” that is invading or engaging in an  
2 invasion or incursion. Because it does not, the Proclamation fails on its face.

3 Further, the AEA’s historical record confirms that it was intended to address conflicts with  
4 foreign sovereigns, not criminal gangs like TdA. *See* 5 Annals of Cong. 1453 (Apr. 1798) (“[W]e  
5 may very shortly be involved in war[.]”); John Lord O’Brian, Special Ass’t to the Att’y Gen. for  
6 War Work, *Civil Liberty in War Time*, at 8 (Jan. 17, 1919) (“The [AEA] was passed by Congress  
7 . . . at a time when it was supposed that war with France was imminent.”) If Respondents were  
8 allowed to designate any group with ties to officials as a foreign government, and courts were  
9 powerless to review that designation, any group could be deemed a government, leading to an  
10 untenable and overbroad application of the AEA.

11  
12 The Proclamation half-heartedly attempts to link TdA to Venezuela by suggesting only that  
13 TdA is “supporting,” “closely aligned with,” or “has infiltrated” the Maduro regime. *See*  
14 Proclamation. But those characterizations, even if accepted, are insufficient to establish that a  
15 “foreign government or nation” is itself invading the United States. Thus, this Court need not go  
16 beyond the face of the Proclamation to find that it fails to satisfy the statutory preconditions of the  
17 AEA. In any event, experts are in accord that it is “absolutely implausible that the Maduro regime  
18 controls TdA or that the Maduro government and TdA are intertwined.” *J.G.G.*, No. 1:25-cv-766-  
19 JEB, ECF No. 67-3 (Hanson Decl.) ¶17; *id.* at 67-4 (Antillano Decl.) ¶ 13; *id.* at 67-12 (Dudley  
20 Decl.) ¶¶ 2, 21. As one expert who has done numerous projects for the U.S. government, including  
21 on the topic of TdA, explained, the Proclamation’s characterization of the relationship between the  
22 Venezuelan state and TdA with respect to TdA’s activities in the United States is “simply  
23 incorrect.” *Id.* at 67-12 (Dudley Decl.) ¶¶ 5, 17-18. The President’s own intelligence agencies  
24 reached that same conclusion prior to his invocation of the AEA. *See id.* at 67-21 (Sarabia Roman  
25  
26  
27  
28

1 Decl., Exh. 19) (“shared judgment of the nation’s spy agencies” is “that [TdA] was not controlled  
2 by the Venezuelan government”).

3 **B. Summary Removals Without Notice, a Meaningful Opportunity to Challenge**  
4 **“Alien Enemy” Designations, or the Right of Voluntary Departure Violate**  
5 **the AEA and Due Process.**

6 As the Supreme Court has now made clear, the government must provide Petitioner notice  
7 “within a reasonable time and in such a manner as will allow them to actually seek” relief from  
8 summary removals under the Proclamation. *J.G.G.*, 2025 WL 102409, at \*2 (“detainees subject to  
9 removal orders under the AEA are entitled to notice and an opportunity to challenge their  
10 removal.”). Because the government has not stated whether or how it will comply with the  
11 Supreme Court’s recent order) a TRO is warranted to ensure that the government provides the  
12 Court with protocol for how it will provide notice. *See J.G.G.*, 2025 WL 102409, at \*2 (“It is well  
13 established that the Fifth Amendment entitles [noncitizens] to due process of law’ in the context  
14 of removal proceedings.”). At a minimum, the notice must be translated into a language that  
15 individuals can understand (for Venezuelans, Spanish). Most importantly, there must be sufficient  
16 time for individuals to seek review. As during World War II, that notice must be at least 30 days  
17 in advance of any attempted removal. And it must be provided to undersigned counsel. *See, e.g.,*  
18 *Noem v. Abrego Garcia*, No. 24A949, 2025 WL 1077101 (U.S. Apr. 10, 2025)

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

22 The Proclamation is unlawful for an independent reason: it overrides statutory protections  
23 for noncitizens seeking protection against persecution or torture by subjecting them to removal  
24 without meaningful consideration of their claims. Congress codified the U.N. Convention against  
25 Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment (“CAT”) to ensure that  
26 noncitizens have meaningful opportunities to seek protection from torture. *See* 8 U.S.C. § 1231  
27  
28

1 note; 8 C.F.R. §§ 208.16-.18. CAT categorically prohibits returning a noncitizen to any country  
2 where they would more likely than not face torture. 8 U.S.C. § 1231 note. CAT applies regardless  
3 of the mechanism for removal.

4 The D.C. Circuit recently addressed a similar issue in *Huisha-Huisha v. Mayorkas*,  
5 reconciling the Executive’s authority under a public-health statute, 42 U.S.C. § 265, with CAT’s  
6 protections. 27 F.4th 718 (D.C. Cir. 2022). Because § 265 was silent about where noncitizens could  
7 be expelled, and CAT explicitly addressed that question, the court held no conflict existed. *Id.*  
8 Both statutes could—and therefore must—be given effect. *Id.* at 721, 731-32. This case is on all  
9 fours with *Huisha-Huisha*, because the AEA and CAT must be harmonized by applying CAT’s  
10 protections to AEA removals.  
11

12 Despite this clear statutory framework, the Proclamation overrides all of the INA’s  
13 protections and deprives those designated under the Proclamation of any opportunity to seek  
14 protection against being sent to a place where they will be tortured. *See J.G.G.*, 2025 WL 890401,  
15 at \*15 (“CAT could stand as an independent obstacle” to “potential torture should Plaintiffs be  
16 removed to El Salvador and incarcerated there.”)  
17

18 The AEA can similarly be harmonized with other subsequently enacted statutes specifically  
19 designed to protect noncitizens seeking asylum and withholding. *See* Refugee Act of 1980, Pub.  
20 L. No. 96-212, 94 Stat. 102 (1980) (asylum and withholding); 8 U.S.C. §§ 1158 (asylum),  
21 1231(b)(3) (withholding of removal). Congress has unequivocally declared that “[a]ny alien who  
22 is physically present in the United States or who arrives in the United States . . . irrespective of  
23 such alien’s status, may apply for asylum.” 8 U.S.C. § 1158(a)(1). Likewise, the withholding of  
24 removal statute explicitly bars returning a noncitizen to a country where their “life or freedom”  
25 would be threatened based on a protected ground. *Id.* § 1231(b)(3)(A). These humanitarian  
26 protections were enacted in the aftermath of World War II, when the United States joined other  
27  
28

1 countries in committing to never again turn our backs on people fleeing persecution and torture.  
2 Sadako Ogata, U.N. High Comm'r for Refugees, Address at the Holocaust Memorial Museum  
3 (Apr. 30, 1997).<sup>8</sup> A President invoking the AEA cannot simply sweep away these protections.

4 **D. The Proclamation Violates the Procedural Requirements of the INA.**

5 Since the last invocation of the AEA more than 80 years ago, Congress has carefully  
6 specified the procedures by which noncitizens may be removed. The INA leaves little doubt that  
7 its procedures must apply to every removal, unless otherwise specified by that statute. It directs:  
8 “Unless otherwise specified in this chapter,” the INA’s comprehensive scheme provides “the sole  
9 and exclusive procedure for determining whether an alien may be . . . removed from the United  
10 States.” 8 U.S.C. § 1229a(a)(3); *see also United States v. Tinoso*, 327 F.3d 864, 867 (9th Cir. 2003)  
11 (“Deportation and removal must be achieved through the procedures provided in the INA.”).  
12 Indeed, Congress intended for the INA to “supersede all previous laws with regard to  
13 deportability.” S. Rep. No. 82-1137, at 30 (Jan. 29, 1952).<sup>9</sup>

14 Congress was aware that alien enemies were subject to removal in times of war or invasion  
15 when it enacted the INA. *See Miles v. Apex Marine Corp.*, 498 U.S. 19, 32 (1990) (courts presume  
16 Congress drafts statutes with full knowledge of existing law). Indeed, the AEA was invoked just a  
17 few years before passage of the 1952 INA. With this awareness, Congress provided that the INA  
18 contains the “sole and exclusive” procedures for removal and declined to carve out AEA removals  
19 from standard immigration procedures, even as it expressly excepted other groups of noncitizens,  
20 including those who pose security risks. *See, e.g.*, 8 U.S.C. § 1531 *et seq.* (establishing fast-track  
21

22  
23  
24  
25 <sup>8</sup> <https://perma.cc/X5YF-K6EU>.

26 <sup>9</sup> One of the processes otherwise specified in the INA is the Alien Terrorist Removal Procedure at  
27 8 U.S.C. § 1531 *et seq.* The Attorney General may opt to use this when she has classified  
28 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).

1 proceedings for noncitizens posing national security risks). By ignoring the INA’s role as the “sole  
2 and exclusive” procedure for determining whether a noncitizen may be removed, the Proclamation  
3 unlawfully bypasses the mandated congressional scheme and usurps Congress’s Article I power  
4 in the process.

5  
6 **II. Petitioner Faces Imminent Irreparable Harm.**

7 In the absence of a TRO, Petitioner is at imminent risk of summary removal to places, such  
8 as El Salvador, where he faces life-threatening conditions, persecution, and torture. *See supra*;  
9 *J.G.G.*, 2025 WL 1024097, at \*5 (“[I]nmates in Salvadoran prisons are ‘highly likely to face  
10 immediate and intentional life-threatening harm at the hands of state actors.’”). That easily  
11 constitutes irreparable harm. *See, e.g., Huisha-Huisha*, 27 F.4th at 733 (irreparable harm exists  
12 where petitioners “expelled to places where they will be persecuted or tortured”). And Petitioner  
13 may never get out of these prisons. *See J.G.G.*, 2025 WL 1024097, at \*5.

14  
15 Even if the government instead removes Petitioner to Venezuela, he faces serious harm  
16 there. He is eligible for asylum and withholding of removal and, on information and belief, should  
17 receive protection based on his legally cognizable fear of persecution based on violence  
18 perpetrated against his family by gang members in Venezuela. Moreover, returning to Venezuela  
19 labeled as a gang member by the U.S. government only increases the danger, as he will face  
20 heightened scrutiny from Venezuela’s security agency, as well as possible gang violence. *See*  
21 *J.G.G.*, No. 1:25-cv-766-JEB, ECF No. 67-3 (Hanson Decl.) ¶ 28.

22  
23 Not only does Petitioner face grave harm, but thus far, the government has tried to execute  
24 removals without any due process. *See Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146, 172  
25 (D.D.C. 2021) (irreparable harm where plaintiffs “face the threat of removal prior to receiving any  
26 of the protections the immigration laws provide”). Although the Supreme Court has now made  
27 clear that meaningful notice is required under the AEA, *J.G.G.*, 2025 WL 102409, at \*2,  
28

1 Respondents have yet to provide assurances that they will provide meaningful notice, much less  
2 any sense of when that notice will be provided to individuals or what form it will take. Petitioner's  
3 notice may only reach him once he is far from counsel with no genuine available to communicate  
4 or seek judicial relief. As such, there remains an unacceptably high risk that the government will  
5 unlawfully remove him without adequate process.  
6

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

9 The balance of equities and public interest merge in cases against the government. *See*  
10 *Nken v. Holder*, 556 U.S. 418, 436 (2009); *Leiva-Perez v. Holder*, 640 F.3d 962, 970 (9th Cir.  
11 2011) (granting stay of removal). Here, the balance overwhelmingly favors Petitioner. The public  
12 has a critical interest in preventing wrongful removals, especially where it could mean a lifetime  
13 sentence in a notorious foreign prison. *See Nken*, 556 U.S. at 436. That is especially so given the  
14 government's position that it will not obtain the release of individuals mistakenly sent to the  
15 notorious Salvadoran prison, as well as El Salvador's evident willingness to enable that position.  
16

17 Petitioner, moreover, does not contest Respondents' authority to detain him under the  
18 immigration laws or their ability to seek his removal under the immigration laws. *Cf. J.G.G.*, 2025  
19 WL 914682, at \*30 ("The Executive remains free to take TdA members off the streets and keep  
20 them in detention. The Executive can also deport alleged members of TdA under the INA[.]").  
21 Thus, Respondents cannot show how the government's interests overcome the irreparable injury  
22 to Petitioner.  
23

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

26 In addition to this Court's equitable powers, this is a textbook case for use of the All Writs  
27 Act ("AWA"), which provides courts a powerful tool to "maintain the status quo by injunction  
28 pending review of an agency's action through the prescribed statutory channels." *F.T.C. v. Dean*

1 *Foods Co.*, 384 U.S. 597, 604 (1966); 28 U.S.C. § 1651(a); *California v. M&P Inv.*, 46 F. App'x  
2 876, 878 (9th Cir. 2002) (finding Act should be broadly construed to “achieve all rational ends of  
3 law”) (quoting *Adams v. United States*, 317 U.S. 269, 273 (1942)); *J.A.V. v. Trump*, No. 1:25-CV-  
4 072, 2025 WL 1064009, at \*1 (S.D. Tex. Apr. 9, 2025) (“A federal court has the power under the  
5 All Writs Act to issue injunctive orders in a case even before the court's jurisdiction has been  
6 established.”). If Petitioner is illegally sent to a foreign country, and El Salvador assumes  
7 jurisdiction, the government will argue, as it already has, that this Court will no longer have  
8 jurisdiction to remedy the unlawful use of the AEA. *See* Resp. to Order to Show Cause, *J.G.G.*,  
9 No. 25-cv-766-JEB (D.D.C. Mar. 25, 2025), ECF No. 58 at 12 (government asserting “once the  
10 flights were outside the United States, the President did not need to rely on that Proclamation or  
11 Act to justify transferring members of a designated foreign terrorist group to a foreign country”);  
12 Resp. to Plfs.’ Mot. for Additional Relief, *Abrego Garcia v. Noem*, No. 8:25-cv-951-PX (D. Md.  
13 Apr. 13, 2025), ECF No. 65 at 3-4 (government arguing that “[t]he federal courts have no authority  
14 to direct the Executive Branch to . . . engage with a foreign sovereign in a given manner,” to  
15 facilitate return of wrongfully deported individual).  
16  
17

18       Whereas a traditional TRO requires a party to state a claim, an injunction based on the  
19 AWA requires only that a party identify a threat to the integrity of an ongoing or prospective  
20 proceeding. *See Arctic Zero, Inc. v. Aspen Hills, Inc.*, No. 17-CV-00459-AJB-JMA, 2018 WL  
21 2018115, at \*5 (S.D. Cal. May 1, 2018) (distinguishing AWA injunction from traditional  
22 preliminary injunction); *see also ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359 (5th Cir.  
23 1978) (court may enjoin “conduct which, left unchecked, would have . . . the practical effect of  
24 diminishing the court’s power to bring the litigation to a natural conclusion”). Courts have  
25 explicitly relied upon the AWA in order to prevent even a risk that a respondent’s actions will  
26 diminish the court’s capacity to adjudicate claims before it. *See Michael v. INS*, 48 F.3d 657, 664  
27  
28

1 (2d Cir. 1995) (staying an order of deportation “in order to safeguard the court’s appellate  
2 jurisdiction” and preserve its ability to hear subsequent appeals by the petitioner); *see also Al Otro*  
3 *Lado v. McAleenan*, 423 F. Supp. 3d 848, 874-78 (S.D. Cal. 2019).

4 **V. The Court Should Not Require Petitioner to Provide Security.**

5 Federal Rule 65(c) “invests the district court with discretion as to the amount of security  
6 required, if any.” *Jorgensen v. Cassidy*, 320 F.3d 906, 919 (9th Cir. 2003) (internal quotation  
7 marks and citation omitted). District courts routinely exercise this discretion to require no security  
8 in cases brought by indigent and/or incarcerated people. *See, e.g., Toussaint v. Rushen*, 553 F.  
9 Supp. 1365, 1383 (N.D. Cal. 1983) (state prisoners); *Orantes–Hernandez v. Smith*, 541 F. Supp.  
10 351, 385 n. 42 (C.D. Cal. 1982) (detained immigrants). This Court should do the same here.

11  
12 **CONCLUSION**

13  
14 The Court should grant the proposed TRO.

15 Dated: April 15, 2025

16 By: /s/ Jordan Wells  
Jordan Wells

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