BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section
CHRISTINA MARQUEZ (Cal. Bar No. 305301)
Assistant United States Attorney
Federal Building, Suite 7516
300 North Los Angeles Street
Los Angeles, California 90012
Telephone: (213) 894-4061
Facsimile: (213) 894-7819
E-mail: Christina.Marquez@usdoj.gov

Attorneys for Respondents

UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

YOSTIN SLEIKER GUTIERREZ-CONTRERAS,

Petitioner,

v.

WARDEN, DESERT VIEW ANNEX, *et al.*,

Defendants.

No. 5:25-cv-00965-SSS-KES

RESPONDENT'S BRIEF IN OPPOSITION TO THE ISSUANCE OF A PRELIMINARY INJUNCTION

Hearing Date: May 9, 2025
Hearing Time: 1:00 p.m.
Location: Riverside Courthouse, Ctrm. 2

Honorable Sunshine S. Sykes
United States District Judge

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A preliminary injunction should not be entered.

First, Petitioner cannot establish standing because he does not face an imminent threat of suffering actual injury and cannot overcome several jurisdictional hurdles.[1] Petitioner is currently being detained under Title 8 and the Immigration and Nationality Act ("INA") strips this Court of jurisdiction to enjoin transfers of aliens detained under Title 8 out of this district. To the extent Petitioner seeks to enjoin Respondents from exercising authority to transfer or remove Petitioner under the Alien Enemies Act ("AEA"), this Court lacks jurisdiction to do so. Moreover, even if the issue is limited to notice prior to any AEA removal, then Petitioner cannot establish standing because he does not face an imminent threat of removal without notice given the Department of Homeland Security's ("DHS") recently developed AEA notice procedures.

Second, Petitioner cannot establish that his claims will succeed on the merits. Petitioner is receiving all process due under these circumstances. Were Petitioner designated for removal under the AEA, he would be provided ***at least*** 24 hours to file a habeas petition. The United States Supreme Court has held that 24 hours' notice is sufficient in the comparable context of expedited removal under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, § 305(a)(3), 110 Stat. 3009-546, 602.

Finally, Petitioner fails to satisfy the remaining requirements for preliminary

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[1] Based on the Court's TRO (Dkt. 11) it appears the issue currently before the Court is whether the Court should enter a preliminary injunction enjoining Respondents from removing Petitioner under the AEA ***without notice*** and not whether Respondents can in fact remove him under the AEA. Petitioner's habeas petition is unclear on this issue, since Petitioner's argument has been focused primarily on notice. Normally, Petitioner would be required to move for a preliminary injunction outlining the relief he seeks since it is his burden. However, since Respondents have been ordered to respond first, Respondents address the anticipated arguments from Petitioner including any challenge to the President's Proclamation and the exercise of authority under Article II and the AEA.

injunctive relief. He cannot show irreparable harm because Petitioner will be afforded the notice required under these circumstances. Further, Petitioner has not shown that the balance of the equities and public interest lies with him. Individuals identified as members of a Foreign Terrorist Organization cannot credibly claim injury from the President's decision to expel them from the United States. Meanwhile, the President—and public—have an overwhelming interest in the security of the United States and in ensuring that the Executive's significant outlay of diplomatic capital for this mission is not wasted.

II. BACKGROUND

A. Tren de Aragua's designation as a foreign terrorist organization and under the Alien Enemies Act

Tren de Aragua ("TdA") is a transnational criminal organization that originated in Venezuela and has "conducted kidnappings, extorted businesses, bribed public officials, and authorized its members to attack and kill U.S. law enforcement." Office of the Spokesperson, Dep't of State, Designation of International Cartels (Feb. 20, 2025); *see also* Smith Decl., Ex. A, ¶¶ 6–7; Charles Decl., Ex. B. The President has found that TdA operates "both within and outside the United States" and that its "extraordinarily violent" campaign of terror presents "an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." Exec. Order No. 14,157, 90 Fed. Reg. 8439, 8439 (Jan. 29, 2025). On the first day of his term, the President declared a national emergency to respond to that threat. *Id.*

The threat is so severe that, on February 20, 2025, the Secretary of State designated TdA a Foreign Terrorist Organization. 90 Fed. Reg. 10,030 (Feb. 20, 2025). The immigration laws authorize such a designation when a foreign organization engages in "terrorist activity" or "retains the capability and intent" to do so, thereby threatening "the national security of the United States." 8 U.S.C. § 1189(a)(1), (d)(4); *see Holder v. Humanitarian Law Project*, 561 U.S. 1, 9 (2010). Because TdA poses a significant threat to national security, government officials have expended significant efforts engaging in

delicate negotiations with foreign governments. As the Senior Bureau Official within the State Department's Bureau of Western Hemisphere Affairs has explained, high-level government officials have spent weeks negotiating at the highest levels with the Government of El Salvador and the Maduro regime to secure consent to the removal of Venezuelan nationals who are members of TdA. Kozak Decl., Ex. C, ¶ 2. Following those "intensive and delicate negotiations," the United States reached arrangements "with these foreign interlocutors" to accept the removal of some number of TdA members. *Id.*

On March 14, 2025, the President signed a proclamation, invoking his authority under the Alien Enemies Act, 50 U.S.C. §§ 21–24, against TdA members. *See* Proclamation No. 10,903, 90 Fed. Reg. 13,033, 13,034 (Mar. 20, 2025) (the "Proclamation"). Originally enacted in 1798, the AEA grants the Executive broad power to remove enemy aliens. *See* 50 U.S.C. § 21. The AEA's remaining provisions outline procedures for implementing that broad authority. An "alien who becomes liable as an enemy" but who "is not chargeable with actual hostility, or other crime against the public safety," may be afforded time to settle affairs before departing. *Id.* § 22.

Here, the Proclamation outlines the President's findings that TdA members meet the statutory criteria for removal under the AEA. The President found that TdA, which "commits brutal crimes" including murder and kidnapping, is "conducting irregular warfare and undertaking hostile actions against the United States." *See* 90 Fed. Reg. at 13,033. The President further found that TdA has "engaged in and continues to engage in mass illegal migration" to further TdA's objectives: "harming United States citizens, undermining public safety, and supporting the Maduro regime's goal of destabilizing democratic nations in the Americas, including the United States." *Id.* And the President found that TdA works with the Maduro-sponsored Cártel de los Soles to use "illegal narcotics as a weapon to 'flood' the United States." *Id.*

The President additionally found that TdA has taken control over Venezuelan territory. *Id.* Moreover, TdA is "closely aligned with" Maduro's regime in Venezuela,

and indeed has "infiltrated" the regime's "military and law enforcement apparatus." *Id.* The resulting "hybrid criminal state," "is perpetrating, attempting, and threatening an invasion or predatory incursion against the territory of the United States," posing "a substantial danger." *Id.* at 13,033–34.

Based on those findings, the President proclaimed 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" under 50 U.S.C. § 21. *Id.* at 13,034. Further, the President found "all such members of TdA . . . chargeable with actual hostility against the United States" and "a danger to the public peace or safety of the United States." *Id.*

The Proclamation adds that all such TdA members "are subject to immediate apprehension, detention, and removal." *Id.* To that end, the President directed the Attorney General and the Secretary of Homeland Security to, "*consistent with applicable law*, apprehend, restrain, secure, and remove every Alien Enemy described" above. *Id.* (emphasis added). Any such TdA member found within the United States is "subject to summary apprehension" under the Proclamation. *Id.* at 13,035. Alien enemies so apprehended may be detained until their removal to "any such location as may be directed" by the enforcing officers. *Id.* TdA members remain deportable under other authorities, including Title 8, as members of a foreign terrorist organization or otherwise. *See id.* at 13,034 (permitting Secretary of Homeland Security "discretion to apprehend and remove any Alien Enemy under any separate authority"); *see also* 8 U.S.C. §§ 1182(b)(3)(B), 1227(a)(4)(B). But the Proclamation permits a particularly expeditious, statutorily authorized removal method for individuals found to present serious national-security threats under specified circumstances.

B. The *J.G.G.* case[2]

On March 15, 2025, five aliens, nationals of Venezuela asserting fear of removal under the Proclamation, filed a putative class-action complaint along with a motion for a temporary restraining order ("TRO"). *J.G.G. v. Trump*, Case No. 25-cv-00766 (D.D.C.). The aliens also sought to certify a class of all noncitizens who were, are, or will be subject to the Alien Enemies Act Proclamation or its implementation. *J.G.G.*, Compl., ECF 1, ¶¶ 56–63.[3] The aliens sought relief in habeas and under the Administrative Procedure Act ("APA"), asking for an injunction barring enforcement of the Proclamation as contrary to the AEA, the INA, and other authorities. *Id.* ¶¶ 70–106. Finally, they asked for a TRO "barring their summary removal under the AEA." *J.G.G.*, ECF No. 3-2, at 2. Hours later, the district court granted a TRO as to the five aliens, *J.G.G.*, 2025 WL 825115 (D.D.C. Mar. 15, 2025), which the government immediately appealed.

At a hearing later that day, the aliens dismissed their habeas claims at the district court's suggestion. The district court then provisionally certified a class of "[a]ll noncitizens in U.S. custody who are subject to the March 15, 2025, Presidential Proclamation . . . and its implementation," and temporarily enjoined the government from removing class members not subject to removal under other authority. *J.G.G.*, 2025 WL 825116 (D.D.C. Mar. 15, 2025). The government immediately appealed that order.

After the D.C. Circuit denied the government's stay motions, the government applied to the Supreme Court to vacate the district court's TROs. The Court granted that application, holding that, because the aliens' claims "fall within the 'core' of the writ of habeas corpus and thus must be brought in habeas," "jurisdiction lies in only one district: the district of confinement." *Trump v. J.G.G.*, 604 U.S. ——, No. 29A931, 2025 WL

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[2] Since, *J.G.G.*, the United States Supreme Court has prohibited removals under the Alien Enemies Act absent further order of the Court. *See A.A.R.P. v. Trump*, 604 U.S._, 2025 WL 1147238 (April 19, 2025).

[3] Respondents request this Court take judicial notice of the contents of this document for background purposes only. *See* Fed. R. Evid. 201(b)(2), (c)(2).

1024097, at *1 (Apr. 7, 2025) (per curiam) (quoting *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)). The Court further held that the aliens are "entitled to notice and opportunity to be heard 'appropriate to the nature of the case,'" including notice "that they are subject to removal under" the AEA, "within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Id.* at *2 (quoting *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313 (1950)).

C. DHS's notice procedure

In accordance with the Supreme Court's decision in *J.G.G.*, the government has developed procedures for aliens newly subject to the Proclamation. More specifically, if ICE intends to detain or remove pursuant to the AEA, ICE officers will serve each alien individually with the Form AEA-21B, Notice and Warrant of Apprehension and Removal Under the Alien Enemies Act and it will be read and explained to each alien in a language that the alien understands. *See* Declaration of Jackson Lara "Lara Decl." at ¶ 9. ICE officers and staff are accustomed to working with aliens who do not understand English, many are proficient in one or more languages other than English, and all have access to languages assistance services, which covers more than 200 languages, including rare and Indigenous languages. *Id.* at ¶ 6.

Further, as part of this notice procedure, the alien is informed that he or she can make a telephone call to whomever he or she desires, including legal representatives. *Id.* at ¶ 10. ICE ensures that telephones are made available for the aliens and that the aliens have access to the telephone lines. *Id.* The alien will be afforded a requisite amount of time to not only express an intent to file a habeas petition but also to file the petition. *Id.* at ¶ 11. If the alien files a habeas petition, they will not be removed during its pendency. *Id.* at ¶ 12.

III. LEGAL STANDARD

The standard for issuing a temporary restraining order is "substantially identical" to the standard for issuing a preliminary injunction. *Stuhlbarg Int'l Sales Co. v. John D.*

Brush & Co., 240 F.3d 832, 839 n.7 (9th Cir. 2001). "[A] preliminary injunction is an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion." *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997) (emphasis in original) (internal quotations omitted); *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 22 (2008). In moving for a temporary restraining order or a preliminary injunction, plaintiffs "must establish that [they are] likely to succeed on the merits, that [they are] likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in [their] favor, and that an injunction is in the public interest." *Id.*

The Ninth Circuit has adopted a "sliding scale" test for issuing preliminary injunctions, under which "serious questions going to the merits and a hardship balance that tips sharply towards the plaintiff can support issuance of an injunction, assuming the other two elements of the *Winter* test are also met." *Alliance for Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131-32 (9th Cir. 2011) (emphasis added). Thus, Plaintiffs must show that the injunction or TRO is in the public interest and that there is a likelihood, not merely a possibility, of irreparable injury. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009).

IV. ARGUMENT

A. This Court lacks jurisdiction over Petitioner's claims

1. Petitioner has not demonstrated the imminent threat of injury necessary to establish standing for preliminary injunctive relief

Petitioner has not "b[orne] the burden of establishing standing" necessary for injunctive relief. *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quoting *Carney v. Adams*, 592 U.S. 53, 59 (2020)). Because he "must support each element of standing 'with the manner and degree of evidence required at the successive stages of the litigation,'" *id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)), "[a]t the preliminary injunction stage, then, [Petitioner] must make a 'clear showing' that [he is] 'likely' to establish each element of standing." *Id.* (*quoting Winter*, 555 U.S. at 22); *see also Yazzie*

v. Hobbs, 977 F.3d 964, 965 (9th Cir. 2020) ([Plaintiff] "must make a 'clear showing' of each element of standing" to maintain the preliminary injunction.); *Lopez-Venegas v. Beers*, 2013 WL 12474081, at *8-9 (C.D. Cal. Dec. 27, 2013) (finding that the individual plaintiffs did not have standing for prospective equitable relief because it was unlikely they would be coerced into choosing voluntary departure given their current knowledge).

Here, Petitioner has not shown that he is under an "actual and imminent" threat of suffering a "concrete and particularized" injury-in-fact. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009). In *Lopez-Venegas*, organizational plaintiffs and individual plaintiffs brought certain claims arising from the voluntary departure program.[4] *Lopez Venegas*, 2013 WL 12474081, at *1. More specifically, the individual plaintiffs alleged that they were coerced into accepting voluntary departure without proper notice of the legal consequences for doing so. *Id.* at *2. The Court held that the individual plaintiffs did not have standing because they could not establish a threat of future harm given their knowledge of the voluntary departure program, among other things, and therefore it would be unlikely that any of them would be coerced in the future into accepting voluntary departure without knowledge of the legal consequences. *Id.* at *9.

Here, it appears Petitioner's claim for injury is that he will be removed under the AEA without reasonable notice. However, this is purely speculative considering that Petitioner has not been designated pursuant to the Proclamation as an "alien enemy." Further, like the plaintiffs in *Lopez-Venegas*, DHS now has notice procedures in place to ensure Petitioner has an opportunity to challenge such designation ***if*** that ever happens and Petitioner now has the knowledge of the necessary steps to do so.

2. There is no jurisdiction to review the President's Proclamation

This Court lacks jurisdiction to review the Proclamation or enjoin the President's

[4] Under the Program, non-citizens unlawfully residing in the United States may voluntarily agree to leave by signing their own expulsion orders. *See Lopez-Venegas*, 2013 WL 12474081, at *1.

exercise of authority under Article II and the AEA. The Supreme Court has long recognized that courts cannot issue an injunction purporting to supervise the President's performance of his duties. *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867) (courts have "no jurisdiction . . . to enjoin the President in the performance of his official duties"); *Trump v. United States*, 603 U.S. 593, 607 (2024) (recounting that the President "has important foreign relations responsibilities: [including] . . . recognizing foreign governments . . . overseeing international diplomacy and intelligence gathering, and managing matters related to terrorism . . . and immigration"); *see also Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) ("With regard to the President, courts do not have jurisdiction to enjoin him.").

Consistent with that general rule, courts have held for over a century that the President's authority and discretion under the AEA is not a proper subject for judicial scrutiny: "The authority of the President to promulgate by proclamation or public act 'the manner and degree of the restraint to which they (alien enemies) shall be subject, and in what cases,' is, of course, plenary and not reviewable." *Ex parte Gilroy*, 257 F. 110, 112 (S.D.N.Y. 1919) (emphasis added); *see also id.* ("Once the person is an alien enemy, obviously the course to be pursued is essentially an executive function, to be exercised in the discretion of the President."); *see also, e.g.*, *Ludecke v. Watkins*, 335 U.S. 160, 163–64 (1948) (reasoning, on appeal from "[d]enial of a writ of habeas corpus," that "some statutes 'preclude judicial review'" and "the Alien Enemy Act of 1798 is such a statute," as demonstrated by the clear text and "controlling contemporary construction"); *id.* at 164–65 (noting that "every judge before whom the question has since come has held that the statute barred judicial review"); *United States ex rel. Schlueter v. Watkins*, 67 F. Supp. 556, 565 (S.D.N.Y. 1946) (reviewing habeas petition challenging detention as an alien enemy and explaining "courts are without power to review the action of the executive in ordering removal of an alien enemy . . . except with respect to . . . whether the relator is an enemy alien"), *aff'd*, 158 F.2d 853 (2d Cir. 1946); *United States ex rel. Schwarzkopf v. Uhl*, 137 F.2d 898, 900 (2d Cir. 1943) (similar).

Ultimately, "[t]he very nature of the President's power to order the removal of all enemy aliens rejects the notion that courts may pass judgment upon the exercise of his discretion." *Ludecke*, 335 U.S. at 164. For that reason, it has long been established that "[u]nreviewable power in the President . . . is the essence of the" AEA. *Citizens Protective League v. Clark*, 155 F.2d 290, 296 (D.C. Cir. 1946). This Court lacks power to review the President's Proclamation for another reason as well: Whether the AEA's preconditions are satisfied is a political question committed to the President's discretion, no different from the President's determination to trigger the Constitution's Invasion Clause (Article IV, section 4). *See United States v. Abbott*, 1110 F.4th 700, 728 (5th Cir. 2024) (Ho, J., concurring) (observing that "[c]ourts across the country have held that determining whether an invasion has occurred for purposes of Article IV, section 4 is a nonjusticiable political question," and collecting cases); *see also California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997) (collecting cases). Any challenge to that determination is therefore foreclosed. The Supreme Court has held that the political-question doctrine is "essentially a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 217 (1962). To guide courts, the Supreme Court identified six factors that indicate a question has been committed to the political branches. *See, e.g.*, *id.* at 217; *Kuwait Pearls Catering Co., WLL v. Kellog Brown & Root Servs., Inc.*, 853 F.3d 173, 178–79 (5th Cir. 2017). The President's determination under the AEA implicates at least two independently sufficient factors.

First, the determination that an "invasion" or "predatory incursion" is being perpetrated sits at the intersection of two areas the Constitution commits to the political branches: (1) foreign affairs, *see Barclays Bank PLC v. Franchise Tax Bd.*, 512 U.S. 298, 327–28 (1994); and (2) immigration policy, *see Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Indeed, "any policy towards aliens is vitally and intricately interwoven with contemporaneous policies in regard to the conduct of foreign relations, the war power, and the maintenance of a republican form of government. Such matters are so exclusively entrusted to the political branches of government as to be largely immune

from judicial inquiry or interference." *Harisiades v. Shaughnessy*, 342 U.S. 580, 588–89 (1952).

Second, even without the clear textual commitment to the Executive of the constitutional responsibilities undergirding issuance of the Proclamation, there are no manageable standards permitting courts to assess exactly when hostile entry and criminal and violent acts constitute an "invasion" or "predatory incursion" for AEA purposes. *See Martin v. Mott*, 25 U.S. 18, 31–32 (1827) (Story, J.). Thus, there is no basis for second-guessing the Executive's policy judgment that such an "invasion" or "predatory incursion" is occurring. *See Chi. & S. Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948) ("The President, both as Commander-in-Chief and as the Nation's organ for foreign affairs, has available intelligence services whose reports neither are nor ought to be published to the world. It would be intolerable that courts . . . should review and perhaps nullify actions of the Executive taken on information properly held secret.").

AEA proclamations are thus conclusive and preclusive. As for whether the Act's preconditions are satisfied, that is the President's call alone; the federal courts have no role to play.

3. This Court lacks jurisdiction to enjoin the transfer of Petitioner outside this district

The government may detain aliens pending removal proceedings under 8 U.S.C. § 1226(a) and removable aliens under § 1231(a). And the government must detain aliens who are inadmissible or removable under certain provisions. *See id.* §§ 1226(c)(1), 1231(a)(2)(A). This Court's temporary restraining order is therefore overbroad insofar as it restrains the government from acting according to those authorities for aliens detained under Title 8, which provides a separate source of authority from the AEA for detention and removal. *See J.G.G.*, 2025 WL 825116. Indeed, the INA bars this Court from entering injunctive relief with respect to transfers in two different ways.

First, under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in deciding where to detain Petitioner. The INA precludes review of "any . . . decision or action of

the Attorney General . . . the authority for which is specified under this subchapter to be in the discretion of the Attorney General . . . ." 8 U.S.C. § 1252(a)(2)(B)(ii). Therefore, § 1252(a)(2)(B)(ii) bars relief that would impact where and when to detain Petitioner. *See Van Dinh v. Reno*, 197 F.3d 427, 433–34 (10th Cir. 1999) (citing *Rios-Berrios v. INS*, 776 F.2d 859, 863 (9th Cir. 1985)) (finding that judicial review of decision to transfer a detainee is inappropriate due to lack of jurisdiction).

Second, § 1252(g) also bars enjoining transfers under Title 8. It prohibits district courts from hearing challenges to decisions and actions about whether, when, and where to commence removal proceedings. Reading the discretionary language in §§ 1231(g)(1) and 1252(g) together confirms that Congress foreclosed piecemeal litigation over where a detainee may be placed into removal proceedings. *See Liu v. INS*, 293 F.3d 36, 41 (2d Cir. 2002) (habeas petition "must not be construed to be 'seeking review of any discretionary decision'" (*quoting Chmakov v. Blackman*, 266 F.3d 210, 215 (3d Cir. 2001))), superseded by statute on other grounds as recognized by *Ruiz-Martinez v. Mukasey*, 516 F.3d 102, 113 (2d Cir. 2008); *see also Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002); *Tercero v. Holder*, 510 F. App'x 761, 766 (10th Cir. 2013) (Attorney General's discretionary decision to detain aliens is not reviewable by way of habeas.).

In the Court's TRO (Dkt. 11), the Court similarly conflates the jurisdictional arguments made by Respondents as the court did in *D.B.U.* Respondents contend that pursuant to the INA, the Court does not have jurisdiction to enjoin transfers under Title 8, as it relates to Petitioner's housing at Desert View Annex in Adelanto, California. *D.B.U. v. Trump*, 2025 WL 1163530 (D. Colo. April 22, 2025) suggests that the INA does not prohibit judicial review "as to questions of interpretation and constitutionality" of the Act, and therefore the Court has jurisdiction over the matter, including the discretionary decision to transfer among immigration detention facilities. However, these are two separate issues. While Respondents do not dispute that those detained under the AEA are entitled to limited judicial review, thereby conferring jurisdiction as to

questions of the AEA's interpretation and constitutionality as it applies to the individual petitioner, *see Trump v. J.G.G.*, 604 U.S._, 2025 WL1024097, at *2, this is distinct from the Court's jurisdiction as to where Petitioner can be transferred pending his Title 8 removal proceedings.

Accordingly, Congress has specifically barred judicial intervention with respect to the government's decision where to detain Petitioner. Therefore, this Court lacks jurisdiction to enter an order enjoining the government from transferring Petitioner from the Desert View Annex immigration detention facility and enjoining the government from transporting Petitioner outside of Adelanto, California.

B. Petitioner cannot succeed on the merits of his claims

1. The Proclamation comports with the requirements of the statute

In all events, the Proclamation and its implementation are perfectly lawful. The AEA grants the President discretion to issue a proclamation directing the apprehension, restraint, and removal of alien enemies when two conditions are met. First, there either must be "a declared war," "invasion," or a "predatory incursion" that is "perpetrated," "attempted," or "threatened against the territory of the United States." 50 U.S.C. § 21. Second, that hostile action must be by a "foreign nation" or "government." *Id.* The Proclamation satisfies both conditions.

a. TdA's actions constitute an invasion or predatory incursion

As to the first prerequisite, the President determined that TdA is perpetrating an invasion or a predatory incursion into the United States. Although the word "invasion" includes a military entry and occupation of a country, the accepted definition of that term is far broader, as definitions contemporaneous with the passage of the AEA make clear. "Invasion" was defined to include a "hostile entrance," *see, e.g.*, 1 John Ash, *The New and Complete Dictionary of the English Language* (1775), or a "hostile encroachment" on another's territory, *see* Thomas Sheridan, *A Complete Dictionary of the English Language* (2d ed. 1789). Nor is there any requirement that the purpose of the incursion be to possess or hold territory. *See, e.g., United States v. Texas,* 719 F. Supp. 3d 640, 681

(W.D. Tex. 2024). Here, the actions of TdA fit accepted conceptions of an invasion. TdA's encroachment on U.S. territory is a hostile act contrary to the rights of citizens to be free from criminality and violence. *See* Smith Decl. ¶¶ 8–18.

At a minimum, the actions of TdA constitute a "predatory incursion" that justifies invocation of Section 21. The phrase "predatory incursion" encompasses (1) an entry into the United States (2) for purposes contrary to the interests of the United States. *See, e.g.,* A*maya v. Stanolind Oil & Gas Co.*, 62 F. Supp. 181, 189–90 (S.D. Tex. 1945) (noting use of the phrase to describe raids during hostilities with Mexico falling well short of "invasion"); *see also Davrod Corp. v. Coates*, 971 F.2d 778, 785 (1st Cir. 1992) (using the phrase to refer to foreign fishing fleets unlawfully fishing in territorial waters); *Bas v. Tingy*, 4 U.S. (4 Dall.) 37 (1800) (broadly defining "enemy" and "war"). Here, there is no question that TdA members have effected entries into the United States and that those entries are contrary to both the interests and laws of this country: trafficking in substances and people, committing violent crimes, and conducting business with interests antithetical to those of the United States. *See* 90 Fed. Reg. at 13,034.

b. Given its intimate connection to Venezuela, TdA is a foreign nation or government for purposes of 50 U.S.C. § 21

The Proclamation makes clear that TdA qualifies as a "foreign nation or government" for at least two independent reasons. First, TdA's infiltration of key elements of the Venezuelan state, make it indistinguishable from Venezuela. *See Proclamation*. TdA's growth itself can be attributed to promotion via the actions of former Governor of Aragua Tareck El Aissami, who was later appointed Vice President in the Maduro regime. 90 Fed. Reg. at 13,033. And Maduro's connections to the group, via the regime-sponsored narco-terrorism enterprise Cártel de los Soles, are also clear. *Id.* The Cártel de los Soles "coordinates with and relies on TdA . . . to carry out its objective of using illegal narcotics as a weapon to 'flood' the United States." *Id.* Given how significantly TdA is intertwined in the fabric of Venezuela's structures, it functions as a governing entity. And through those ties, TdA has become indistinguishable from

the Venezuelan state.

Further, the United States has a long history of using war powers against formally nonstate actors. Historically, the United States authorized the use of force against "slave traders, pirates, and Indian tribes." Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2066 (2005). It has engaged militarily, during broader armed conflicts, with "opponents who had no formal connection to the state enemy," including during the Mexican– American and Spanish–American Wars. *Id.* at 2066–67. President Wilson famously sent U.S. troops into Mexico to pursue Pancho Villa, the leader of rebels opposed to the Mexican government. *Id.* at 2067. And more recently, President Clinton authorized missile strikes on al Qaeda targets in Africa and elsewhere. *See generally El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836 (D.C. Cir. 2010). This history is important because statutes must be read "but with reference to the statutory context, 'structure, history, and purpose.'" *Abramski v. United States*, 573 U.S. 169, 179 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The AEA is a war powers statute and thus must be read in light of a robust history of employing war powers against nonstate actors.

In all events, TdA also acts as a governing authority in the areas where it operates. As the Proclamation recognizes, "Venezuelan national and local authorities have ceded ever-greater control over their territories to transnational criminal organizations, including TdA." 90 Fed. Reg. at 13,033. In those areas where it operates, TdA acts as a criminal governing entity, independent or in place of the normal civil society and government. *See id.* Given TdA's governance and organizational structure, as well as its *de facto* control over parts of Venezuela where it operates with impunity, it is well within the President's discretion to determine it constitutes a foreign "government" for purposes of invoking § 21.

2. The AEA Notice Procedures Comport With Due Process

The due process owed under the AEA is "flexible and calls for such procedural protections as the particular situation demands." *Morrissey v. Brewer*, 408 U.S. 471, 481

(1972). The government believes that, in most removals pursuant to the Alien Enemies Act, 24 hours will suffice to provide notice prior to removal. This amount of notice has been deemed sufficient in an analogous context.

Take expedited removal under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, § 305(a)(3), 110 Stat. 3009-546, 602. The entire purpose of the Act was to "substantially shorten and speed up the removal process" for those "who [are] arriving in the United States[,]" or have not shown that they were "physically present in the United States continuously for the 2-year period immediately prior to the date of the determination of inadmissibility." *Make the Rd. N.Y. v. Wolf*, 962 F.3d 612, 618–19 (D.C. Cir. 2020) (quoting 8 U.S.C. § 1225(b)(1)(A)(i), (iii)). If an immigration officer determines that an alien is inadmissible because they do not have valid entry documents, the "officer shall order the alien removed . . . without further hearing or review unless the alien indicates either an intention to apply for asylum . . . or a fear of persecution." 8 U.S.C. § 1225(b)(1)(A)(i). Even if the individual claims asylum or a fear of persecution, the "process is scarcely more involved" because the immigration officer can quickly deny the claim. *Make the Rd. N.Y.*, 962 F.3d at 618–19 (citing 8 U.S.C. § 1225(b)(1)(B)(iii)(III)). In fact, Congress was explicit on how fast this process was supposed to be: "Review shall be concluded as expeditiously as possible, to the maximum extent practicable within 24 hours, but in no case later than 7 days after the date of the determination under subclause (I)." 8 U.S.C. § 1225(b)(1)(B)(iii)(III).

The D.C. Circuit[5] has held that this suffices for due process. *See Am. Immigr. Laws. Ass'n v. Reno*, 18 F. Supp. 2d 38, 58 (D.D.C. 1998), *aff'd*, 199 F.3d 1352, 1357 (D.C. Cir. 2000) (affirming "the dismissal of these claims substantially for the reasons

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[5] Under 8 U.S.C. § 1252(e)(3), a person may challenge the constitutionality and legality of the expedited removal provisions, regulations implementing those provisions, or written policies to implement the provisions. Such challenges, however, ***must be brought within 60 days after implementation and only in the District of Columbia***. *Id.* § 1252(e)(3)(A)–(B).

stated in the court's thorough opinion"). This was because the Supreme Court has been clear that "the power to expel or exclude aliens is a fundamental sovereign attribute exercised by the Government's political departments, largely immune from judicial control." *Id.* (*quoting Fiallo v. Bell*, 430 U.S. 787, 792 (1977)). Additionally, several circuit courts of appeal that have considered the constitutionality of such provisions have all concluded that the expedited removal process comports with due process. *See United States v. Garcia–Martinez*, 228 F.3d 956, 961 (9th Cir. 2000); *United States v. Rangel de Aguilar*, 308 F.3d 1134, 1138 (10th Cir. 2002); *United States v. Benitez–Villafuerte*, 186 F.3d 651, 659 (5th Cir. 1999). This makes sense and is what this situation demands given that arriving aliens do not have the same due process rights.[6] *See DHS. v. Thuraissigiam*, 140 S.Ct. 1959, 1982 (2020) (explicitly rejecting the court's holding that an arriving alien has a "constitutional right to expedited removal proceedings that conformed to the dictates of due process").

That logic applies equally here: "[w]hatever the procedure authorized by Congress is, it is due process." *Thuraissigiam*, 591 U.S. 103, 139 (2020) (*quoting United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537, 544 (1950)) (holding that expedited removal does not violate the Suspension Clause for similar reasons). Indeed, much like with the AEA, the Executive has wide "sole and unreviewable discretion" to determine who is subject to the two-year period for expedited removal. 8 U.S.C. § 1225(b)(1)(A)(iii)(I). And like in this case, "'[j]udicial review' of expedited removal orders is only 'available in habeas corpus proceedings.'" *I.M. v. CBP*, 67 F.4th 436, 437–38 (D.C. Cir. 2023) (quoting 8 U.S.C. § 1252(e)(2)). If 24 hours suffices to satisfy due process for someone who may have resided in the United States for two years, then surely it is sufficient for those who have been designated enemies of the nation by the Commander in Chief. It would be perverse to hold otherwise. Accordingly, if the government provides 24 hours of notice in this context, there is no due process issue.

[6] Petitioner is considered an arriving alien as defined under 8 U.S.C. § 1001.1(q).

3. Any claim of insufficient notice is speculative

To the extent Petitioner argues that DHS' notice procedure is inadequate, this claim is speculative. As an initial matter, the AEA permits absolute discretion to establish the conditions and processes the Executive will use to implement a Presidential Proclamation. *See* 50 U.S.C. § 21; *Schlueter*, 158 F.2d at 853 (the AEA authorizes "the making of an order of removal of an alien enemy without a court order and without a hearing of any kind"); *see also Ludecke*, 335 U.S. at 162–63 (noting the entirely administrative process established for determining whether an individual was an alien enemy). The only process due those deemed to fall within the scope of the Proclamation is notice and an opportunity to challenge that designation through habeas relief, where any "questions of interpretation and constitutionality" of the AEA must also be raised. *J.G.G.*, 2025 WL 1024097, at *2.

In any case, Petitioner will receive all the process due: "notice . . . that [he is] subject to removal under" the AEA, "afforded within a reasonable time and in such a manner as will allow [him] to actually seek habeas relief in the proper venue before such removal occurs." *Id.* at *2; *see generally* Lara Decl. The procedures provide the reasonable notice the Supreme Court contemplated. The government is not required to provide procedures that a reviewing court or Petitioner find "preferable"; instead, a court "must evaluate the particular circumstances and determine what procedures would satisfy the minimum requirements of due process." *Landon v. Plasencia*, 459 U.S. 21, 35 (1982).

C. The remaining equitable factors weight strongly in the government's favor

1. Petitioner cannot establish irreparable harm

Petitioner cannot establish irreparable harm based on DHS' notice procedures. The Court in its decision granting the TRO found that Petitioner established irreparable harm because if he were removed pursuant to the AEA he would be unable to seek habeas relief. *See* Dkt. 11 at 6. However, this is no longer the case. As discussed above,

Petitioner will be afforded the opportunity to pursue habeas relief ***if*** Respondents decide to remove him under the AEA.

2. The balance of equities and public interest favor denial of preliminary injunctive relief

The balance of harms and the equities strongly favor the government here as an injunction irreparably harms the conduct of foreign policy. An injunction effectively usurps the President's statutory and constitutional authority to address what he has identified as an invasion or predatory incursion by a group undertaking hostile actions and conducting irregular warfare. Such an injunction "deeply intrudes into the core concerns of the executive branch," *Adams*, 570 F.2d at 954, and frustrates the "public interest in effective measures to prevent the entry of illegal aliens," *United States v. Cortez*, 449 U.S. 411, 421 n.4 (1981). The Executive's protection of these interests, including "sensitive and weighty interests of national security and foreign affairs" inherent to combating terrorist groups, warrants the utmost deference. *Humanitarian Law Project*, 561 U.S. at 33–35; *see also Barr v. DOJ*, 819 F.2d 25, 26 (2d Cir. 1987).

Additionally, the Supreme Court has warned of "the danger of unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013); *Biden v. Texas*, 597 U.S. 785, 816 (2022) (Kavanaugh, J., concurring) ("Nothing in the relevant immigration statutes . . . suggests that Congress wanted the Federal Judiciary to improperly second-guess the President's Article II judgment with respect to American foreign policy and foreign relations."). An injunction does just that, impeding the Executive's ability to swiftly remove alien enemies under the Proclamation. *See, e.g.,* N*ken v. Holder,* 556 U.S. 418, 436 (2009) (noting there "is always a public interest in prompt execution of removal orders" even where an alien asserts a risk of harm, and the interest "may be heightened" if "the alien is particularly dangerous"). An injunction also risks compromising the ability of the United States to negotiate in the future on key foreign-affairs and national-security issues, as foreign actors may "change their minds regarding their willingness to accept" alien enemies or

might otherwise seek to "leverage [any delay] as an ongoing issue." Kozak Decl. ¶¶ 3, 4.

Because Petitioner has not shown the balance of the equities and public interest lies in his favor, he has not made this essential showing for injunctive relief.

Dated: May 2, 2025

Respectfully submitted,

BILAL A. ESSAYLI
United States Attorney
DAVID M. HARRIS
Assistant United States Attorney
Chief, Civil Division
JOANNE S. OSINOFF
Assistant United States Attorney
Chief, Complex and Defensive Litigation Section

/s/ *Christina Marquez*
CHRISTINA MARQUEZ
Assistant United States Attorney

Attorneys for Respondents

Certificate of Compliance under L.R. 11-6.2

The undersigned, counsel of record for Defendant, certifies that this brief contains 6,733 words, which complies with the word limit of L.R. 11-6.1.

Dated: May 2, 2025

/s/ Christina Marquez

CHRISTINA MARQUEZ
Assistant United States Attorney