**IN THE UNITED STATES DISTRICT COURT**
**FOR THE WESTERN DISTRICT OF TEXAS**
**EL PASO DIVISION**

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| SANCHEZ PUENTES, et al.,<br><br>*Petitioners,*<br><br>v.<br><br>GARITE, et al,<br><br>*Respondents.* | Case No. 25-cv-0127 |

**PETITIONERS' REPLY TO AMENDED VERIFIED PETITION FOR A WRIT OF HABEAS CORPUS**

Respondents' failure to submit their response by the court-ordered deadline has severely prejudiced Petitioners' ability to provide a full Reply. Nonetheless, Petitioners submit this brief to highlight critical inconsistencies, mischaracterizations, and unsound legal arguments Respondents raise. Nothing Respondents submitted should change the outcome in this case: Petitioners are unlawfully designated and detained, and they should be released. Even if the Court finds that more time is needed to fully address the underlying legal issues, Petitioners should still be released on bail pending further proceedings. *Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001); *Sanchez v. Winfrey*, No. CIV.A.SA04CA0293RFNN, 2004 WL 1118718, at *2 (W.D. Tex. Apr. 28, 2004). Petitioners request that this Court order their release due to a finding that they have improperly been designated alien enemies, or in the alternative, order their release on bail pending full adjudication of their Petition.

## I. Respondents Have Not Provided Any New Evidence And Their Double- and Triple-Hearsay Declaration Remains "Terrible".

On their fourth opportunity to submit evidence in support of their designation of Petitioners as "senior members" of Tren de Aragua, Respondents have provided yet another double- and triple-hearsay declaration that contains numerous factual inaccuracies, repeats statements previously found baseless, and then adds even more unsupported statements without any underlying evidence. The declarant reports, based not on first-hand knowledge but on alleged review of documents (that are not provided) and statements (that are not verified), that an unknown year-old investigation Respondents have never previously mentioned, relying on unknown sources they never previously brought forth, identified Ms. Sanchez as a member of TdA. The declarant misstates Ms. Sanchez's age, the date she was granted Temporary Protected Status, the date that status was withdrawn, and the date she received a Notice to Appear, Dkt. 18-7, ¶ 11; states she was possibly a "lookout" but somehow also a "senior member" of TdA,

and refers to a custodial interview (conducted under unknown circumstances) with someone who identified *fifty* different people as TdA members, *id.* ¶¶ 12–14. These are just some of the many indicia of unreliability in the declaration Respondents submitted, which remains "terrible." *See* Dkt. 1-8 Tr. of March 28, 2025 Hr'g.

As to Mr. Sanchez, Respondents have never submitted any evidence whatsoever of TdA membership, and concede that they have no such evidence. Dkt. 18-7, ¶ 20.

## II. This Court Should Require the Government to Establish Mr. and Ms. Sanchez's Membership in TdA by "Clear, Unequivocal, and Convincing" Evidence.

Under governing due process doctrine, this Court should require the government to show that Petitioners are members of TdA by "clear, unequivocal, and convincing" evidence, or, at a minimum, by "clear and convincing" evidence. Those are the constitutional standards governing removal proceedings and other proceedings of comparable gravity. *See generally Woodby v. INS*, 385 U.S. 276, 277 (1966) (removal proceedings); *Schneiderman v. United States*, 320 U.S. 118, 159 (1943) (de-naturalization proceedings); *Nishikawa v. Dulles*, 356 U.S. 129, 137-138 (1958) (expatriation proceedings). As the Supreme Court held, "the Fifth Amendment entitles [noncitizens] to due process of law." *Trump v. J.G.G.*, 604 U.S. ---, 2025 WL 1024097, *2 (2025) (citing *Reno v. Flores*, 507 U.S. 292, 306 (1993)). In a civil immigration detention case, standard due process doctrine applicable to non-citizens in removal proceedings governs. *Id.*

Respondents do not name the standard of evidence they believe applies during the proceedings or what burden they must meet. *See* Dkt. 18-1, 13–14. However, they refer to *Hamdi v. Rumsfeld*, 542 U.S. 507 (2004), a case applying a preponderance of the evidence standard for a citizen *detained abroad, on the battlefield, during active wartime.* Even in that context, both the federal courts and the government's own procedures required that the government bear the burden of proof and establish the threshold facts justifying detention by a preponderance of the

evidence. *See Parhat v. Gates*, 532 F.3d 834, 854 (D.C. Cir. 2008). Further, unlike here, in *Hamdi* the Court applied a preponderance of evidence standard to individuals who had *already been through a full adjudication* in an administrative proceeding–a military tribunal–that bears no resemblance to the nonexistent "process" utilized to designate individuals here. *See id.*[1]

Here, the "clear, unequivocal, and convincing evidence" standard is the appropriate one because of the factual nature of the inquiry and the severity of the stakes. *See Addington v. Texas*, 441 U.S. 418, 432-433 (1979) (finding that the lower "clear and convincing" standard applied to civil commitment based on serious mental disorders but contrasting that with "[t]he issues in *Schneiderman* and *Woodby*," which "were basically factual and therefore susceptible of objective proof and [where] consequences to the individual were unusually drastic.") The central question is whether either Petitioner is a "member" of TdA, a "basically factual" question the consequences of which are "unusually drastic." *See id.* Accordingly, the government must prove its case by "clear, unequivocal, and convincing" evidence. At the very least, it should bear the burden by "clear and convincing" evidence, which is the *minimum* default burden of proof where substantial liberty interests are at stake. *See id.* at 433. Under either standard, the government must present overwhelming evidence to prevail–evidence it has failed to present despite four opportunities to do so. Clear and convincing evidence must be "so clear, direct and weighty and convincing as to enable the fact finder to come to a clear conviction, without hesitancy, of the truth of the precise facts." *Galaviz v. Reyes*, 95 F.4th 246, 256 (5th Cir. 2024) (quoting *In re Medrano*, 956 F.2d 101, 102 (5th Cir. 1992)). "Mere speculation" cannot satisfy this burden. *Id.*

[1] *See* Deputy Secretary of Defense, *Implementation of Combatant Status Review Tribunal Procedures for Enemy Combatants Detained at U.S. Naval Base Guantanamo Bay, Cuba* (July 14, 2005), *available at* https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Detainne_Related/04-F-0269_Implementation_of_Combatant_Status_Review_Tribunal_Procedures_for_Enemy_Combatants_Detained_at_US_Naval_Base_Guantanamo_Bay_Cuba.pdf. (creating internal review process).

*See also Schneiderman*, 320 U.S. at 135 (clear, unequivocal, and convincing evidence "does not leave the issue in doubt").[2]

Should the Court instead choose to apply the basic balancing approach of *Mathews v. Eldridge*, 424 U.S. 319 (1976), it would reach the same result. Under that approach, the Court would weigh the individual's liberty interest, the government's asserted interest and the burdens associated with providing greater process, and the probable value, if any, of additional or substitute procedural safeguards. *Hamdi*, 542 U.S. at 529 (plurality) (citing *Mathews*). Here, Petitioners' liberty interests are of the highest order, as this finding will subject them to summary deportation either to Venezuela, a place they have fled and sought asylum from, or to CECOT, a notorious maximum security prison in El Salvador where they could face conditions that constitute both punishment and torture.[3] *Mathews* also requires consideration of the probable value of additional safeguards. Here, the additional safeguards Petitioners seek would be enormously valuable, as the many mistakes the government has already made show. Since the government's deportation of 238 men to CECOT on March 15, reporting has highlighted multiple errors in TdA membership determinations,[4] and the government has itself admitted error

[2] In any event, under any standard, Respondents have not met their burden of proof to show that either of Petitioners are "members" of TdA.

[3] Petitioners will argue, if the Court reaches the determination that they are "members" of TdA, that because banishment to CECOT constitutes punishment, the government must charge them with a crime and comply, at minimum, with the Fourth, Fifth, Sixth, and Eighth Amendments.

[4] *See, e.g.*, Cecilia Vega, Aliza Chasan, Camilo Montoya-Galvez, Andy Court, & Annabelle Hanflig, *Trump administration deports gay makeup artist to prison in El Salvador*, CBS News (April 6, 2025), https://www.cbsnews.com/news/venezuelan-migrants-deportations-el-salvador-prison-60-minutes/; All in with Chris Hayes, *'Incredible': Trump admin reportedly deports man over autism awareness tattoo*, MSNBC (Mar. 27, 2025); Stefano Pozzebon & Max Saltman, *He has a tattoo celebrating Real Madrid. His lawyer believes it's why he was deported.*, CNN (Mar. 26, 2025), https://www.cnn.com/2025/03/26/americas/deported-real-madrid-tattoo-latam-intl/index.html; Tom Phillips & Clavel Rangel, *'Deported because of his tattoos': has the US targeted Venezuelans for their body art?* The Guardian (Mar. 20, 2025), https://www.theguardian.com/us-news/2025/mar/20/deported-because-of-his-tattoos-has-the-us-targeted-venezuelans-for-their-body-art.

in at least one case that it has thus far refused to rectify. *Noem v. Abrego Garcia*, 604 U.S. ---, 2025 WL 1077101, *1 (2025).

On the other side of the ledger, while the government's interest in actual wartime detention is more substantial, *Hamdi*, 542 U.S. at 531-532, this is not wartime detention. There should be no serious dispute that those interests are severely attenuated where, as here, there is no war or hostilities, and the government has not explained why the harms it seeks to address could not be managed through the normal criminal process or through its expansive Title 8 authority, including the Alien Terrorist Removal Court. *See* 8 U.S.C. 1531, et seq. Therefore, consistent with longstanding due process principles, this Court should require that the government prove TdA membership by clear, unequivocal, and convincing evidence.

## III. Respondents Are Not Entitled to Deference on Whether Petitioners are Members of TdA.

The Court should afford no deference to the government with respect to its determination of TdA membership for two principal reasons. *First*, because the Proclamation renders TdA membership the relevant factual predicate for designation, it is analogous to nationality determinations made under previous invocations of the Alien Enemies Act. Those invocations authorized restrictions on all foreign nationals from enemy nations, just as here the invocation authorizes restrictions on all members of TdA.[5] As the Supreme Court recognized in *J.G.G.*, under these prior invocations, federal courts reviewed the claims of individuals challenging whether they were indeed nationals of enemy nations. 2025 WL 1024097, at *2. (requiring review of "whether [petitioner] 'is in fact an alien enemy fourteen years of age or older.'") (citing *Ludecke v. Watkins*, 335 U.S. 160, 163-64, 172, n. 17 (1948)); *see also Ludecke*, 335 U.S.

[5] *See Lockington v. Smith*, 15 F. Cas. 758, 758-759 (C.C.D. Pa. 1817) (discussing the War of 1812 proclamation); Proclamation, 40 Stat. 1651 (1917) (World War I); Proclamation: Alien Enemies—Japanese, 6 Fed. Reg. 6,321 (Dec. 10, 1941) (World War II). Of course, that difference also suggests that the invocation is not authorized at all.

at 165, n.8 (collecting cases). Review of the opinions in those cases reveals no substantial deference to government determinations. *See Bauer v. Watkins*, 171 F.2d 492, 494 (2d Cir. 1948) (ruling that district court erred denying habeas relief on disputed nationality claim, holding that government bears the burden of proof on whether petitioner is "native or citizen or Germany."); *U.S. ex rel. Schwarzkopf v. Uhl*, 137 F.2d 898, 901-03 (2d Cir. 1943) (rejecting government requests for deference on several nationality-related issues, finding petitioner was not a German citizen, and reversing denial of writ); *Banning v. Penrose*, 255 F. 159 (N.D. Ga. 1919) (upon thorough review of record, rejecting government's claim that petitioner was German, either because he failed to naturalize or had renounced his U.S. citizenship, and granting writ); *Ex parte Gilroy*, 257 F. 110, 112–13 (S.D.N.Y. 1919) (extensively reviewing and reversing nationality determination); *Ex parte Fronklin*, 253 F. 984 (N.D. Miss. 1918) (reviewing evidence before concluding "[f]rom the evidence as a whole, I am convinced that the petitioner was born in Hamburg, Germany, and is a German alien enemy).

*Second*, the Court should accord no deference to the government's prior TdA membership determination because Petitioners received no prior process by which to contest the initial agency finding. At least since the World War I invocation, courts did not defer to executive determinations that did not provide for a hearing. *See, e.g.*, *Gilroy*, 257 F. at 112–13 ("The decisions in which the courts have declined to review the determination of executive officials have been in cases where the executive or administrative act followed as the result of some hearing, sometimes formal, sometimes informal, but nevertheless a hearing."). Here, the *only* process available to Petitioners is through the instant habeas proceeding.

Longstanding general principles of habeas doctrine also provide that "the necessary scope of habeas review in part depends upon the rigor of any earlier proceedings." *Boumediene v. Bush*,

553 U.S. 723, 781 (2008); *see also id.* ("What matters is the sum total of procedural protections afforded to the detainee at all stages, direct and collateral."). The government provided *far* more process to detained enemy non-citizens during World War II than it has provided here. *See generally JGG v. Trump*, No. 25-5067, 2025 WL 914682, *16 (D.C. Cir. Mar. 26, 2025) (Millett, J., concurring) (recounting history of judicial review and hearing board processes). And still, reviewing courts did not defer substantially to executive determinations there. *See also Ludecke*, 335 U.S. at 172 (noting the role of Hearing Boards).

Given the stakes involved, Petitioners are entitled to robust procedural protections. Petitioners face possible indefinite incarceration and family separation, deportation to a country they have fled out of fear of persecution, and rendition to a notorious prison facility in El Salvador. Under these circumstances, the procedures governing this Court's evidentiary hearing on TdA membership should be trial-like in their rigor. *See generally Townsend v. Sain*, 372 U.S. 293 (1963) (emphasizing trial-like procedures required in cases challenging unconstitutional detention involving state prisoners); *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976) (rigor of procedures varies in part based on the severity of the deprivation at issue).[6]

## IV. The AEA Invocation is Itself Unlawful

The Court can resolve this Petition and release Petitioners without reaching this issue, but should it become necessary, Petitioners are prepared to argue that the invocation of the Alien Enemies Act is unlawful for three reasons: (1) there is no "invasion or predatory incursion"; (2)

[6] To the extent factual disputes are not resolved at the hearing today, Petitioners should be provided an opportunity to examine all the evidence upon which the government relies for the designation, and should have the right to present evidence, including to present and examine witnesses, and seek discovery if needed. *See Harris v. Nelson*, 394 U.S. 286, 298 (1969) (finding discovery is appropriate in habeas cases where it will "allow development, for purposes of the hearing, of the facts relevant to disposition of a habeas corpus petition"); *Al Odah v. United States*, 559 F.3d 539, 544–45 (D.C. Cir. 2009) (per curiam) (holding that court may compel disclosure to counsel of classified information for habeas review).

there is no purported invasion perpetuated by a "foreign government or nation"; and (3) there is "no process to contest whether an individual does fall within the Proclamation." *D.B.U. v. Trump*, No. 1:25-cv-01163 (D. Colo. filed Apr. 22, 2025), Dkt. 35, Order Granting TRO, 21–22 (citing Dkt. 2, Petitioners' Emergency Motion for TRO, 11); *see also id.* 22–29 (finding Petitioners have shown a likelihood of success on the merits that the invocation itself is unlawful). Ex. 1, *D.B.U.* TRO Order.[7]

## V. Should the Court Determine Further Proceedings Are Necessary for Full Adjudication of the Petition, the Court Should Release Petitioners on Bail.

While the Petition can and should fully be resolved in Petitioners' favor now, should the Court find that more time is needed, Petitioners should be released on bail. *See Mapp v. Reno*, 241 F.3d 221, 230 (2d Cir. 2001) (holding that federal courts have inherent authority to set bail pending the adjudication of a habeas petition when (1) the petition has raised substantial claims, and (2) extraordinary circumstances "make the grant of bail necessary to make the habeas remedy effective"). *See also Boyer v. City of Orlando*, 402 F.2d 966, 968 (5th Cir. 1968) (ordering the release of a habeas petitioner on bail pending pending review of the petition); *Woodcock v. Donnelly*, 470 F.2d 93, 94 (1st Cir. 1972) (holding that "a district court entertaining a petition for habeas corpus has inherent power to release the petitioner pending determination of the merits."). In this case, Petitioners have raised substantial claims that their detention is unlawful; two courts have previously released them on bail and another court pursuant to a habeas petition; and the circumstances of their detention and ongoing separation from their family are extraordinary.

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[7] Experts have also submitted declarations in other cases challenging the unlawfulness of the AEA invocation, showing that "Venezuela is not directing, controlling, or otherwise influencing TdA's actions in the United States." *See J.A.V. v. Trump*, No. 1:25-cv-00072 (S.D. Tex. Apr. 8, 2025), Dkt. 42, Petitioners' Motion for Preliminary Injunction, 19 (citing Hanson Decl., Antillano Decl., and Dudley Decl.). The Motion and Declarations are attached here as Ex. 2.

Another court in this District has held that it has the authority to release habeas petitioners on bail pending the "conclusion" of the habeas proceedings, even when the petitioner is in immigration detention. *Winfrey*, 2004 WL 1118718, at *2. It also held that where a petitioner's detention and removal order are "not predicated in some way on a judicial adjudication of guilt and criminal responsibility," a lower standard than the one outlined in *Mapp* applies, and a court need only examine whether there is a "substantial claim" in the petition and whether the facts "are exceptional and deserving of special treatment in the interests of justice. *Id.* at *2–3. Here, there has been no judicial adjudication of guilt or criminal responsibility, and Petitioners have been ordered released by three different judges. Petitioners have made a "substantial claim" that their initial detention was unlawful because at the time of their arrest, there was no alien enemy designation and they were still in the appeal window to appeal the withdrawal of their TPS.[8] Petitioners have also made a substantial claim that their detention *remained unlawful* even after their designation as alien enemies due to the lack of evidence of TdA membership and the utter lack of process they received.[9]

The circumstances here are also "exceptional" for a number of reasons. First, contrary to Respondents' assertions, both notices they were provided are entirely deficient.[10] The initial notice, provided to Petitioners only in English, a language they do not understand, was given

[8] Respondents mislead the Court by erroneously stating that DHS terminated TPS as of April 1, and so "Petitioners' lawful status terminated on April 1." Dkt. 18-1, 4. As Petitioners thoroughly lay out in their Petition, DHS's termination of the Venezuela Designation was effective April 7, 2025, *not* April 1, and this termination is stayed pursuant to the order in *National TPS Alliance v. Noem*, No. 3:25 CV 01766, 2025 WL 957677 (N.D. Cal. Mar. 31, 2025). *See* Dkt. 9, 7–8.

[9] Respondents mischaracterize Petitioners' arguments about the unlawfulness of their detention, claiming that Petitioners are arguing the TPS statute itself bars Mr. and Ms. Sanchez's detention pursuant to the AEA. *See, e.g.*, Dkt. 18-1, 2. Not so. Petitioners make two distinct arguments about their unlawful detention: (1) their *initial* detention at the airport violates the TPS regulations, and (2) their further detention pursuant to an AEA designation that began several hours later is also separately unlawful. *See* Dkt. 9, 16–20.

[10] Respondents also misrepresent Petitioners' position on notice: Petitioners nowhere "admit" that the second notice was sufficient or meets the standard set by the Supreme Court in *J.G.G.*

more than a week after the Supreme Court's *J.G.G.* decision and in blatant violation of the Court's order, and stated that Petitioners "are not entitled to a hearing, appeal, or judicial review of this notice and warrant of apprehension and removal," Ex. 3, April 16, 2025 Notice. While the second notice they received removed that sentence, that notice was provided *after* they filed the instant petition, and nowhere does it state that they may challenge the government's designation and removal in a court of law or provide any timeframe within which those notified must bring such an action. These notices are simply insufficient to afford anyone who receives them the ability to "actually seek habeas relief in the proper venue before such removal occurs." J.G.G., 2025 WL 1024097, at *2.

Second, Respondents actively obstructed counsel's attempts to obtain copies of the notices, to obtain information about when Petitioners might be removed from the United States, and to obtain information about their whereabouts, even falsely stating that Petitioners were not located where they were. See Villeda Sanchinelli Decl. Dkt. 9-1, ¶¶ 4, 8, 10, 11. It was only because multiple attorneys and friends were actively looking for Mr. and Ms. Sanchez that they were able to file a habeas petition at the last minute. *See id.* ¶9. Third, the entire framework on which Respondents base their designations, and the standard they put forth to the Court, is unlawful. Respondents have raised a host of new arguments that Petitioners have not had the opportunity to consider or respond to, and it would be highly prejudicial to Petitioners to remain detained while these matters are being considered and adjudicated in full.

For the foregoing reasons, this Court should find that Respondents' alien enemy designation was improper and should order Petitioners released. If the Court finds that additional briefing or further consideration is needed, the Court should order Petitioners released on bail so they can be reunited with their family and community and a schedule for further proceedings.

Dated: April 23, 2025

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that on this date, I uploaded the foregoing, with all attachments thereto, to this court's CM/ECF system, which will send a Notice of Electronic Filing (NEF) to all case participants. Counsel is also sending a courtesy copy to Respondents' counsel.

Respectfully submitted,

Date: April 23, 2025

*/s/ Christopher Benoit*
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