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8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 DARWIN ANTONIO AREVALO
11 MILLAN, on his own behalf and on behalf
12 of others similarly-situated

13 *Petitioner-Plaintiff,*

14 vs.

15 DONALD J. TRUMP, in his official
16 capacity as President of the United States;
17 PAMELA BONDI, Attorney General of
18 the United States, in her official capacity;
19 KRISTI NOEM, Secretary of the U.S.
20 Department of Homeland Security, in her
21 official capacity; U.S. DEPARTMENT OF
22 HOMELAND SECURITY; PETE
23 HEGSETH, Secretary of the U.S.
24 Department of Defense, in his official
25 capacity; U.S. DEPARTMENT OF
26 DEFENSE; MARCO RUBIO, Secretary of
27 State, in his official capacity; U.S.
28 DEPARTMENT OF STATE; TODD
LYONS, Acting Director of U.S.
Immigration and Customs Enforcement, in
his official capacity; U.S.
IMMIGRATION AND CUSTOMS
ENFORCEMENT; DAVID MARIN, in
his official capacity as Director of the Los
Angeles Field Office Director for U.S.
Immigration and Customs Enforcement;
FERETI SEMAIA, in his official capacity
as Warden of the GEO Group Adelanto
ICE Processing Center and Desert View
Annex; and DOES 1-10

Respondents-Defendants.

Case No.: 5:25-cv-01207

**PETITION FOR WRIT OF HABEAS
CORPUS AND CLASS ACTION
COMPLAINT FOR DECLARATORY
AND INJUNCTIVE RELIEF**

INTRODUCTION

1. Petitioner-Plaintiff Darwin Antonio Arevalo Millan (“Darwin” or “Petitioner”) is a Venezuelan man in immigration custody at risk of imminent removal under the president’s Proclamation 10903 entitled “Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua,” which invokes the Alien Enemies Act (“AEA”). Exec. Proclamation 10903, 90 Fed. Reg. 13033. At least 278 people have been removed, disappeared, or extraordinary renditioned to El Salvador’s super-max prison known as CECOT including the 137 Venezuelans originally removed under the AEA.

2. Darwin is not a member of Tren de Aragua (“TdA”). Darwin is a vocal dissident of the Venezuelan government who has an active political asylum claim in the United States for speaking out about the oppression he experienced in Venezuela as a bus driver. Darwin has explained that if he is returned to Venezuela he credibly fears he will be charged with treason or sedition for speaking out about the corruptions of the Venezuelan government. His political asylum claim that includes other bases of asylum relief is still open and may result in a grant of asylum, i.e., refugee status, withholding of removal, or protection under the Convention Against Torture once it is adjudicated by a duly constituted immigration court.

3. Darwin was previously granted parole, a permit authorizing him to work legally in the United States pending review of his duly filed asylum application, and he secured a job to support himself and some members of his family who are also in the United States seeking asylum or other immigration relief.

4. There is no reason for Darwin to be in custody.

5. At a scheduled ICE check-in, Darwin was arrested and put back into detention at the Desert View Annex or Desert View Modified Community Correctional Facility, a part of or associate of the Adelanto ICE Processing Center owned by GeoGroup.

1 6. Darwin was not served any warrant, I-200, or any other paperwork informing
2 him about why he was arrested or how long he would be held. However, he was told
3 that he was arrested for being a Venezuelan with tattoos that reference basketball that
4 include a crown tattoo on his shoulder that emulates Kobe Bryant's crown tattoo,
5 which, he was told, could indicate that he was affiliated with TdA. He was also
6 wearing athletic shoes at the time and socks with the number 23 on them referencing
7 Michael Jordan. See Exhibit A (depicting true and accurate screen shots and images
8 taken of Darwin and the Delfines de Anoco from their public facing Facebook pages
9 found, respectively, at <https://www.facebook.com/darwin.arevalo.984/photos>, and
10 <https://www.facebook.com/profile.php?id=100009146108071> respectively, accessed
11 by counsel on May 16, 2025).

12 7. It is well known that Donald Trump despises the National Basketball
13 Association ("NBA"). @realDonaldTrump, X,
14 <https://x.com/realDonaldTrump/status/1300778602301190144> ("People are tired of
15 watching the highly political @NBA. Basketball ratings are WAY down, and they
16 won't be coming back.").

17 8. On or around April 30, 2025, Darwin was put "in transfer" from the Desert
18 View Annex to another building in the Adelanto ICE Processing Center apparently
19 due to a COVID outbreak. When asked about specifics regarding whether Darwin
20 was exposed to COVID, tested positive for COVID, or experiencing symptoms of
21 COVID counsel was not told anything and Health Insurance Portability and
22 Accountability Act ("HIPPA") was cited as a reason for not saying. This COVID
23 issue and HIPPA may be a pretext to transfer Darwin out somewhere without
24 notifying his family or attorneys, or it may be a part of a shell game to obstruct this
25 filing.

26 9. On May 10, 2025, counsel visited Darwin who was in the Adelanto ICE
27 Processing Center. At that visit Darwin credibly reported that he did not have
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1 COVID, but that he and many others were moved due to the apparent pretext of
 2 COVID danger. Darwin expressed his fears about being disappeared to El Salvador
 3 or somewhere else without notice or an opportunity to be heard by an impartial
 4 decision maker and explained that staying in ICE detention has been harsher, more
 5 degrading, and more difficult to live through than being held in a makeshift prison by
 6 a drug cartel, which he says happened to him and was one reason he traveled to the
 7 United States to seek refuge.

8 10. In an executive order entitled “Protecting the American People Against
 9 Invasion” and a memo directing his administration to expand the use of Guantanamo
 10 Bay to house immigrants and the use of military planes to deport immigrants to
 11 foreign nations and by deploying the military to the U.S.-Mexico border, President
 12 Trump clarified that his executive power to detain, remove, disappear, and
 13 extraordinary rendition immigrants, including asylum seekers like Darwin, should be
 14 maximized by invoking war powers to incentivize immigrants not to immigrate to the
 15 United States and to strong arm foreign nations into acquiescing to an influx of U.S.
 16 deportees—something the U.S. Supreme Court appears to have determined that
 17 foreign countries have the sovereign power to reject if they choose. Exec. Order No.
 18 14159, 90 Fed. Reg. 8443; *Expanding Migrant Operations Center at Naval Station*
 19 *Guantanamo Bay to Full Capacity*, WHITE HOUSE (Mem.) (Jan. 29, 2025),
 20 <https://perma.cc/C3Q5-EGMW>; see *Biden v. Texas*, 597 U.S. 785, 806 (2022)
 21 (refusing “to force the Executive to the bargaining table with Mexico, over a policy
 22 that both countries wish to terminate”); Maichal Rios & Omar Fajardo, *First*
 23 *Deportation Flight Lands in Venezuela From US, After Countries Agree to Resume*
 24 *Repatriations*, CNN: WORLD (Mar. 24, 2025, 4:37 AM),
 25 [https://www.cnn.com/2025/03/24/americas/venezuela-us-deportees-flight-latam-intl-](https://www.cnn.com/2025/03/24/americas/venezuela-us-deportees-flight-latam-intl-hnk)
 26 [hnk](https://www.cnn.com/2025/03/24/americas/venezuela-us-deportees-flight-latam-intl-hnk); cf. Foreign Sovereign Immunities Act, 28 U.S.C. § 1330 *et seq.*

1 11. These constitutionally questionable and arguably illicit, criminal, and
2 dangerous efforts to deter legal asylum seekers from entering the United States to
3 duly assert asylum claims is an extraordinary act of self-harm inflicted by the
4 president upon the United States as a whole that will not only destroy the human
5 rights of thousands of individuals, support dictators across the world including the
6 Maduro regime by harming their detractors including Darwin, and harm the
7 reputation of the United States as an asylum for humankind, but it will also demolish
8 trillions of dollars of value imported every year by immigrants to this country.
9 Michael Clemens, *Economics and Emigration: Trillion-Dollar Bills on the*
10 *Sidewalk?*, CFGD Working Paper 264, at 3 (Aug. 2011),
11 [https://www.cgdev.org/sites/default/files/1425376_file_Clemens_Economics_and_E](https://www.cgdev.org/sites/default/files/1425376_file_Clemens_Economics_and_Emigration_FINAL.pdf)
12 [migration_FINAL.pdf](https://www.cgdev.org/sites/default/files/1425376_file_Clemens_Economics_and_Emigration_FINAL.pdf) (noting that the United States stands to lose “tens of trillions of
13 dollars” by continuing to exclude immigrants).

14 12. U.S. policies of immigrant exclusion and expulsion are imposed upon weaker
15 foreign nations and enforced through executive agreements largely founded upon
16 fraud, extortion, and duress that could imbrue the United States in wars abroad and
17 therefore likely exceed the broad executive powers of peace recognized in *Curtiss-*
18 *Wright*. *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936)
19 (acknowledging broad powers of the president to block sales of machine guns in
20 foreign countries without Congress’s permission, but limiting this power to measures
21 of peace); *see U.S. CONST. art. VI*, cl.2 (explicitly *not* including executive agreements
22 as supreme laws of the land); *cf. Little v. Barreme*, 6 U.S. 170, 179 (1804) (noting
23 that presidential orders that tend toward international violence, unrest, and war are a
24 mere trespass suable in court when not supported by a duly enacted law of Congress
25 for such acts ordered to take place on the high seas).

26 13. It is well known that similar policies in the 1930s, known as the Mexican
27 Repatriation program, candidly entrenched the economic tribulations experienced by
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1 common white working class individuals during the Great Depression. Jongkwan
2 Lee et al., *The Employment Effects of Mexican Repatriations: Evidence from the*
3 *1930's*, NBER Working Paper 23885, at 24 (2017),
4 https://www.nber.org/system/files/working_papers/w23885/w23885.pdf; cf. David
5 Card, *Immigrant Inflows, Native Outflows, and the Local Labor Market Impacts of*
6 *Higher Immigration*, 19 J. LABOR ECON. 22, 56–58 (2001).

7 14. California apologized for its error of supporting and carrying out the Mexican
8 Repatriation Program, and directed California to properly value the presence of
9 immigrants accordingly, which remains the applicable law in the Central District of
10 California when in conflict with mere executive agreements and policies. Cal. Gov.
11 Code § 7284 et seq.; Cal. Gov. Code § 8720 et seq.

12 15. Also, California independently requires a warrant, probable cause, and
13 particularity in its Constitution. CAL. CONST., art. I, § 13.

14 16. The Adelanto ICE Processing Center and Desert View Annex is in the Central
15 District of California and under *J.G.G. v. Trump*, this Central District is the proper
16 venue for this writ, however, if a writ is improvidently filed in the wrong venue
17 *Boumediene v. Bush* resolved the venue issue raised in *Rumsfeld v. Padilla* according
18 to *Braden v. 30th Jud. Cir. Ct. Ky.*, requiring the government to file for a change in
19 venue and the dicta in *A.A.R.P.* guessing at the failure of the writ itself due to this
20 basic filing issue is properly answered by *Boumediene* in favor of continuing the writ
21 to whatever jurisdiction is proper. *J.G.G. v. Trump*, No. 24A931, slip op. at 2 (2025)
22 (citing *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004)); *Boumediene v. Bush*, 553
23 U.S. 723, 796 (2008) (“If, in a future case, a detainee files a habeas petition in
24 another judicial district in which a proper respondent can be served ... *the*
25 *Government* can move for change of venue ...” (emphasis added)), *extending*
26 *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 499, n.15 (1973).

1 17. The Adelanto ICE Processing Center and Desert View Annex, its owners,
2 employees, the government officials it contracts and coordinates with named as
3 Respondents in this petition are specifically detaining Darwin according to active
4 military proclamation, orders, memoranda, and other executive actions designed to
5 thwart a perceived "invasion" of Venezuela *specifically* by and through its unofficial
6 military arm TdA, consequently making Darwin an enemy of the state without equal
7 protection of the law, due process, a trial, a warrant, notice, or any legal process
8 whatsoever, a minimum which is mandated by the Refugee Act, the UN Convention
9 Against Torture, Article 26 of the U.S.-Venezuela Treaty of Peace, Friendship,
10 Navigation and Commerce of May 31, 1836, 12 Bevans 1038, 18 Stat. 787, Article 3
11 of the Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug.
12 12, 1949, [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No. 3364, and the AEA. *See*
13 *Boumediene v. Bush*, 553 U.S. 723, 783 (2008) ("Where a person is detained by
14 executive order, rather than, say, after being tried and convicted in a court, the need
15 for collateral review is most pressing.").

16 18. The Adelanto ICE Processing Center and Desert View Annex, its owners,
17 employees, the government officials it contracts and coordinates with named as
18 Respondents in this petition are specifically detaining Darwin according to active
19 military proclamation, orders, memoranda, and other executive actions designed to
20 thwart a perceived "invasion" of immigrants *generally*, consequently treating Darwin
21 as an enemy of the state without equal protection of the law, due process, a trial, a
22 warrant, notice, or any legal process whatsoever, a minimum which is mandated by
23 the Refugee Act, the UN Convention Against Torture, Article 26 of the U.S.-
24 Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836,
25 12 Bevans 1038, 18 Stat. 787, Article 3 of the Geneva Convention (III) Relative to
26 the Treatment of Prisoners of War, Aug. 12, 1949, [1955] 6 U.S.T. 3316, 3318,
27 T.I.A.S. No. 3364, and the AEA. *See id.*

19. The Adelanto ICE Processing Center and Desert View Annex, its owners, employees, the government officials it contracts and coordinates with named as Respondents in this petition are an active military detention facility composed under the AEA, the Immigration & Nationality Act (“INA”) as amended by the USA PATRIOT Act and the Authorizations for Use of Military Force (“AUMF”) of 2001 and 2002. *See id.*; cf. Bryan Schatz, *Our Immigration Courts Aren’t Ready to Handle Millions of Deportations*, MOTHER JONES (Mar. 31, 2017), <https://perma.cc/EQ4A-LMBD> (quoting IJ Hon. Dana Leigh Marks: “‘The ‘deployment’ of judges to the border . . . does imply a military force”).

20. The Respondents’ implementing regulations, notices, orders, proclamations, memoranda, and other executive acts to thwart an invasion of Hispanic immigrants generally, and Venezuelan members of TdA specifically, by disappearing people to the U.S. contractor CECOT in El Salvador, to the U.S. military prison in Guantanamo Bay, and to other black site prisons open for presidential use, was to create a pretext for the suspension of habeas corpus by admitting the allegations in paragraph 19. Exec. Proclamation 10903, 90 Fed. Reg. 13033; *Expanding Migrant Operations Center at Naval Station Guantanamo Bay to Full Capacity*, WHITE HOUSE (Mem.) (Jan. 29, 2025), <https://perma.cc/C3Q5-EGMW>; Kathryn Watson, *Trump Administration “Actively Looking” at Suspending Habeas Corpus to Deport Migrants*, Stephen Miller Says, CBS NEWS (May 9, 2025, 5:40 PM), <https://www.cbsnews.com/news/stephen-miller-says-trump-administration-actively-looking-at-suspending-habeas-corpus-to-deport-migrants/>; *see also* Mike Levine, *Trump “Border Czar” Tells ABC Military Planes Will Deport Migrants Every Day*, ABC NEWS (Jan. 24, 2025, 3:06 PM), <https://abcnews.go.com/Politics/trump-border-czar-tells-abc-military-planes-deport/story?id=118065503>.

21. The Respondents’ implementing regulations, notices, orders, proclamations, memoranda, and other executive acts to thwart an invasion of Hispanic immigrants

1 for eugenic purposes. *Compare* Exec. Order No. 14204, 90 Fed. Reg. 9497 (“[T]he
 2 United States shall promote the resettlement of Afrikaner refugees escaping
 3 government-sponsored race-based discrimination, including racially discriminatory
 4 property confiscation.”), *with* Exec. Order No. 14159, 90 Fed. Reg. 8443, and Exec.
 5 Proclamation 10903, 90 Fed. Reg. 13033; *cf.* Susan Currell, “*This May Be the Most*
 6 *Dangerous Thing Donald Trump Believes*”: *Eugenic Populism and the American*
 7 *Body Politic*, 42 AM. STUD. 291, 292 (2019); *Buck v. Bell*, 274 U.S. 200, 207 (1927)
 8 (“It is better for all the world if, instead of waiting to execute degenerate offspring for
 9 crime or to let them starve for their imbecility, society can prevent those who are
 10 manifestly unfit from continuing their kind.”), *extended by* *Madrigal v. Quilligan*,
 11 1978 U.S. Dist. LEXIS 20423 (C.D. Cal. 1978) (cataloguing and endorsing a system
 12 for the forced sterilization of Latinas in the Los Angeles), *arguably made*
 13 *unconstitutional by* CAL. CONST. art. I, § 1.1 (enshrining a “fundamental right to
 14 choose or refuse contraceptives”).

15 22. It appears that these eugenic purposes, at least in the granting of refugee status
 16 to people who enforced or participated in eugenic systems of injustice, are explicitly
 17 declared unlawful by the INA. 8 U.S.C. § 1101(a)(42)(B) (“The term ‘refugee’ does
 18 not include any person who ordered, incited, assisted, or otherwise participated in the
 19 persecution of any person on account of race, religion, fear of persecution on account
 20 of race, religion, nationality, membership in a particular social group, or political
 21 opinion.”).

22 23. The U.S. Supreme Court famously decided that eugenic policies violate the
 23 Equal Protection Clause stating: “In evil or reckless hands, it can cause races or types
 24 which are inimical to the dominant group to wither and disappear. There is no
 25 redemption for the individual it touches. Any experiment which the State conducts is
 26 to his irreparable injury. He is forever deprived of a basic liberty.” *Skinner v.*
 27 *Oklahoma ex rel. Williamson*, 316 U.S. 535, 541 (1942).

1 24. The Supreme Court reached this decision by building upon previous cases of
2 Chinese immigrants who sought and were granted equal protection and due process
3 of the law under the Fourteenth Amendment. *Id.* (citing *Yick Wo v. Hopkins*, 118
4 U.S. 356, 369 (1886) (quoting U.S. CONST. amend. XIV)).

5 25. The Supreme Court also laid the groundwork of the congressional arbitrary and
6 capricious standard by drawing from immigration sources that required a resort to
7 federal court review whenever the president or Congress threatens “to sap the judicial
8 power as it exists under the federal Constitution . . . to establish a government of a
9 bureaucratic character alien to our system.” *Crowell v. Benson*, 285 U.S. 22, 57
10 (1932) (citing *Ng Fung Ho v. White*, 259 U.S. 276, 285 (1922)); *cf.* James E. Pfander,
11 *Article I Tribunals, Article III Courts, and the Judicial Power of the United States*,
12 118 HARV. L. REV. 643, 659 (2004) (noting that “*Crowell* . . . provided the foundation
13 for much of the modern administrative state”); *Wong Yang Sung v. McGrath*, 339
14 U.S. 33, 37 (1950).

15 26. It appears that common law review in this Court according to *Crowell* is now
16 mandated to review Darwin’s fundamental rights. *Crowell*, 285 U.S. at 57; *see* *Loper*
17 *Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024) (“*Chevron* is overruled.”);
18 *SEC v. Jarkesy*, 603 U.S. 109, 140 (2024) (“When a matter ‘from its nature, is the
19 subject of a suit at the common law,’ Congress may not ‘withdraw [it] from judicial
20 cognizance.’” (quoting *Murray’s Lessee, v. Hoboken Land & Improv. Co.*, 59 U.S.
21 272, 284 (1855))).

22 27. Prudential barriers including exhaustion and political question doctrine are
23 irrelevant here. *Boumediene*, 553 U.S. at 751 (“The prudential barriers that may have
24 prevented the English courts from issuing the writ to Scotland and Hanover are not
25 relevant here.” (distinguishing *Rex v. Cowle* (1759) 2 Burr. 834, 854–56 (Eng.))); *id.*
26 795 (“[Habeas petitioners] need not exhaust the review procedures in the Court of
27 Appeals before proceeding with their habeas actions in District Court”—“Our
28

1 holding with regard to exhaustion should not be read to imply that a habeas court
2 should intervene the moment an enemy combatant steps foot in a territory where the
3 writ runs. The Executive is entitled to a reasonable period of time to determine a
4 detainee's status before the court entertains that detainee's habeas corpus petition.”).

5 28. Exhaustion, here, through bond or custody hearings is futile and would not
6 provide any of the requested relief to Darwin or the class according to a Board of
7 Immigration Appeals decision *Matter of LI*, which has nationwide effect allowing
8 such warrantless, indefinite detentions without bond, and if there is any decision by
9 the U.S. Supreme Court denying nationwide injunctions as requested here this is a
10 distinguishing nationwide factor arising from the nationwide structure of EOIR
11 review that should allow and require a nationwide injunction here. *Matter of LI*, 29
12 I&N Dec. 66, 70–71 (BIA 2025).

13 29. Darwin is currently detained without reason for an indefinite term awaiting
14 review in a constitutionally defunct tribunal, the Executive Office for Immigration
15 Review (“EOIR”), that at best could take years and at worst could last his entire life,
16 during which he has no right to counsel, there are no rules of evidence, no impartial
17 decision maker, and where the government is a judge in its own case.

18 30. It is well known that EOIR openly defies the U.S. Supreme Court's decisions
19 in *Niz-Chavez v. Garland* and *Pereira v. Sessions*, both decisions mandating the
20 government to comply with basic, unambiguous requirements of law. *Matter of R-T-*
21 *P-*, 28 I&N Dc. 828, 835, 842 (BIA 2024) (allowing the Immigration Judge to fix the
22 errors in the charging document known as a Notice to Appear for the government ad
23 hoc after observing that *Niz-Chavez* is still being violated stating: “DHS did not
24 satisfy the single document requirement in *Niz-Chavez* and incorrectly provided a
25 date and time for a hearing that had already taken place” and finding that compliance
26 with IIRIRA and U.S. Supreme Court precedent is not required to maintain
27 jurisdiction in EOIR), *observing and endorsing the continued violation of Niz-*
28

1 Chavez v. Garland, 593 U.S. 155, 172 (2021) (“If men must turn square corners when
2 they deal with the government, it cannot be too much to expect the government to
3 turn square corners when it deals with them.”), and *Pereira v. Sessions*, 585 U.S. 198,
4 204–05 (2018).

5 31. Furthermore, Darwin is at imminent risk of removal, disappearance, or
6 extraordinary rendition to a foreign black site including Guantanamo Bay, CECOT in
7 El Salvador, or another foreign black site prison available for presidential use
8 according to Proclamation 10903, which was issued under the AEA, invoking war
9 powers without a declaration of war or any actual invasion or predatory incursion
10 according to terrorist designations made under the INA as amended by the USA
11 PATRIOT Act, the AUMFs of 2001 and 2002 and their implementing regulations,
12 notices, orders, proclamations, memoranda, and other executive acts.

13 32. As to Hispanic immigrants generally and to suspected members of TdA
14 specifically, the Adelanto ICE Processing Center and the Desert View Annex, its
15 owners, employees, the government officials it contracts with and coordinates with
16 named collectively as the Respondents in this petition have unconstitutionally
17 suspended the writ of habeas corpus or have aided and abetted its unconstitutional
18 suspension by and through the named Respondents according to several statutes,
19 regulations, decisions, orders, proclamations, memoranda, and/or other implied or
20 actual, clandestine or public, administrative or personal efforts of the United States
21 government or any of its representatives, employees, officials, agents, deputies,
22 assignees, or contractors.

23 33. These suspensions are manifested or effectuated by Respondents’ refusal to
24 comply with federal court orders, Respondents’ failure to give notice and a chance to
25 be heard by an impartial decision maker to affected individuals including Darwin, by
26 frivolously delaying and disregarding equal protection and due legal process that
27 could release affected individuals including Darwin, and by completing their
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1 objectives in secret, in the dead of the night, by use of illegitimate feudal law, and
2 through means of lies and propaganda designed to sway public opinion against
3 affected individuals including Darwin so as to delay, obstruct, deny, and suspend due
4 legal process and equal protection of the law.

5 **JURISDICTION AND VENUE**

6 34. This case arises under the AEA, 50 U.S.C. §§ 21–24; the Administrative
7 Procedures Act (“APA”), 5 U.S.C. § 702; Article 13 of the U.S.-Venezuela Treaty of
8 Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans 1038, 18
9 Stat. 787; Article 3 of the Geneva Convention (III) Relative to the Treatment of
10 Prisoners of War, Aug. 12, 1949, [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No. 3364; the
11 Immigration and Nationality Act (“INA”), 8 U.S.C. § 1101, *et seq.* as amended by the
12 Refugee Act of 1980 and its implementing regulations; the INA, 8 U.S.C. § 1189 as
13 amended by the USA PATRIOT Act its implementing regulations, notices, and
14 orders, the United Nations Convention Against Torture (“CAT”), *see* FARRA, Pub.
15 L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-822 (1998)
16 (codified as Note to 8 U.S.C. § 1231); the All Writs Act, 28 U.S.C. § 1651; the
17 Preamble, Naturalization Clause, Commerce Clause, Necessary and Proper Clause,
18 Emoluments Clause, Guarantee Clause, Supremacy Clause, the First, Fourth, Fifth,
19 Sixth, Ninth, Tenth, Eleventh, and Fourteenth Amendments to the U.S. Constitution;
20 the separation of powers and federalism; and the terms of governmental legitimacy
21 mandated in paragraph two of the Declaration of Independence and referenced as
22 proper objects and ends of government in the Preamble of the U.S. Constitution as
23 they were expounded by the U.S. Supreme Court in *Chisholm v. Georgia*.
24 DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776); *Chisholm v. Georgia*, 2 U.S.
25 419, 474–75 (1793) (applying the “six objects” of the U.S. Constitution’s preamble as
26 a key to interpret the rest of the constitution).

1 35. This Court has subject matter jurisdiction under 28 U.S.C. § 2241 *et seq.*
2 (habeas corpus); art. I, § 9, cl. 2 of the U.S. Constitution (Suspension Clause); 28
3 U.S.C. § 1331; 28 U.S.C. § 1346 (United States as defendant); 28 U.S.C. § 1361
4 (mandamus); 28 U.S.C. § 1651 (All Writs Act), and pursuant to the principles of
5 supplemental jurisdiction under 28 U.S.C. § 1367.

6 36. The Court may grant relief pursuant to 28 U.S.C. § 2241; 28 U.S.C. § 2243; the
7 Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*; the All Writs Act, 28 U.S.C. §
8 1651; the APA 5 U.S.C. § 706, and the Court's inherent equitable powers.

9 37. The Court has personal jurisdiction over Respondents, because they actually
10 and constructively run, operate, control, direct, or otherwise maintain the detention of
11 Petitioner in ICE detention facilities located in this District and they "can be reached
12 by service of process." *Rasul v. Bush*, 542 U.S. 466, 478–79 (2004).¹ Respondents
13 have also targeted members of Petitioner's class to be similarly detained and
14 processed in this District.

15 38. Venue is proper in this District under 28 U.S.C. § 2241; 28 U.S.C. § 1391(b);
16 and, 28 U.S.C. § 1391(e)(1) because at the time of filing the Petitioners were detained
17 in the Respondents' custody within the Central District of California; a substantial
18 part of the events and omissions giving rise to the claim occurred in this district; and
19

20
21 ¹ Habeas corpus jurisdiction runs to the custodians, not the Petitioner, and Respondents are
22 Petitioner's actual and constructive custodians. *See Boumediene v. Bush*, 553 U.S. 723, 747 (2008)
23 ("[A] petitioner's status as an alien was not a categorical bar to habeas corpus relief." (citing
24 *Somerset's Case* (1772) 20 How. St. Tr. 1, 8–82 (Eng.))); *id.* at 751 ("[P]rudential barriers . . . are
25 not relevant here."); *id.* 795 ("[Habeas petitioners] need not exhaust the review procedures in the
26 Court of Appeals before proceeding with their habeas actions in District Court."); *id.* at 746 (citing
27 *Braden v. 30th Judicial Circuit Court*, 410 U.S. 484, 499, n.15 (1973)); *Braden*, 410 U.S. at 497
28 ("[O]verruling . . . *Ahrens*."); *see also* *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 412 (2024)
("Chevron is overruled."); *SEC v. Jarkesy*, 603 U.S. 109, 140 (2024) ("When a matter 'from its
nature, is the subject of a suit at the common law,' Congress may not 'withdraw [it] from judicial
cognizance.'" (quoting *Murray's Lessee v. Hoboken Land & Improv. Co.*, 59 U.S. 272, 284
(1855))).

1 Respondents are agencies of the United States or officers of the United States acting
2 in their official capacity.

3 STANDARD OF REVIEW

4 39. The standard of review is *de novo* review of law and fact, and this Court may
5 make findings of fact and admit exculpatory evidence to support those findings not
6 admitted in any previous or different agency, court, or tribunal including to declare
7 facts that may control other courts and federal agencies under this Court's
8 jurisdiction. *Cone v. Bell*, 556 U.S. 449, 472 (2009) (“[T]he claim is reviewed *de*
9 *novo*.”); *Boumediene*, 553 U.S. at 786–87.

10 40. Specifically, under the AEA, Darwin is entitled to and requests a hearing and
11 process to admit and present exculpatory evidence to rebut the allegation that he is an
12 alien enemy and to demonstrate he is a refugee not merely seeking asylum, but a non-
13 merchant Venezuelan citizen “forced to seek refuge or asylum” in the United States
14 and therefore due an expeditious grant of asylum by the proper authorities including
15 in defensive EOIR proceedings or a green card or other permanent legal status from
16 which Darwin can adjust his status or naturalize directly under the AEA pursuant to
17 Proclamation 10903, which triggered Article 9, 26 of the U.S.-Venezuela Treaty of
18 Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans 1038, and
19 other treaty stipulations. *Boumediene*, 553 U.S. at 779, 786–87 (“Indeed, common-
20 law habeas corpus was, above all, an adaptable remedy. Its precise application and
21 scope changed depending upon the circumstances.”); 8 U.S.C. § 1101(a)(42)(A); 18
22 Stat. 787, 793.

23 PARTIES

24 A. Petitioner-Plaintiff (“Petitioner”)

25 41. Petitioner Darwin Antonio Arevalo Millan is a Venezuelan national duly
26 seeking political asylum and other forms of immigration relief in the United States.

27 B. Respondents-Defendants (“Respondents”)

42. Respondent Donald Trump is the President of the United States. He is sued in his official capacity. In that capacity, he issued Proclamation 10903 under the AEA and issued related Executive Orders 14165 and 14159. Injunctive relief is not sought against the President.

43. Respondent Pamela J. Bondi is the U.S. Attorney General at the U.S. Department of Justice, which is a cabinet-level department of the United States government. She is sued in her official capacity.

44. Respondent Kristi Noem is the Secretary of the U.S. Department of Homeland Security, which is a cabinet-level department of the United States government. She is sued in her official capacity. In that capacity, Respondent Noem is responsible for the administration of the immigration laws pursuant to 8 U.S.C. § 1103.

45. Respondent U.S. Department of Homeland Security (“DHS”) is a cabinet-level department of the United States federal government. Its components include Immigration and Customs Enforcement (“ICE”). Respondent DHS is a legal custodian of Petitioner.

46. Respondent Todd Lyons is the Acting Director of ICE. Respondent Lyons is responsible for ICE’s policies, practices, and procedures, including those relating to the detention of immigrants during their removal procedures. Respondent Lyons is a legal custodian of Petitioner. Respondent Lyons is sued in his official capacity.

47. Respondent ICE is the sub-agency of DHS that is responsible for carrying out removal orders and overseeing immigration detention. Respondent ICE is a legal custodian of Petitioner.

48. Respondent Pete Hegseth is the Secretary of Defense at the U.S. Department of Defense. He is sued in his official capacity. Respondent Hegseth is responsible for administering president’s war powers under Article II of the U.S. Constitution, 50 U.S.C. § 21, and several presidential orders, proclamations, memoranda, and other

1 executive actions that administer detentions, removals, disappearances, and/or
2 extraordinary renditions of Petitioner and those in Petitioner's class.

3 49. Respondent U.S. Department of Defense ("DoD"), which is a cabinet-level
4 department of the United States government. DoD is a legal custodian of the
5 Petitioner.

6 50. Respondent Marco Rubio is the Secretary of State at the U.S. Department of
7 State. He is sued in his official capacity. Respondent Rubio is responsible for
8 designating TdA as a terrorist organization under the Immigration and Nationality
9 Act as amended by the USA PATRIOT ACT at 8 U.S.C. § 1189, the Authorizations
10 for Use of Military Force of 2001 and 2002, the AEA, and several executive
11 proclamations, orders, memoranda, and other executive actions indicating an invasion
12 and/or predatory incursion by TdA, Venezuela, and immigrants generally.

13 51. Respondent U.S. Department of State, which is a cabinet-level department of
14 the United States government.

15 52. Respondent David Marin is the acting director of ICE's Los Angeles' Field
16 Office, which is responsible for ICE activities in the Central District of California,
17 including the Adelanto ICE Processing Center and Desert View Annex. He is sued in
18 his official capacity.

19 53. Respondent Fereti Semaia is the Warden of the GEO Group Adelanto ICE
20 Processing Center and Desert View Annex, which detains individuals suspected of
21 civil immigration violations pursuant to a contract with ICE. Respondent Semaia is
22 the immediate physical custodian responsible for the detention of Petitioner. He is
23 sued in his official capacity.

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1 **FACTUAL BACKGROUND**

2 ***“Obsta Principiis,” the Separation of Powers, and Habeas Corpus as it Existed in***
3 ***1789***

4 54. In *Boumediene v. Bush*, the Court unanimously agreed that “‘at the absolute
5 minimum’ the [Suspension] Clause protects the writ as it existed when the
6 Constitution was drafted and ratified.” *Boumediene v. Bush*, 553 U.S. 723, 746
7 (2008) (majority opinion) (quoting *INS v. St. Cyr*, 533 U.S. 289, 301 (2001)); *id.* at
8 815 (Roberts, C.J., dissenting) (“‘[A]t the absolute minimum,’ the Suspension Clause
9 protects the writ ‘as it existed in 1789.’” (quoting *St. Cyr*, 533 U.S. at 301)). This
10 holding was extended and upheld by the U.S. Supreme Court. *DHS v. Thuraissigiam*,
11 591 U.S. 103, 116 (2020) (citing *St. Cyr*, 533 U.S. at 301).

12 55. In 1789, the federal courts were established under Judiciary Act of 1789, which
13 included the first federal habeas corpus statute in the first All Writs Act in Section 14
14 of the Judiciary Act of 1789, which is now codified at 28 U.S.C. § 1651 and 28
15 U.S.C. § 2241 as cited in this petition. Making this the applicable constitutional
16 minimum here speaks to the Supreme Court’s enduring confidence in the
17 constitutionality of the original habeas corpus statute. *See, e.g., St. Cyr*, 533 U.S. at
18 305 n.25 (“§ 2241 descends directly from § 14 of the Judiciary Act of 1789 and the
19 1867 Act. . . . Its test remained undisturbed by either AEDPA or IIRIRA.”); *Felker v.*
20 *Turpin*, 518 U.S. 651, 659 (1996); *see Ex parte Yerger*, 75 U.S. 85, 105 (1868).

21 56. *Ex parte Bollman* is cited as the leading case regarding what the writ of habeas
22 corpus was as of 1789 as it arose under the Judiciary Act of 1789, § 14 and
23 discharged the famous German immigrant Erik Bollman into the United States,
24 defeating Thomas Jefferson’s deportation orders to the contrary. *Ex parte Bollman*, 8
25 U.S. 75, 136–37 (1807), *contradicting* Letter Thomas Jefferson to James Wilkinson
26 (Feb. 3, 1807) (early access document), *and* Letter from Thomas Jefferson to William
27 C. C. Claiborne (Feb. 3, 1807) (early access document) (attempting to define secret
28

1 presidential orders for “the military arrest & deportation” of “Swartwout, Bollman,
2 Burr, Blannerhasset, Tyler &c.” to exclude U.S. citizens).

3 57. In general, the United States always extended rights to foreigners litigating in
4 federal court even if they were stateless. *Caignet v. Pettit*, 2 U.S. 234, 235 (1795).

5 58. The United States is an anti-Hobbesian experiment in government that opposes
6 Thomas Hobbes’ modern argument for the unity of powers in one globalized dictator-
7 in-chief known as *Leviathan*. THOMAS HOBBS, *LEVIATHAN* frontispiece (A.R.
8 Waller ed., 1904), *rejected by* JAMES OTIS, *COLLECTED POLITICAL WRITINGS OF*
9 *JAMES OTIS* 241 (Richard Samuelson ed., 2015).

10 59. Hobbes’ theories of uniting the powers of church, state, king, and people in one
11 man were deposed in America, where the theories of separated powers championed
12 by Montesquieu and Coke were adopted. Joshua J. Schroeder, *Courting Oblivion Part*
13 *II: How to Revive American Reconstruction by Feigning Forgetfulness*, 73 CLEV. ST.
14 L. REV. 515, 534 (2025).

15 60. In the far-flung empire of a Hobbesian monarch such as the English Crown, the
16 only path forward in America was originally penned by Jeremiah Dummer under the
17 ancient maxim *obsta principiis* (“resist beginnings”). OTIS, *supra*, at 162, 331
18 (“*Obsta Principiis* is a maxim never to be forgot.” (citing JEREMIAH DUMMER, A
19 DEFENCE OF THE NEW-ENGLAND CHARTERS 29 (1765) (1715))).

20 61. The old and great defense of Mr. Dummer on the subject of immigrant rights
21 that inspired the American Revolution and its relation to *obsta principiis* bears
22 repeating here:

23 And to complete the oppression, when they upon their trial claimed the
24 rights of Englishmen, they were scoffingly told, *those things would not*
25 *follow them to the ends of the earth*. Unnatural insult; must the brave
26 adventurer, who with the hazard of his life and fortune, seeks out new
27 climates to enrich his mother country, be denied those common rights,
28 which his countrymen enjoy at home in ease and indolence? Is he to be
made miserable, and a slave by his own acquisitions? Is the laborer alone
unworthy of his hire, and shall they only reap, who have neither sowed

1 nor planted? Monstrous absurdity! Horrid inverted order! . . . Burnt
2 houses may rise against out of their ashes, and even more beautiful than
3 before, but 'tis to be feared that *liberty once lost, is lost forever*.

4 DUMMER, *supra*, 23, 44 (emphasis added) (noting that denial of habeas corpus
5 was one of the unnatural insults propagated by the English empire against
6 English immigrants in America).

7
8 62. Following Otis's lead John Adams later announced: "*Obsta principiis*, nip the
9 shoots of arbitrary power in the bud, is the only maxim which can ever preserve the
10 liberties of any people." JOHN ADAMS, THE REVOLUTIONARY WRITINGS OF JOHN
11 ADAMS 175 (2000).

12 63. Founder, framer, and inaugural Justice of the U.S. Supreme Court James
13 Wilson expounded the most fundamental rights of the citizen in America were
14 transplanted with the first British subjects to America by virtue of their most
15 fundamental right to leave the British experiment behind with their rights intact. 2
16 JAMES WILSON, COLLECTED WORKS OF JAMES WILSON 786 (Kermit L. Hall & Mark
17 David Hall eds., 2007) ("Citizens, who emigrate, carry with them their rights and
18 liberties.").

19 64. Upon this right to leave, Wilson interpreted America's first vindication of the
20 consent of the governed mandated by the Declaration of Independence as a
21 fundamental requirement to any government's legitimacy. 1 WILSON, *supra*, at 643–
22 44 (citing PENN. CONST. 1790, art. IX, § 25); DECLARATION OF INDEPENDENCE para. 2
23 (U.S. 1776).²

24
25
26
27 ² This appears to be coeval with Hannah Arendt's later iteration of a "right to have rights" adopted
28 by a plurality in *Trop v. Dulles*. *Trop v. Dulles*, 356 U.S. 86, 102 (1958) (plurality opinion),
implicitly drawn from HANNAH ARENDT ORIGINS OF TOTALITARIANISM 315 (1962).

1 65. During the framing of the U.S. Constitution, during heated debates with Wilson
2 of Pennsylvania, Virginia founder and framer George Mason agreed and coined this
3 policy as “opening a wide door for emigrants.” 1 WILSON, *supra*, at 140.

4 66. Justice Wilson, moreover, envisioned a system of “unrestrained immigration”
5 according to the ratified Pennsylvania Constitution he himself drafted for all races
6 and genders of people. *Id.* at 643; PENN. CONST. 1790, art. IX, § 25.

7 67. Justice Wilson ushered this system into reality in *Collet v. Collet*, where his
8 judgement for a liberal and open invitation to immigrants still stands according to his
9 interpretation of the Naturalization Clause, which made the gender and race
10 limitations in the first Naturalization Act a minimum upon which the states could
11 (and did) include new female and non-white citizens, which later became
12 controversial in the decades leading up to the Civil War. *Collet v. Collet*, 2 U.S. 294,
13 295–96 (D.C.C. Penn. 1792); *cf.* LUCY STONE, WOMAN SUFFRAGE IN NEW JERSEY 12
14 (1867) (“In New Jersey, women and negroes voted from 1776 to 1807, a period of
15 thirty-one years.”).³

16 68. According to Wilson, the only apparent restrictions on the immigrant imposed
17 by the founders were the naturalization requirements to serve in Congress and the
18 natural born requirement excluding immigrants from the presidency. 1 WILSON,
19 *supra*, at 639–40.

20 69. In *Henfield’s Case*, the rights of the immigrant to travel were put to the test
21 when Citizen Genêt appealed from the President to the people, attempting to stoke
22 another revolution in government. *Henfield’s Case*, 11 F. Cas. 1099, 1120 (C.C.D.
23 Pa. 1793) (No. 6360).

24
25
26 ³ In fact, Pennsylvania’s open door to Black immigrants from the South fleeing slavery, became the
27 issue upon which the Civil War was fought after *Prigg v. Pennsylvania* erroneously struck down the
28 Pennsylvania sanctuary law to deport Black citizens back into slavery in the South. *Prigg v.*
Pennsylvania, 41 U.S. 539 (1842).

1 70. Genêt opened prize courts up and down the Eastern seaboard, where he
2 enlisted U.S. citizens to fight as mercenaries in French wars with the world, including
3 against Great Britain. William R. Casto, *The Early Supreme Court Justices' Most*
4 *Significant Opinion*, 29 OHIO N.U.L. REV. 173, 176 (2002).

5 71. Then President Washington opposed U.S. participation in wars with nations the
6 United States was at peace with, and issued his Proclamation of Neutrality in
7 response. *Id.* at 193; cf. *Glass v. The Betsey*, 3 U.S. 6, 16 (1794) (closing Genêt's
8 prize courts).

9 72. A U.S. citizen named Gideon Henfield was successfully conscripted by Genêt
10 into French service, and the United States arrested and charged Henfield with treason
11 under Washington's proclamation. *Henfield's Case*, 11 F. Cas. at 1110.

12 73. Justice Wilson presided over the case, where Henfield claimed a right to
13 immigrate as a defense of treason. *Id.*

14 74. The District Attorney argued:

15 That the emigration from one country and the reception in another must
16 be substantially and definitively effected before the acts of hostility. Let
17 it not be said that this doctrine violates the rights of man. It is on the
18 rights of man that it is established.

18 *Id.* at 1118.

19 75. In response, Wilson clearly maintained: "Emigration is, undoubtedly, one of
20 the natural rights of man." *Id.* at 1120.

21 76. However, Wilson appeared to deny that by offering himself as a mercenary to
22 France that Henfield emigrated, upholding the common law treason suit. *Id.*

23 77. The jury, nevertheless, acquitted Henfield and Genêt stoked a terrorist
24 movement against Justice Wilson and President Washington that eventually
25 foundered. *Id.* at 1122; Letter from Thomas Boylston Adams to Abigail Adams (Aug.
26 10, 1793), in 9 THE ADAMS PAPERS 443-44 (C. James Taylor et al. eds., 2009)
27 (noting how Americans went "raving mad" with French politics and that during this
28

1 time handbills were “distributed representing the President and Judge Willson with
2 their heads under the Guillotine”).

3 78. Then, the French Terror took hold and demolished the political party that sent
4 Genêt as an emissary of France. MME. ROLAND, THE PRIVATE MEMOIRS OF MADAME
5 ROLAND 113, 371 (1901) (“O my friends! May propitious fate conduct you to the
6 United States, the only asylum of freedom!”).

7 79. After this, Genêt himself—a self-avowed French *Terroriste*—applied for and
8 was granted asylum in the United States. 26 THOMAS JEFFERSON, THE PAPERS OF
9 THOMAS JEFFERSON 685–92 (John Catanzariti ed., 1995).

10 80. Many other controversial figures were granted the benefits of the United
11 States’ open door to the immigrant including Erik Bollman, who was deported by
12 Thomas Jefferson into the United States from the Louisiana Territory to stand trial for
13 aiding and abetting Aaron Burr’s allegedly treasonous expedition to revolutionize
14 Mexico. *See* Letter Thomas Jefferson to James Wilkinson (Feb. 3, 1807) (early access
15 document); Letter from Thomas Jefferson to William C. C. Claiborne (Feb. 3, 1807)
16 (early access document). Bollman’s petition for writ of habeas corpus was granted to
17 defeat Jefferson’s deportation orders and Bollman was released into the United
18 States. *Ex parte* Bollman, 8 U.S. 75, 136–37 (1807).

19 81. The habeas corpus petition of George Holmes, a man wanted for murder in
20 Canada, was granted by the Supreme Court of Vermont, according to Chief Justice
21 Taney’s opinion above, releasing him into the United States. *Ex parte* Holmes, 12
22 Vt. 631, 641–42 (1840), *extending* Holmes v. Jennison, 39 U.S. 540, 561 (1840)
23 (Opinion of Taney, C.J.).

24 82. Chief Justice Taney’s decision in *Holmes* was extended in *The Amistad* to
25 release former Black slaves of that ship into the United States as immigrants rather
26 than deporting them as traitors or replevining them as property to face slavery and
27
28

1 death in Cuba. *United States v. The Amistad*, 40 U.S. 518, 552–53 (1841) (quoting
2 *Holmes*, 39 U.S. at 569 (Opinion of Taney, C.J.)).

3 83. According to several fundamental holdings of the U.S. Supreme Court
4 spanning centuries, Darwin is entitled to habeas corpus as it existed in 1789, which is
5 symbolized by the writs granted to the Africans of *The Amistad*, George Holmes, and
6 Erik Bollman who were all released *into* the United States, and the asylum given to
7 the self-acclaimed terrorist Citizen Genêt—a man who led mobs who threatened to
8 drag President Washington out of his house to apparently kill him. *See* Letter from
9 John Adams to Thomas Jefferson (June 30, 1813) (early access document)
10 (describing “the terrorism of a former day . . . excited by Genet, in 1793, when ten
11 thousand People in the Streets of Philadelphia, day after day, threatened to drag
12 Washington out of his House, and effect a Revolution in government”).

13 ***The Neutrality Acts from 1794 to Present Day***

14 84. After *Henfield’s Case*, Congress codified the Proclamation of Neutrality into
15 the Neutrality Act of 1794, which was repealed and replaced several times and is now
16 codified at 18 U.S.C. §§ 956–60 and surrounding sections. Neutrality Act of 1794,
17 Pub. L. 3–50, 1 Stat. 381, *repealed and replaced by several laws now codified at 18*
18 *U.S.C. §§ 956–60 et seq.*

19 85. The Neutrality Act of 1794 was initially superseded by the Neutrality Act of
20 1817, 3 Stat. 370, which were both codified and consolidated by the Neutrality Act of
21 1818, 3 Stat. 447, that were subsequently codified. Edward Dumbauld, *Neutrality*
22 *Laws of the United States*, 31 AM. J. INT. L. 258, 263 (1937).

23 86. In response to a series of events on the border of Canada and the United States
24 known as the Canadian Rebellion of 1837, in which several U.S. citizens were killed
25 or wounded on the U.S. side of Niagara Falls, it was difficult to stop U.S. persons
26 from avenging themselves. On January 5, 1838, then President Van Buren issued a
27 Proclamation of Neutrality and two months later March 10, 1838, Congress passed
28

1 and Act, 5 Stat. 212, which allowed the executive to enforce the Neutrality laws by
2 seizing munitions and vessels about to be used in unlawful hostilities. This act
3 expired after two years. *Id.*

4 87. Several cases arising under the Neutrality Acts were litigated to determine the
5 lawfulness of frequent “[e]xpeditions in aid of Cuban insurgents” and occasional
6 activity “in connection with sporadic revolts in other Latin-American countries.” *Id.*
7 at 264 n.39.

8 88. Eventually, a Joint Resolution was enacted on April 22, 1898 during the
9 Spanish-American War to prohibit exports used in war, which was invoked by
10 President Theodore Roosevelt by proclamation on October 14, 1905. *Id.* at n.40; 30
11 Stat. 739; 30 Stat. 3183.

12 89. This Joint Resolution was amended on March 14, 1912 to make exportation of
13 munitions or arms to any American country pursuant to a duly issued presidential
14 proclamation, which was imposed by President Taft on March 14, 1912 by
15 proclamation and again by President Wilson on October 19, 1915. Dumbauld, *supra*,
16 at 265; 37 Stat. 630.

17 90. Several cases litigating the neutrality laws arose during and around the time of
18 World War I. *See* Dumbauld, *supra*, at nn.43–44.

19 91. Congress amended the Neutrality Acts by two acts passed on March 4, 1915
20 and June 15, 1917, and a Joint Resolution of January 31, 1922 extended the
21 applicability of provisions enacted in 1912, which resulted in several embargoes
22 directed against exportation of arms to foreign countries. 38 Stat. 1226; 40 Stat. 222;
23 42 Stat. 361; Dumbauld, *supra*, at n.52.

24 92. Congress enacted a Joint Resolution affecting the sale of arms and munitions to
25 “those countries now engaged in armed conflict in Chaco, which was put into effect
26 by President Franklin Delano Roosevelt by proclamation and upheld by the U.S.

1 Supreme Court in *United States v. Curtis-Wright Export Corp.*, 299 U.S. 304 (1936).”
2 *Id.* at 267; 48 Stat. 811; 48 Stat. 1744-45.

3 93. Congress passed Joint Resolutions on August 31, 1935, February 29, 1936, and
4 January 8, 1937 mandating neutrality in several ways. Dumbauld, *supra*, at 268–69;
5 49 Stat. 1081; 49 Stat. 1152; 75th Cong. Pub. No. 1.

6 94. In May of 1937 Congress passed the Neutrality Act of 1937, 50 Stat. 121.
7 Dumbauld, *supra*, at 269.

8 95. After Nazi Germany invaded Czechoslovakia and Poland, on November 4,
9 1939 President Roosevelt signed the Neutrality Act of 1939, which repealed the
10 Neutrality Acts of 1935 and 1937. 54 Stat. 4.

11 96. Due to several events in the months leading up to the U.S. involvement in
12 World War II, several provisions of the Neutrality Act of 1939 were repealed on
13 November 17, 1941 by Joint Resolution. 55 Stat. 764.

14 97. These repeals left several provisions in force including those asserted here: 18
15 U.S.C. §§ 956–60 and other laws designed to criminalize the instigation of wars
16 between the United States and other nations whom the United States is presently at
17 peace including, as relevant here, the sovereign nation of Venezuela.

18 ***President Trump’s General and Specific Violations of Neutrality and the***
19 ***Separation of Powers***

20 98. On January 20, 2025, President Trump issued his Executive Order 14159
21 entitled “Protecting the American People Against Invasion.” Exec. Order No. 14159,
22 90 Fed. Reg. 8443.

23 This order generally described undocumented immigrants as terrorists and enemies of
24 the state according to a theory described by Press Secretary Karoline Leavitt that all
25 undocumented immigrants can be presumed criminals and terrorists without due
26 process and equal protection of law and in violation of the presumption of innocence:
27
28

1 [I]f you are an individual, a foreign national, who illegally enters the
2 United States of America, you are, by definition, a criminal. . . .
3 [C]riminal drug dealers, the rapists, the murderers, the individuals who
4 have committed heinous acts on the interior of our country and who have
5 *terrorized* law-abiding American citizens, absolutely, those should be
the priority of ICE. But that doesn't mean that the other illegal criminals
who entered our nation's borders are off the table.

6 *Press Briefing by Press Secretary Karoline Leavitt*, WHITE HOUSE (Jan. 29, 2025),
7 [https://www.whitehouse.gov/briefings-statements/2025/01/press-briefing-by-press-](https://www.whitehouse.gov/briefings-statements/2025/01/press-briefing-by-press-secretary-karoline-leavitt/)
8 [secretary-karoline-leavitt/](https://www.whitehouse.gov/briefings-statements/2025/01/press-briefing-by-press-secretary-karoline-leavitt/) (using 8 U.S.C. § 1325 to presumptively declare all
9 undocumented immigrants criminals without due process or equal protection of the
10 law).

11 99. Executive Order 14159 also directed Secretary of State Marco Rubio to
12 designate immigrant groups as terrorist organizations according the USA PATRIOT
13 Act amended portions of the Immigration and Nationality Act ("INA"), which
14 Secretary Rubio did on February 6, 2025. Public Notices 12671 & 12672, 90 Fed.
15 Reg. 10030–31 (designating TdA a terrorist organization (citing 8 U.S.C. § 1189)).

16 100. On March 14, 2025, President Trump signed his Proclamation 10903 entitled
17 "Invocation of the Alien Enemies Act Regarding the Invasion of the United States by
18 Tren de Aragua." Exec. Proclamation 10903, 90 Fed. Reg. 13033 (made public the
19 next day on March 15, 2025).

20 101. This Proclamation invoked the AEA for the first time in American history
21 without a declaration of war or actual invasion or predatory incursion. *Id.*, citing
22 AEA, 50 U.S.C. § 21 (1798).

23 102. This Proclamation is actually and constructively a feudal, unconstitutional, and
24 ultra vires declaration of war.

25 103. This Proclamation claimed that a gang called Tren de Aragua invaded the
26 United States on behalf of or as a part of the sovereign nation of Venezuela—a bold
27 assertion that appears to declare a war exists between the United States and
28

1 Venezuela—a declaration that only Congress can make. Exec. Proclamation 10903,
2 90 Fed. Reg. 13033; U.S. CONST. art. I, § 8, cl. 11; *see* Sarnoff v. Shultz, 409 U.S.
3 929, 930 (1972) (Douglas, J., dissenting) (noting that the constitutionality of
4 presidential war powers without a congressional declaration war remains undecided
5 by the courts (citing *Flast v. Cohen*, 392 U.S. 83 (1968))); *cf.* *Curtiss-Wright*, 299
6 U.S. at 319 (limiting peacetime exertions of the foreign affairs power to executive
7 acts that tend to keep peace); *Little v. Barreme*, 6 U.S. 170, 179 (1804) (similarly
8 denying immunities to privateers following presidential war orders on the high seas
9 without due congressional authorization).

10 104. Moreover, President Trump is currently violating a series of court orders
11 instructing him to return individuals disappeared to the controversial super-max
12 prison known as CECOT in El Salvador without due process or equal protection of
13 law. *See, e.g.*, *Noem v. Abrego Garcia*, No. 24A949, slip op. at 2 (2025) (Statement
14 of Sotomayor, J.), *defied by* Exec. Proclamation 10903, 90 Fed. Reg. 13033; *see also*,
15 *e.g.*, *J.G.G. v. Trump*, No. CV 25-766, 2025 WL 890401, at *2 (D.D.C. Mar. 24,
16 2025) (Boasberg, J.) (“[B]efore plaintiffs may be deported, they are entitled to
17 individualized hearings to determine whether the Act applies to them at all.”); *J.A.V.*
18 *v. Trump*, 1:25-cv-072, *36 (S.D. Tex. 2025).

19 105. President Trump has removed and will continue removing individuals with
20 duly granted visas. *See, e.g.*, *Am. Assoc. U. Prof. v. Rubio*, 25-CV-10685 (U.S. Dist.
21 Mass. 2025).

22 106. Trump has ordered his administration to detain all immigrants to the fullest
23 extent of the law, resulting in indefinite detentions of immigrants without any
24 apparent reason including immigrants who have visas, who have had a successful
25 bond hearing, or who have been granted parole as Darwin had been here. Exec.
26 Order No. 14165, 90 Fed. Reg. 8467, § 5.

1 107. It appears that by naming certain immigrant groups specifically and
2 undocumented immigrants generally as enemies of the state that President Trump has
3 violated the Neutrality Acts including their spirit embodied by President
4 Washington's Proclamation of Neutrality that was codified in 1794. *Id.*; Exec.
5 Proclamation 10903, 90 Fed. Reg. 13033; Exec. Order No. 14159, 90 Fed. Reg. 8443;
6 Leavitt, *supra*.

7 ***The Alien Enemies Act of 1798***

8 108. The AEA is a wartime authority enacted in 1798 that grants the President
9 specific powers with respect to the regulation, detention, and deportation of enemy
10 aliens.

11 109. The AEA was amended only once on April 16, 1918 to include women, as the
12 original text of the AEA clearly indicated that its provisions only applied to adult
13 males above the age of fourteen. 40 Stat. 531.

14 110. The constitutionality of the AEA remains undecided in the U.S. Supreme
15 Court. *Ludecke v. Dulles*, 335 U.S. 160, 163 (1948) (refusing to reach "questions of
16 interpretation and constitutionality").

17 111. In so far as *Ludecke* resolved the constitutionality of the AEA, it is clearly
18 distinguished from this petition, because Darwin is not a Nazi or enemy of the United
19 States, he is not a "native[], citizen[], denizen[], or subject[]" of TdA, nor can anyone
20 be, there is no declaration of war and no predatory incursion, the president is
21 obstructing and delaying review by the federal courts, and he is defying federal court
22 orders designed to facilitated federal judicial review of Exec. Proclamation 10903, 90
23 Fed. Reg. 13033. *Id.* at 171 (stating in obiter dicta that the Supreme Court was
24 predisposed to find the AEA constitutional under the circumstances and due to its
25 vintage, but indicating that it only contemplated the statute's use during "the
26 existence of the 'declared war,'" not during a time of peace, and because "resort to
27 the courts" was available to question the application of the AEA's provisions,
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1 presuming the president would follow the decisions, findings, and orders of the
2 judiciary); *cf.* Ian Ward, *There's No Need to Guess. JD Vance Is Ready to Ignore the*
3 *Courts*, POLITICO MAG. (Feb. 11, 2025, 11:18 AM),
4 [https://www.politico.com/news/magazine/2025/02/11/jd-vance-trump-executive-](https://www.politico.com/news/magazine/2025/02/11/jd-vance-trump-executive-power-supreme-court-00203537)
5 [power-supreme-court-00203537](https://www.politico.com/news/magazine/2025/02/11/jd-vance-trump-executive-power-supreme-court-00203537); @JDVance, X (Feb. 9, 2025),
6 <https://x.com/JDVance/status/1888607143030391287> (“Judges aren’t allowed to
7 control the executive’s legitimate power.”).

8 112. The AEA, as codified today, provides that “[w]henever there is a declared war
9 between the United States and any foreign nation or government, or any invasion or
10 predatory incursion is perpetrated, attempted, or threatened against the territory of the
11 United States by any foreign nation or government, and the President makes public
12 proclamation of the event, all natives, citizens, denizens, or subjects of the hostile
13 nation or government, being of the age of fourteen years and upward, who shall be
14 within the United States and not actually naturalized, shall be liable to be
15 apprehended, restrained, secured, and removed as alien enemies.” 50 U.S.C. § 21.

16 113. The AEA can thus be triggered in only two situations. The first is when a
17 formal declared war exists with a foreign nation or government. The second is when a
18 foreign nation or government perpetrates, attempts, or threatens an invasion or
19 predatory incursion against the territory of the United States. *Id.*

20 114. To trigger the AEA, the President must make a public proclamation of the
21 declared war, or of the attempted or threatened invasion or predatory incursion. *Id.*

22 115. The AEA also provides that noncitizens must be permitted the full time to
23 depart as stipulated by any treaty between the United States and the enemy nation,
24 unless the noncitizen has engaged in “actual hostility” against the United States. If no
25 such treaty exists, the President may declare a “reasonable time” for departure,
26 “according to the dictates of humanity and national hospitality.” *Id.* at § 22.

1 116. Darwin has not engaged in actual hostility against the United States or any
2 other crime against the public safety.

3 117. Venezuela and the United States are at peace and are not hostile nations, and
4 their Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12
5 Bevans 1038 (“Treaty of Peace”), remains in force according to Article 34
6 “perpetually and permanently binding on both powers” regarding “all those parts
7 which related to peace and friendship.” 18 Stat. 787, 795. There is no apparent
8 evidence that this treaty is repealed or no longer in force as to the provisions related
9 to peace. *Cf. Chew Heong v. United States*, 112 U.S. 536, 560 (1884) (deciding that
10 the U.S.-China Treaty of Peace, Amity, and Commerce was not repealed by the
11 Chinese Exclusion Act).

12 118. Should a war break out between the United States and Venezuela, Article 26 of
13 the treaty stipulates that merchants “who dwell in the interior” of the United States
14 will have “the term of one year . . . to arrange their business and transport their effects
15 where the[y] please,” and to “citizens of all other occupations” a total exemption of
16 removal “unless their particular conduct shall cause them to forfeit this protection,
17 which, in consideration of humanity, the contracting parties engage to give them.” 18
18 Stat. 787, 793.

19 119. Darwin is a Venezuelan citizen non-merchant (of other occupation) dwelling in
20 the interior of the United States whose particular conduct shall not cause him to
21 forfeit this protection.

22 120. When citizens of Venezuela are in the United States, Article 7 of the Treaty of
23 Peace states that they will “be treated as citizens of the country in which they reside,”
24 or, at a minimum, they will “be placed on a footing with the subjects or citizens of the
25 most favored nation.” *Id.* at 789.

26 121. Article 9 of the Treaty of Peace furthermore states: “Whenever the citizens of
27 either the contracting parties shall be forced to seek refuge or asylum . . . whether
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1 merchant or of war, public or private, through stress of weather, pursuit of pirates or
2 enemies, they shall be received and treated with humanity; giving to them all favour
3 and protection.” *Id.*

4 122. Article 13 of the Treaty of Peace also grants “special protection to the persons
5 and property of the citizens of each other, of all occupations, who may be in the
6 territories subject to the jurisdiction of the one or the other, transient or dwelling
7 therein, leaving open and free to them the tribunals of justice for their judicial
8 recourse on the same terms which are usual and customary with the natives or
9 citizens of the country in which they may be” including several explicit rights to trial.
10 *Id.* at 790.

11 123. Article 14 of the Treaty of Peace furthermore grants a religious liberty right
12 that appears to include free speech protections. *Id.*

13 124. Both Venezuela and the United States are signatories of the UN Convention
14 Against Torture, the UN Universal Declaration of Human Rights, which requires
15 nonrefoulement (“nonreturn”), the right to travel, and mandates a right to have
16 asylum claims adjudicated by an impartial decision maker regardless of how a
17 migrant entered the signatory country, and Article 3 of the Geneva Convention (III)
18 Relative to the Treatment of Prisoners of War, Aug. 12, 1949, [1955] 6 U.S.T. 3316,
19 3318, T.I.A.S. No. 3364, which prohibits sentences passed out “without previous
20 judgment pronounced by a regularly constituted court, affording all the judicial
21 guarantees which are recognized as indispensable by civilized peoples.”

22 125. Should the Court decide that these are treaty stipulations as contemplated by
23 the AEA, then it must provide due process and equal protection under the law prior to
24 removing, disappearing, or effecting an extraordinary rendition of Darwin according
25 to these treaty stipulations under the AEA. This Court can provide an opportunity to
26 be heard by an impartial decision maker and it can declare facts including that
27 Darwin is a refugee, not a member of TdA, the same as it should have done for
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1 refugee Jews from Nazi Germany. G.A. Res. 217 A, Universal Declaration of
2 Human Rights Art. 13(2) (Dec. 10, 1948); G.A. Res. 34/46, U.N. Convention Against
3 Torture Art. 3 (Dec. 10, 1984).

4 126. Both the United States and Venezuela are also signatories and current members
5 of the Inter-American Treaty of Reciprocal Assistance, which states that “an attack
6 by any State against an American State shall be considered as an attack against all the
7 American States.” 21 U.N.T.S. 93, 95 (1948).

8 127. Under this multilateral treaty, if this Court finds that President Trump’s
9 references to an “invasion” of immigrants generally and Venezuela in particular are
10 real, instead of mere puffery, the eighteen member nations are bound “to meet [the]
11 armed attacks” against the United States and “to deal with threats of aggression”
12 against the United States. *Id.*

13 128. If, during their required meeting of these threats fellow member nations find
14 that President Trump committed fraud or deceit by accusing a member nation of an
15 invasion or potentially all other member nations of invasion, then they may be bound
16 to meet the threat of the United States against Venezuela and the world. *Id.*

17 129. Under the AEA, noncitizens who “refuse or neglect to depart” pursuant to
18 either treaty stipulations or presidential declaration of a reasonable time to depart, if
19 there are no treaty stipulations, are subject to removal. 50 U.S.C. § 21.

20 130. Moreover, the AEA cannot be used to detain, remove, disappear, or
21 extraordinary rendition individuals who are not clearly within the class of noncitizens
22 affected, and in order to ensure that U.S. citizens and others are not so mistreated in
23 violation of the Eighth Amendment under *Trop v. Dulles* and similar cases, the U.S.
24 Supreme Court mandated that resort to the federal courts is required for the AEA to
25 remain constitutional. *Ludecke*, 335 U.S. at 171.

26 131. Lenity, grace, and mercy has always been applied to even the most doomed
27 immigrant suits to avoid an arbitrary and capricious system that allows the president
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1 to treat U.S. citizens and lawful immigrants as removable aliens without due process
2 or equal protection of the law. *Kwock Jan Fat v. White*, 253 U.S. 454, 465 (1920);
3 *see also* *Johnson v. Eisentrager*, 339 U.S. 763, 769–70 (1950) (noting the question of
4 citizenship mandates access to the courts (citing *Chin Yow v. United States*, 208 U.S.
5 8 (1908); *Perkins v. Elg*, 307 U.S. 325 (1939))).

6 132. The AEA has been used only three times in American history, all during actual
7 or imminent wartime under declarations of war.

8 133. The AEA was first invoked several months into the War of 1812, but President
9 Madison did not use the AEA to remove anyone from the United States during the
10 war.

11 134. The AEA was invoked a second time during World War I by President Wilson.
12 Upon information and belief, there were no removals effectuated pursuant to the
13 AEA during World War I.

14 135. The AEA was used again during World War II, though it was never used as a
15 widespread method of removal.

16 136. However, “over 31,000 suspected enemy aliens and their families, including a
17 few Jewish refugees from Nazi Germany, had been interned at Immigration and
18 Naturalization Services (INS) internment camps and military facilities throughout the
19 United States.” *World War II Enemy Alien Control Program Overview*, NAT’L
20 ARCHIVES: WEBSITE, [https://www.archives.gov/research/immigration/enemy-](https://www.archives.gov/research/immigration/enemy-aliens/ww2)
21 [aliens/ww2](https://www.archives.gov/research/immigration/enemy-aliens/ww2) (last accessed May 11, 2025).

22 137. Furthermore, “over 6,600 individuals of Japanese, German, and Italian
23 ancestry, along with some of their families” were deported from one of fifteen Latin
24 American countries to be interned in the United States. *Id.*

25 138. Based on information and belief, several thousand of these interns were
26 eventually deported under the AEA at the end of the hostilities of World War II. *See*
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1 Exec. Proclamation 2655, 10 Fed. Reg. 8947 (July 20, 1945); *see also* 10 Fed. Reg.
2 12189 (Sept. 28, 1945).

3 139. On December 7, 1941, after the Japanese invaded Hawaii in the attack on Pearl
4 Harbor, President Roosevelt proclaimed that Japan had perpetrated an invasion upon
5 the territory of the United States. The president issued regulations applicable to
6 Japanese nationals living in the United States. The next day Congress declared war on
7 Japan.

8 140. On the same day, President Roosevelt issued two separate proclamations
9 stating that an invasion or predatory incursion was threatened upon the territory of the
10 United States by Germany and Italy. The president incorporated the same regulations
11 that were already in effect as to Japanese people for German and Italian people. Three
12 days later Congress voted unanimously to declare war against Germany and Italy.

13 141. Congress declared war against Hungary, Romania, and Bulgaria on June 5,
14 1942. Just over a month later, President Roosevelt issued a proclamation recognizing
15 that declaration of war and invoking the AEA against citizens of those countries.

16 142. Under these proclamations, the United States infamously interned noncitizens
17 from Japan, Germany, Italy, Hungary, Romania, and Bulgaria (with U.S. citizens of
18 Japanese descent subject to a separate order that did not rely on the AEA).

19 143. It was not until the end of hostilities that the President provided for the removal
20 of alien enemies from the United States under the AEA. On July 14, 1945, President
21 Truman issued a proclamation providing that alien enemies detained as a danger to
22 public peace and safety “shall be subject upon the order of the Attorney General to
23 removal from the United States.” Exec. Proclamation 2655, 10 Fed. Reg. 8947 (July
24 20, 1945).

25 144. The Department of Justice subsequently issued regulations laying out the
26 removal process. *See* 10 Fed. Reg. 12189 (Sept. 28, 1945).

1 145. The regulations required, inter alia, notice of the removal order to be served on
2 the designated alien enemy and that the alien enemy had thirty (30) days thereafter to
3 depart—during which time they could seek judicial review of the removal order. *Id.*

4 146. Some of these removals were adjudicated in *Ahrens v. Clark*, which
5 distinguished *Ex parte Endo* and temporarily allowed a legal fiction that the writ of
6 habeas corpus did not run to Ellis Island to facilitate these removals, which was
7 overruled in *Braden v. 30th Judicial Circuit Court* and *Braden* was extended in
8 *Boumediene* to explicitly reaffirm that there is no geographic limitation on habeas
9 corpus, because the writ runs to the custodian and *not* the detainee. *Boumediene v.*
10 *Bush*, 553 U.S. 723, 746 (2008) (citing *Braden v. 30th Judicial Circuit Court*, 410
11 U.S. 484, 499, n.15 (1973)); *Braden*, 410 U.S. at 497 (“[O]verruling . . . *Ahrens*.”);
12 *id.* at 502 (Rehnquist, J., dissenting) (“Today the Court overrules *Ahrens v. Clark*,
13 335 U.S. 188 (1948).”); *see also Ex parte Endo*, 323 U.S. 283, 306–07 (1944).

14 ***The Hobbs Act of 1946***

15 147. In 1946, Congress enacted the Hobbs Act, codified at 18 U.S.C. § 1951 to
16 prohibit actual or attempted robbery or extortion affecting interstate or foreign
17 commerce.

18 148. The Hobbs Act was amended and expanded several times in 1961, 1962, 1970,
19 1984, 1986, and 1988. The most consequential amendment was that of 1961, which
20 expanded the scope of the act to include various forms of racketeering.

21 149. Several elected state and federal politicians have been removed from office and
22 tried for criminally violating the Hobbs Act.

23 150. The Hobbs Act covers interstate and international extortions by fear, including
24 by threats of physical violence and extortionate acts done by public officials acting
25 under the color of law.

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1 ***President Trump's Violations of the Hobbs Act***

2 151. Proclamation 10903 criminally violates the Hobbs Act, 18 U.S.C. § 1951,
3 because it is a boldfaced extortion affecting interstate and foreign commerce
4 specifically designed to deflate immigration, including legal immigration and trade,
5 to the United States and specifically to California, which has codified its general
6 preference for including undocumented immigrants as, eventually, citizens of
7 California by and through legal pathways to citizenship that are being pursued by
8 Darwin here.

9 152. President Trump long desired to “seal” the U.S.-Mexico border as a means of
10 controlling the trade and livelihoods of people in the United States and
11 internationally, ultimately to enrich and aggrandize himself through unconstitutional
12 emoluments. @WhiteHouse, X,
13 <https://x.com/WhiteHouse/status/1916920033252675685> (noting Trump’s several
14 campaign promises that he will “close” and “seal” up the U.S.-Mexico border); *see*,
15 *e.g.*, @realDonaldTrump, TRUTH SOCIAL,
16 <https://truthsocial.com/@realDonaldTrump/114492082555622686> (“[T]he Defense
17 Department is getting a GIFT, FREE OF CHARGE [from Qatar], of a 747 aircraft to
18 replace the 40 year old Air Force One, temporarily, in a very public and transparent
19 transaction.”).

20 153. U.S. total goods trade with Mexico was an estimated \$839.9 billion in 2024,
21 and that is just the U.S.-Mexico trade that occurs across the U.S.-Mexico border.
22 *Mexico*, OFFICE OF THE U.S. TRADE REPRESENTATIVE: WEBSITE,
23 <https://ustr.gov/countries-regions/americas/mexico> (last accessed on May 11, 2025).

24 154. Proclamation 10903 appears to coincide with President Trump’s general
25 corruption of the markets through tariffs, the Department of Government Efficiency
26 (“DOGE”), and other means to solidify the hegemony of the aristocratic, oligarchic
27 class by further manipulating international and interstate travel and trade by turning
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1 innocent people like Darwin into a profit center for for-profit detention facilities
2 including GeoGroup, owner of Adelanto ICE Processing Center and the Desert View
3 Annex, foreign for-profit prisons like CECOT in El Salvador, and corrupt foreign
4 leaders like President Bukele of El Salvador that the United States pays to administer
5 Proclamation 10903 on its behalf. Sukey Lewis, *What Are US Taxpayers Getting in*
6 *\$6 Million Deal With Salvadoran Mega-Prison?*, KQED (May 7, 2025),
7 [https://www.kqed.org/news/12038872/what-us-taxpayers-getting-6-million-deal-](https://www.kqed.org/news/12038872/what-us-taxpayers-getting-6-million-deal-salvadoran-mega-prison)
8 [salvadoran-mega-prison](https://www.kqed.org/news/12038872/what-us-taxpayers-getting-6-million-deal-salvadoran-mega-prison); cf. Sarah Stillman, *Get Out of Jail, Inc.*, NEW YORKER (June
9 16, 2014), <https://www.newyorker.com/magazine/2014/06/23/get-out-of-jail-inc>.

10 155. If successful, it appears that President Trump will inspire a globalized
11 monopoly system of black-site prisons through fraud and extortion that is paid for by
12 U.S. taxpayer dollars that violates the Hobbs Act and that enriches and empowers the
13 world's most dangerous dictators and oligarchs by paying them to hand over the very
14 dissidents that fled their control to make a new life in the United States so they can be
15 tortured or killed in violation of U.S. treaty obligations. Lewis, *supra*; see ABC
16 News, *FULL SPEECH: President Joe Biden's Farewell Address to the Nation*,
17 YOUTUBE (Jan. 15, 2025), <https://www.youtube.com/watch?v=T8vmhmilluM>
18 ("Today, an oligarchy is taking shape in America of extreme wealth, power, and
19 influence that literally threatens our entire democracy, our basic rights and freedoms,
20 and a fair shot for everyone to get ahead.").

21 156. Accordingly, President Trump announced that he will sell U.S. visas for \$5
22 million with special benefits, which he calls a Gold Card. These benefits may include
23 special government favors and an audience with the president, invitations for foreign
24 payments of more unconstitutional emoluments and noble titles that violate the Equal
25 Protection Clause, the Titles of Nobility and Foreign Emoluments Clauses, and other
26 laws and constitutional provisions not to mentions President Washington's general
27 advice that free citizens be constantly awake to the dangers of foreign influence. Peter
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1 Aitken, *Donald Trump's Gold Card Visa: Elon Musk Gives New Update*, NEWSWEEK
2 (May 11, 2025, 4:46 PM), [https://www.newsweek.com/donald-trump-gold-card-visa-](https://www.newsweek.com/donald-trump-gold-card-visa-elon-musk-update-2070705)
3 [elon-musk-update-2070705](https://www.newsweek.com/donald-trump-gold-card-visa-elon-musk-update-2070705).

4 ***Systemic Overhaul of Immigration Law in 1952***

5 157. Following the end of World War II, Congress consolidated U.S. immigration
6 laws into a single text under the Immigration and Nationality Act of 1952 (“INA”).

7 158. The INA, and its subsequent amendments, provide for a comprehensive system
8 of procedures that the government must follow before removing a noncitizen from the
9 United States. The INA now provides the exclusive procedure by which the
10 government may determine whether to remove an individual. 8 U.S.C. § 1229a(a)(3).

11 159. In addition to laying out the process by which the government determines
12 whether to remove an individual, the INA also enshrines certain forms of
13 humanitarian protection.

14 160. First, the INA provides that “[a]ny alien who is physically present in the United
15 States or who arrives in the United States (whether or not at a designated port of
16 arrival . . .), irrespective of such alien’s status,” may apply for asylum. 8 U.S.C. §
17 1158(a)(1). To qualify for asylum, a noncitizen must show a “well-founded fear of
18 persecution” on account of a protected ground, such as race, religion, nationality,
19 political opinion, or membership in a particular social group. 8 U.S.C. §
20 1101(a)(42)(A).

21 161. Second, save for certain limited exceptions, Congress has barred the removal
22 of an individual to a country where it is more likely than not that he would face
23 persecution on one of these protected grounds. 8 U.S.C. § 1231(b)(3). That protection
24 implements this country’s obligations under the 1951 Refugee Convention and the
25 1967 Protocol relating to the Status of Refugees. The relevant form of relief, known
26 as “withholding of removal,” requires the applicant to satisfy a higher standard with
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1 respect to the likelihood of harm than asylum, but this form of relief is mandatory if
2 the standard is met.

3 162. Third, the Convention Against Torture (“CAT”) prohibits the government from
4 returning a noncitizen to a country where it is more likely than not that he would face
5 torture. *See* 8 U.S.C. § 1231 note. That protection implements the Foreign Affairs
6 Reform and Restructuring Act of 1998 (“FARRA”), Pub. L. No. 105-277, div. G,
7 Title XXII, § 2242. As with withholding of removal, CAT relief also requires the
8 applicant to satisfy a higher standard with respect to the likelihood of harm than
9 asylum and relief is mandatory if that standard is met. There is no exception to CAT
10 relief.

11 ***President Trump’s Proclamation Invoking the AEA***

12 163. On March 14, the President signed Proclamation 10903. It provides that “all
13 Venezuelan citizens 14 years of age or older who are members of TdA, are within the
14 United States, and are not actually naturalized or lawful permanent residents of the
15 United States are liable to be apprehended, restrained, secured, and removed as Alien
16 Enemies.” Exec. Proclamation 10903, 90 Fed. Reg. 13033.

17 164. Proclamation 10903 claims that the TdA gang is engaged in an invasion and
18 predatory incursion into the United States, and that the gang should be considered a
19 military arm of the sovereign nation of Venezuela as it is “closely aligned with, and
20 indeed has infiltrated, the Maduro regime including its military and law enforcement
21 apparatus.” *Id.*

22 165. Paradoxically and nonsensically, Proclamation 10903 also seems to disavow
23 the legitimacy of the Maduro regime, saying that Nicolas Maduro only “claims to act
24 as Venezuela’s President and asserts control over the security forces and other
25 authorities in Venezuela,” appearing to maintain that the Venezuelan government is
26 not the actual government of Venezuela such that TdA’s close association with it
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1 does not seem to, by the Proclamation's own logic, make TdA any closer to
2 composing a "foreign government" as the AEA requires. *Id.*

3 166. Moreover, Proclamation 10903's claims about TdA and the Maduro regime
4 appears to be undercut by a recently declassified intelligence memorandum detailing
5 the TdA as likely *not* a part of the Maduro regime. *Venezuela: Examining Regime*
6 *Ties to Tren de Aragua*, SOCM 2025-11374 (Apr. 7, 2025),
7 [https://static01.nyt.com/newsgraphics/documenttools/32f71f10c36cc482/d90251d5-](https://static01.nyt.com/newsgraphics/documenttools/32f71f10c36cc482/d90251d5-full.pdf)
8 [full.pdf](https://static01.nyt.com/newsgraphics/documenttools/32f71f10c36cc482/d90251d5-full.pdf).

9 167. Proclamation 10903 merely acknowledges that Respondent Secretary Rubio
10 designated TdA as a "Foreign Terrorist Organization," and further proclaims that
11 TdA has "unlawfully infiltrated the United States" and is "undertaking hostile actions
12 against the United States"—not once designating, announcing, accusing, or otherwise
13 indicating that TdA as a foreign government in and of itself. *Id.*

14 168. Despite implicitly asserting that Venezuela is invading the United States by
15 and through TdA, because TdA and similar corrupt organizations are actually in
16 control of Venezuela, Proclamation 10903 nonsensically limits the scope of its
17 definition of enemy alien to all Venezuelan citizens, ages fourteen or older who are
18 members of the TdA who are not U.S. citizens or lawful permanent residents are alien
19 enemies.

20 169. Even were the Court willing to grant Respondents a constructive reading of
21 Proclamation 10903 to imply that TdA is a "foreign government," Darwin is not a
22 "native[], citizen[], denizen[], or subject[]" of TdA, nor can anyone be.

23 170. Even were the Court willing to grant Respondents' fiction that the Maduro
24 regime is not the actual government of Venezuela, such that it is a country actually
25 governed by gangs and cartels including TdA, Darwin is a vocal dissident and critic
26 of the Maduro regime seeking asylum in the United States because he fears
27 persecution in Venezuela because of the Maduro regime. He has claimed in his
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1 asylum application and here that Colectivos did infiltrate the Maduro regime, such
2 that EOIR should grant asylum based upon the persecution he faces due to these
3 technically non-governmental groups. For purposes of his asylum, withholding of
4 removal, and CAT application, he agrees with Respondents' estimation of Venezuela
5 in so far that it allows this Court declare facts admitted by Respondents favorable to
6 his asylum and related claims to bind EOIR and any other administrative agency to
7 grant Darwin asylum relief.

8 171. Proclamation 10903 provides no means or process for individuals to contest
9 that they are members of the TdA and do not therefore fall within the terms of
10 Proclamation 10903. Nor does it provide individuals with the statutory grace period
11 in which they can both seek judicial review or arrange their affairs and leave
12 voluntarily. Nor does it provide for the treaty stipulations statutorily mandated by the
13 U.S.-Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31,
14 1836, 12 Bevans 1038.

15 172. According to the AEA, the treaty stipulations of Article 26 of the U.S.-
16 Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836,
17 12 Bevans 1038, legally requires that any AEA Proclamation, explicitly or implicitly,
18 provide for a one-year visa or stay of removal for Venezuelan citizen merchants and a
19 life-long green card or other similar legal status to all Venezuelan citizen non-
20 merchants "unless their particular conduct shall cause them to forfeit this protection,
21 which, in consideration of humanity, the contracting parties engage to give them." 18
22 Stat. 787, 793.

23 173. Proclamation 10903 does not comply with the treaty stipulations of Article 26
24 of the U.S.-Venezuela Treaty of Peace, Friendship, Navigation and Commerce of
25 May 31, 1836, 12 Bevans 1038, nor does it declare a reasonable time for Venezuelan
26 members of TdA to depart. Instead, it invokes the statutory exception to the
27 "reasonable notice" requirement by claiming that the individuals subject to
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1 Proclamation 10903 are “chargeable with actual hostility,” and pose “a public safety
2 risk,” making them subject to immediate apprehension, restraint, and removal. Exec.
3 Proclamation 10903, 90 Fed. Reg. 13033.

4 174. Proclamation 10903 does not comply with Article 7 of the U.S.-Venezuela
5 Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans
6 1038, because it does not comply with its promise to treat Venezuelans “as citizens in
7 the country in which they reside,” or, at a minimum, they will “be placed on a footing
8 with the subjects or citizens of the most favored nation.” 18 Stat. 787, at 789.

9 175. Proclamation 10903 does not comply with Article 9 of the U.S.-Venezuela
10 Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans
11 1038, because it does not comply with its promise to receive and treat Venezuelans
12 with humanity, “giving them all favour and protection,” when they are “forced to
13 seek refuge or asylum” in the United States. *Id.*

14 176. Moreover, Secretary Leavitt’s characterization of all undocumented
15 immigrants as criminals under 8 U.S.C. § 1325 for merely existing in the United
16 States, which is an accurate summation of the bases of President Trump’s order
17 regarding a general immigrant invasion, in so far that it implicates Venezuelan
18 citizens in the United States seeking refuge violates Article 9 of the U.S.-Venezuela
19 Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans
20 1038. *Id.*

21 177. Proclamation 10903 does not comply with Article 13 of the U.S.-Venezuela
22 Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans
23 1038, because it does not comply with its promise to all Venezuelan citizens
24 “transient or dwelling therein . . . open and free . . . [access to U.S.] tribunals of
25 justice for their judicial recourse on the same terms which are usual and customary
26 with the natives of citizens of the country in which they may be” including several
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1 explicit rights to trial overlapping with the Sixth and Seventh Amendments. *Id.* at
2 790.

3 178. Moreover, Secretary Leavitt's characterization of all undocumented
4 immigrants as criminals under 8 U.S.C. § 1325 for merely existing in the United
5 States, which is an accurate summation of the bases of President Trump's order
6 regarding a general immigrant invasion, in so far that it implicates Venezuelan
7 citizens in the United States seeking access to the courts to vindicate the due process
8 and equal protection of the laws, their common law rights, and the presumption of
9 innocence, in so far that it implicates Venezuelan citizens in the United States seeking
10 refuge violates Article 13 of the U.S.-Venezuela Treaty of Peace, Friendship,
11 Navigation and Commerce of May 31, 1836, 12 Bevans 1038. *Id.*

12 179. Proclamation 10903 does not comply with Article 14 of the U.S.-Venezuela
13 Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans
14 1038, because it does not comply with its promise to protect the religious liberty and
15 free speech rights of Venezuelans in the United States under the First Amendment
16 and other laws customary in the United States by its application as a prior restraint on
17 tattoo art featuring basketball references, crowns, or other images that compose free
18 expression protected by the First Amendment as well as the donning of sports apparel
19 that references Michael Jordan, a love for the sport of basketball, and an adoration for
20 U.S. culture that President Trump openly despises. *Id.*; see Exhibit A.

21 180. Moreover, Secretary Leavitt's characterization of all undocumented
22 immigrants as criminals under 8 U.S.C. § 1325 for merely existing in the United
23 States, which is an accurate summation of the bases of President Trump's order
24 regarding a general immigrant invasion, in so far that it implicates Venezuelan
25 citizens in the United States seeking to express their freedom of speech and support
26 for an iconic U.S. sport beloved around the world, and for the free expression through
27 the wearing tattoo art and clothing generally violates Article 14 of the U.S.-
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1 Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836,
2 12 Bevans 1038 and the First Amendment. *Id.*; see Exhibit A.

3 181. Proclamation 10903 risks that U.S. citizens in Venezuela will be treated
4 similarly by the Venezuelan government as an invading force with no rights, as U.S.
5 citizen rights in Venezuela also depend upon this treaty for their reciprocal rights as
6 well.

7 182. Indeed, Proclamation 10903 appears to have been more cruel and unreasonable
8 than President Maduro's recent attempt to expel U.S. diplomats from Venezuela,
9 because Maduro gave them 72-hours at least, and did not appear to seize or imprison
10 the U.S. diplomats or apparently any other U.S. citizens in Venezuela as enemies of
11 the state. *Maduro Says Venezuela is Breaking Relations with US, Gives American*
12 *Diplomats 72 Hours to Leave Country*, CNBC (Jan. 24, 2019, 4:39 PM),
13 [https://www.cnbc.com/2019/01/23/venezuela-president-maduro-breaks-relations-](https://www.cnbc.com/2019/01/23/venezuela-president-maduro-breaks-relations-with-us-gives-american-diplomats-72-hours-to-leave-country.html)
14 [with-us-gives-american-diplomats-72-hours-to-leave-country.html](https://www.cnbc.com/2019/01/23/venezuela-president-maduro-breaks-relations-with-us-gives-american-diplomats-72-hours-to-leave-country.html).

15 183. The United States government employs an arbitrary and capricious "check
16 list," the "Alien Enemy Validation Guide," to determine who is an "alien enemy"
17 subject to Proclamation 10903. An ICE officer completes the form, tallying points for
18 different categories of alleged TdA membership characteristics. *Alien Enemies Act:*
19 *Alien Enemy Validation Guide*, CTR. FOR IMMIGR. STUDIES,
20 <https://cis.org/sites/default/files/2025-04/Alien-Enemy-Validation-Guide.pdf>.

21 184. The checklist's methodology relies on several dubious criteria, including
22 physical attributes like tattoos, hand gestures, symbols, logos, graffiti, and manner of
23 dress. Experts who study the TdA have explained how none of these physical
24 attributes are reliable ways of identifying members of the TdA. *Id.*

25 185. Moreover, the dubious criteria are not specifically defined and require the
26 interviewing officer to define for themselves what tattoos, hand gestures, symbols,
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1 logos, graffiti, and manner of dress, among other things, “indicate allegiance to
2 TDA.” *Id.*

3 186. Noncitizens subject to Proclamation 10903 are not afforded the procedural or
4 substantive protection under the INA, including under Convention Against Torture.

5 187. Multiple judges have already found that Proclamation 10903 is likely unlawful.
6 *See* J.G.G., 2025 WL 914682, at *5–10 (Henderson, J., concurring) (AEA predicates
7 of “invasion” or “predatory incursion” not met); *id.* at *13 (Millett, J., concurring)
8 (“The Constitution’s demand of due process cannot be so easily thrown aside.”);
9 J.G.G. v. Trump, No. CV 25-766 (JEB), 2025 WL 890401, at *2 (D.D.C. Mar. 24,
10 2025) (Boasberg, J.) (“[B]efore plaintiffs may be deported, they are entitled to
11 individualized hearings to determine whether the Act applies to them at all.”); *cf.*
12 A.A.R.P. v. Trump, No. 24A1007, slip op. (2025).

13 188. One judge in the Southern District of Texas granted habeas corpus and a
14 permanent injunction to a similar class. J.A.V. v. Trump, 1:25-cv-072, *36 (S.D.
15 Tex. 2025).

16 189. As a result of Proclamation 10903, countless Venezuelans—including
17 Petitioner in this District—are at imminent risk of removal pursuant to Proclamation
18 10903 without any hearing or meaningful review, regardless of the absence of any
19 ties to TdA or the availability of claims for relief from and defenses to removal.

20 190. By its terms, the AEA applies only where the United States is in a “declared
21 war” with a “foreign nation or government,” or a “foreign nation or government” has
22 engaged in, or is threatening to engage in, an “invasion” or “predatory incursion”
23 against the “territory of the United States” and where the President makes a
24 proclamation to trigger the statute. 50 U.S.C. § 21.

25 191. Proclamation 10903 references the AEA to authorize the “immediate” removal,
26 without notice, legal process much less *due* legal process, equal protection of the law,
27 judicial review, or administrative review, of noncitizens over the age of fourteen who
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1 the government claims are members of the Venezuelan criminal gang TdA, excluding
2 lawful permanent residents. It overrides all the procedural and substantive protections
3 afforded by Congress and this Court for noncitizens in immigration proceedings,
4 including protection against the removal to a place where they will face torture and
5 review to ensure that citizens and legal immigrants are not being treated as alien
6 enemies, i.e., presumptively guilty of crime and terrorism. Exec. Proclamation 10903,
7 90 Fed. Reg. 13033; *see* *Kwock Jan Fat v. White*, 253 U.S. 454, 465 (1920).

8 192. The AEA, enacted in 1798, provides the President with wartime authority and
9 has been used only three times in our Nation's history: the War of 1812, World War
10 I, and World War II.

11 193. The AEA applies to foreign nationals who have not broken allegiance and
12 remain loyal to their national affiliation abroad.

13 194. It may not be used against a criminal gang, terrorist organization, asylum
14 seekers, turncoats who ally with the United States and against their countries of
15 origin, or during peacetime. It would especially be ironic to use against any
16 immigrant who is in the United States due to turning on their country of origin on
17 behalf of or in the interest of the United States, including most Hmong immigrants
18 among others.

19 195. Nonetheless, on March 15, the government removed at least 137 persons of
20 allegedly Venezuelan origin under Proclamation 10903 to CECOT, one of the
21 world's most notorious prisons in El Salvador, where they may remain
22 incommunicado, for indefinite terms potentially for the rest of their lives, and
23 potentially to face torture, malnourishment, involuntary intoxication or poisoning,
24 and death. At least one of these persons was not Venezuelan and was disappeared to
25 CECOT by administrative error. Another who was a resident of this District appears
26 to have been clearly not a member of TdA, as his social media presence indicated he
27 was a gay beautician.
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1 196. News reports say that President Bukele began using these prisoners to
2 negotiate with Venezuela for Salvadoran prisoners, according to Proclamation
3 10903's claim that they are members of the Venezuelan government, which would be
4 effectively to hand over Venezuelan dissidents like Darwin who are wanted in
5 Venezuela for treason and/or sedition. *See, e.g.,* Jaroslav Lukiv, *El Salvador Offers*
6 *Venezuela Prisoner Swap Involving US Deportees*, BBC (Apr. 20, 2025),
7 <https://www.bbc.com/news/articles/cn5xl5ppzr2o>

8 ***International Law Rights Imported By the Privileges and Immunities Clause***

9 197. The decision here regarding Darwin's rights will be emulated, repeated, and
10 extended in matters regarding U.S. citizen rights according to the ancient maxim we
11 will all be free or none will be; either the fundamental rights of travel traditionally
12 discussed as Privileges and Immunities will be extended to both U.S. citizens and
13 immigrants or neither.

14 198. President Trump already expressed his desire to treat U.S. citizens similarly by
15 overseeing detention, expatriation, disappearance, or extraordinary rendition of
16 naturalized U.S. citizens and U.S. citizens convicted of certain disfavored crimes.
17 Diana Glebova, *Trump Says 'Home-Grown' Americans are next to go to El Salvador,*
18 *tells Bukele 'Gotta Build About Five More Places'*, N.Y. POST (Apr. 14, 2025, 2:27
19 PM), [https://nypost.com/2025/04/14/us-news/trump-says-home-grown-americans-](https://nypost.com/2025/04/14/us-news/trump-says-home-grown-americans-are-next-to-go-to-el-salvador-tells-bukele-gotta-build-about-five-more-places/)
20 [are-next-to-go-to-el-salvador-tells-bukele-gotta-build-about-five-more-places/](https://nypost.com/2025/04/14/us-news/trump-says-home-grown-americans-are-next-to-go-to-el-salvador-tells-bukele-gotta-build-about-five-more-places/).

21 199. The fundamental rights of travel traditionally discussed as Privileges and
22 Immunities in the U.S. Constitution were those "which are, in their nature,
23 fundamental; which belong, of right, to the citizens of all free governments; and
24 which have, at all times, been enjoyed by the citizens of the several states which
25 compose this Union, from the time of their becoming free, independent, and
26 sovereign" including the rights named in the Declaration of Independence as well as:
27 "The right of a citizen of one state to pass through, or to reside in any other state, for
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1 the purposes of trade, agriculture, professional pursuits, or otherwise; to claim the
2 benefit of the writ of habeas corpus; to institute and maintain actions of any kind in
3 the courts of the state.” Corfield v. Coryell, 6 F. Cas. 546, 551 (E.D. Penn. 1823)
4 (No. 3,230); see Article 7 of the U.S.-Venezuela Treaty of Peace, Friendship,
5 Navigation and Commerce of May 31, 1836, 12 Bevans 1038, 18 Stat. 787, at 789
6 (promising to treat Venezuelans “as citizens in the country in which they reside”).

7 200. Petitioner asks this Court to extend these rights to all, because they may
8 otherwise be taken from all. These rights to have rights were originally brought with
9 British immigrants to America, and the United States fought Great Britain in not one
10 but two wars to defend the right to leave, to travel, to immigrate. The blood of our
11 ancestors cries out from the ground, and only the most unjust, impious and
12 illegitimate Court would dare to close its ears.

13 ***The Petitioner: Darwin Antonio Arevalo Millan***

14 201. Darwin did not receive any paperwork explaining why he was detained,
15 however, Darwin credibly reports that ICE officials told him his detention was
16 because of a crown tattoo on his shoulder and because he was wearing socks with the
17 number 23 on them. He was neither served with a duly issued warrant from a state or
18 federal magistrate judge, nor an I-200 document that immigration officials style as a
19 warrant. Darwin credibly reports that his crown tattoo was inspired by the crown
20 tattoo that Kobe Bryant had on his shoulder, and that 23 was Michael Jordan’s jersey
21 number. His basketball related tattoos refer to a local basketball team he was a part
22 of in Venezuela where he competed as an athlete. He also credibly reports that he
23 was also wearing athletic shoes at the time of the arrest, and has other basketball
24 related tattoos. See Exhibit A.

25 202. Darwin credibly reports that he loves basketball, and always looked up to
26 Michael Jordan, Kobe Bryant, and other U.S. basketball stars who he wanted to
27 emulate. In short, he adores American culture. Following his adoration of American
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1 basketball stars, Darwin joined the Delfines de Anaco, which was a local basketball
2 team from his neighborhood in Venezuela that participated in state competitions.
3 Darwin has tattoos demonstrating his love for this world renowned U.S. sport and his
4 participation in a local basketball team in Venezuela. *Id.*

5 203. Darwin credibly reports that he also has a social media presence where he
6 spoke out against the Venezuelan government in an attempt to help people in
7 Venezuela avoid the mafia-styled Venezuelan “Colectivos” who are known to extort
8 payments and taxes from innocent citizens like Darwin.

9 204. When Darwin lived in Venezuela he worked as a bus driver. One day the
10 “Colectivos” boarded his bus and held him at gunpoint. Darwin counted four guns
11 pointed at him and eight individuals surrounding him wearing ski masks, dressed in
12 black. These eight men addressed themselves as the “Colectivos” to Darwin, and
13 claimed the support of the Maduro regime in Venezuela.

14 205. Darwin did not make a police report in Venezuela, because the “Colectivos”
15 operate as a government paramilitary so he would essentially have reported them to
16 themselves, potentially causing negative consequences to himself. Making a police
17 report would have been completely useless and potentially dangerous and life
18 threatening.

19 206. Moreover, it is unbearably ironic that the implementation of Proclamation
20 10903 resulted in the characterization of Darwin as a Venezuelan paramilitary force
21 invading the United States. If Darwin is extraordinarily renditioned or disappeared to
22 El Salvador and traded to Venezuela under the guise that he is their paramilitary
23 force, he will be punished by the “Colectivos” and the only apparent reason
24 Venezuela would trade for him is to punish him for explicitly *undermining* and
25 *opposing* their paramilitary forces with his free speech and opinion.

26 207. On the day Darwin was held at gunpoint by the “Colectivos” they stole at least
27 \$70 U.S. dollars from Darwin and told him they would be back to collect around
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1 \$1000 U.S. dollars a month to be extracted mafia style through threats of violence.
2 Minimum wage in Venezuela was approximately \$2 U.S. dollars every two weeks.
3 Darwin could not possibly afford these payments, feared for his life, and fled the
4 country. He fears for his family, some of whom are still in Venezuela. If he is
5 disappeared to CECOT and later prisoner exchanged by President Bukele, the
6 Maduro regime will likely punish Darwin as a traitor or seditionist with torture,
7 violence, and death for his anti-government speech.

8 208. Like many of the individuals that are already disappeared to CECOT, Darwin
9 is not a member of TdA.

10 209. No court has had an opportunity to review the threshold question of whether
11 basketball tattoos and sports memorabilia referencing Kobe Bryant and Michael
12 Jordan are adequate indicia of membership in the TdA gang or crime in general. *See*
13 Exhibit A.

14 210. No court has had an opportunity to decide whether Darwin's tattoos
15 specifically are proof of membership. *Id.*

16 211. No court has had an opportunity to review whether there is any other evidence
17 tending to show that Darwin is a member of TdA.

18 212. No court has had the opportunity to determine whether the "check list," the
19 "Alien Enemy Validation Guide," to determine who is an "alien enemy" subject to
20 Proclamation 10903 is a prior restraint on speech that violates the First Amendment
21 or is unconstitutionally vague.

22 213. No court has had the opportunity to determine whether the "check list," known
23 as the "Alien Enemy Validation Guide," to determine who is an "alien enemy"
24 subject to Proclamation 10903 is arbitrary, capricious, and otherwise a violation of
25 due process and equal protection of the laws.

26 214. No court has had the opportunity to determine whether the "check list," known
27 as the "Alien Enemy Validation Guide," to determine who is an "alien enemy"

1 subject to Proclamation 10903 causing summary detention, removal, disappearance,
2 and extraordinary rendition is a “sentence” or “execution” passed out “without
3 previous judgment pronounced by a regularly constituted court, affording all the
4 judicial guarantees which are recognized as indispensable by civilized peoples” in
5 violation of Article 3 of the Geneva Convention (III) Relative to the Treatment of
6 Prisoners of War, Aug. 12, 1949, [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No. 3364.

7 215. No court has had an opportunity to review the threshold questions of whether a
8 criminal gang can be deemed a “foreign government or nation” within the meaning of
9 the AEA, or whether the AEA can be invoked without naming a “foreign government
10 or nation,” or whether Darwin is or can be a “native[], citizen[], denizen[], or
11 subject[]” of TdA, or whether criminal activity and migration can constitute a
12 military “invasion or predatory incursion” of the “territory of the United States;”
13 under the Act.

14 216. No court has had an opportunity to review whether Proclamation 10903
15 satisfies the requirements of the AEA.

16 217. No court has had an opportunity to determine whether anyone detained and/or
17 disappeared under Proclamation 10903 is a U.S. Citizen or has some other protected
18 legal status requiring federal review under *Trop v. Dulles*’ “right to have rights”
19 according to the Eighth Amendment and international law antecedents to the
20 Privileges and Immunities and Privileges or Immunities Clauses including under
21 treaty law, *jus cogens* norms, and vital laws facilitating this court’s jurisdiction to
22 decide international issues involving human rights.

23 218. No court has had an opportunity to decide whether EOIR is now a defunct Star
24 Chamber incapable of properly determining Darwin’s asylum status as it appears to
25 violate several constitutional basics of review and is now completely under the thrall
26 of a defiant president that does not follow judicial orders that might otherwise avoid a
27 federalism conflict under the Ninth and Tenth Amendments that might involve the
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1 Posse Comitatus Act, 8 U.S.C. § 1385 and/or the Insurrection Act, 10 U.S. § 251 *et*
2 *seq.*

3 219. No Court has had the opportunity to review EOIR now that the administrative
4 state is directly under the jurisdiction of this court under *Loper Bright, U.S. Corner*
5 *Store*, and *Jarkesy*, such that EOIR's decisions and determinations clearly violate due
6 process, equal protection, the arbitrary and capricious standard, the separation of
7 powers, *McCulloch v. Maryland's* definition of limited and supreme constitutional
8 legislation under the Necessary & Proper Clause, and *NFIB v. Sebelius's* gun against
9 the head analogy that protects California's pro-immigrant laws and policies.
10 *Boumediene v. Bush*, 553 U.S. 723, 746, 765 (2008) (“[T]he writ of habeas corpus is
11 itself an indispensable mechanism for monitoring the separation of powers.”);
12 *McCulloch v. Maryland*, 17 U.S. 316, 414–45, 421 (1819) (“Let the end be
13 legitimate, let it be within the scope of the constitutional, and all means which are
14 appropriate, which are plainly adapted to that end, which are not prohibited, but
15 consist with the letter and spirit of the constitution, are constitutional.”); *NFIB v.*
16 *Sebelius*, 567 U.S. 519, 581 (2012); *Wyeth v. Levine*, 555 U.S. 555, 565 (2009)
17 (noting that where Congress legislates in a field of law that state traditionally
18 occupied, including immigration law, the Court will assume that “the historic police
19 powers of the states were not to be superseded by the Federal Act unless that was the
20 clear and manifest purpose of Congress”); *People v. Downer*, 7 Cal. 169, 171 (1857);
21 CAL. CONST., art. I, § 13; Cal. Gov. Code § 7284 et seq.; Cal. Gov. Code § 8720 et
22 *seq.*

23 220. No court has had an opportunity to decide whether Darwin's potential
24 disappearance to CECOT could be considered a constructive removal to Venezuela if
25 El Salvador does begin trading prisoners, and whether this is a constructive violation
26 of the principle of nonreturn or nonrefoulement mandated in the United States by the
27 Refugee Act and the U.N. Convention Against Torture, and the right to leave
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1 maintained by the U.S. Declaration of Independence, in early state constitutions, the
2 Privileges and/or Immunities Clauses, early federal cases including *Henfield's Case*,
3 and more recently in the U.N. Declaration of Human Rights. DECLARATION OF
4 INDEPENDENCE para. 2 (U.S. 1776); U.S. CONST. amends. V, XIV; *Henfield's Case*,
5 11 F. Cas. 1099, 1120 (C.C.D. Pa. 1793) (No. 6360) (Opinion of Wilson, J.)
6 ("Emigration is, undoubtedly, one of the natural rights of man."); *Corfield v. Coryell*,
7 6 F. Cas. 546, 551 (E.D. Penn. 1823) (No. 3,230); *see id.* at Art. VI, cl. 2 (noting that
8 treaties as well as the constitution and statutes are the supreme law of the land); G.A.
9 Res. 217 A, Universal Declaration of Human Rights Art. 13(2) (Dec. 10, 1948)
10 (declaring the right to leave one's country of origin); G.A. Res. 34/46, U.N.
11 Convention Against Torture Art. 3 (Dec. 10, 1984) ("No State Party shall expel,
12 return ('refouler') or extradite a person to another State where there are substantial
13 grounds for believing that he would be in danger of being subjected to torture.");
14 INA, 8 U.S.C. § 1101; Foreign Affairs Reform and Restructuring Act of 1998
15 ("FARRA"), Pub. L. No. 105-277, div. G, Title XXII, § 2242, 112 Stat. 2681, 2681-
16 822 (1998) (codified as Note to 8 U.S.C. § 1231).

17 221. No court has had an opportunity to decide whether a declaration of war is
18 required in order to allow presidents to invoke war powers such that Proclamation
19 10903 is an unconstitutional violation of the declaration of war requirement. This
20 issue was not passed upon during the Korean or Vietnam Wars over the dissents of
21 Justice Douglas in cases like *Sarnoff v. Shultz*. *See Sarnoff v. Shultz*, 409 U.S. 929,
22 930 (1972) (Douglas, J., dissenting); *Holmes v. United States*, 391 U.S. 936, 948
23 (1968) (Douglas, J., dissenting); *Hart v. United States*, 391 U.S. 956, 959-60 (1968)
24 (Douglas, J., dissenting). This matter remains ripe for the Supreme Court's review
25 and we could not find any law or decision that will bind this Court's determination on
26 this issue.

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1 222. No court has had an opportunity to decide whether invoking AEA transforms
2 or reveals ICE detention facilities as military encampments that violate the Posse
3 Comitatus Act, 8 U.S.C. § 1385 and/or the Insurrection Act, 10 U.S. § 251 *et seq.*

4 223. No court has had the opportunity to determine whether 8 U.S.C. § 1325 is
5 unconstitutional and dangerous for providing a pretext to the executive branch for
6 detaining and disappearing individuals as presumptively guilty of crime for merely
7 being an undocumented immigrant or appearing to be an undocumented immigrant.
8 Leavitt, *supra*.

9 224. No court has had an opportunity to decide whether the AUMFs of 2001 and
10 2002 and the PATRIOT ACT of 2001 amendments to the Immigration and
11 Nationality Act can properly extend the power invoked by Secretary Rubio to classify
12 TdA as a terrorist organization under, by, or through the Bush era Executive Order
13 13224 that apparently created the presidential authority to designate terrorist
14 organizations. Exec. Proclamation 10903, 90 Fed. Reg. 13033; Public Notices 12671
15 & 12672, 90 Fed. Reg. 10030–31; Exec. Order No. 13224, 60 Fed. Reg. 49079; AEA,
16 50 U.S.C. § 21 (1798); 8 U.S.C. § 1189; 50 U.S.C. § 1702; AUMF 2001 and 2002,
17 codified at 50 U.S.C. § 1541 note.

18 225. No court has had an opportunity to decide whether the AUMFs of 2001 and
19 2002 and the PATRIOT ACT of 2001 amendments to the Immigration and
20 Nationality Act can legally justify disappearances of people by and through
21 Executive Orders, Proclamations, and memoranda to foreign super-max prisons
22 where they are held incommunicado, for indefinite prison terms, forced to take drugs,
23 and potentially to endure torture and death. *See* Proclamation 10903, 90 Fed. Reg.
24 13033; AEA, 50 U.S.C. § 21 (1798); Exec. Order No. 14159, 90 Fed. Reg. 8443;
25 Public Notices 12671 & 12672, 90 Fed. Reg. 10030–31; Exec. Order No. 14157, 90
26 Fed. Reg. 8439; Exec. Order No. 13224, 60 Fed. Reg. 49079; 8 U.S.C. § 1189; 50
27 U.S.C. § 1702; AUMF 2001 and 2002, codified at 50 U.S.C. § 1541 note.

1 226. No court has had the opportunity to determine whether the AEA and
2 Proclamation 10903 is an unconstitutional suspension of the writ of habeas corpus
3 under *Boumediene v. Bush*, *Duncan v. Kahanamoku*, and *Ex parte Milligan* and
4 therefore totally unconstitutional, void, and ultra vires. *Boumediene v. Bush*, 553
5 U.S. 723, 733 (2008); *Duncan v. Kahanamoku*, 327 U.S. 304, 324 (1946); *Ex parte*
6 *Milligan*, 71 U.S. 2, 140–41 (1866).

7 227. Nor has any court had the chance to determine the effect of *DHS v.*
8 *Thuraissigiam*, if any, to this set of facts as it appears to be distinguishable, likely bad
9 law worthy of being overruled, and obviously in error according to “early access
10 documents” that indicate that Thomas Jefferson used the word “deportation” in
11 conjunction with his extradition or extraordinary rendition of Erik Bollman into the
12 United States to face a treason charge, which became the first major habeas corpus
13 decision issued by the Supreme Court, which effectively released a famous immigrant
14 into the United States. *Compare* *DHS v. Thuraissigiam*, 591 U.S. 103, 123 (2020)
15 (“As late as 1816, the word ‘deportation’ apparently ‘was not to be found in any
16 English dictionary.’”), and *id.* at 116 n.12 (citing *Ex parte Bollman*, 8 U.S. 75, 95
17 (1807)), with *Bollman*, 8 U.S. at 136–37, implicitly responding to Letter Thomas
18 Jefferson to James Wilkinson (Feb. 3, 1807) (early access document) (using the word
19 “deportation” in conjunction with Erik Bollman), and Letter from Thomas Jefferson
20 to William C. C. Claiborne (Feb. 3, 1807) (early access document) (using the word
21 “deportation” in conjunction with Erik Bollman).

22 228. No court has had the chance to determine the effect of the two-month cut off in
23 Article 32 of the U.S.-Venezuela Treaty of Peace, Friendship, Navigation and
24 Commerce of May 31, 1836, 12 Bevans 1038 under *DHS v. Thuraissigiam*’s reliance
25 upon such treaty provisions under *Ex parte D’Olivera*, which granted a writ that
26 “provided for the sailor to be released into the custody of the master of his ship” to
27 apparently transmogrify a petitioners assertion of the ancient common law habeas
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1 corpus remedy of release into constructive consent of a petitioner to further detention
2 and removal, disappearance, or extraordinary rendition to potentially hostile and
3 dangerous foreign climes. *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (“While
4 respondent does not claim an entitlement to release, the Government is happy to
5 release him—provided the release occurs in the cabin of a plane bound for Sri
6 Lanka.” (citing *Ex parte D’Olivera*, 7 F. Cas. 853, 854 (C.C.D. Mass. 1813) (No.
7 3,967))). Under such a circumstance, “if they be not sent back [to the masters of their
8 ships] within two months, to be counted from the day of their arrest,” Petitioner and
9 the class under Article 32 “shall be set at liberty, and shall be no more arrested for the
10 same cause.” Article 32 of the U.S.-Venezuela Treaty of Peace, Friendship,
11 Navigation and Commerce of May 31, 1836, 12 Bevans 1038, 18 Stat. 787, 794.

12 229. No court has had an opportunity to determine whether the AEA and/or
13 Proclamation 10903 is a violation of the separation of powers, because the AEA was
14 never invoked without a declaration of war to define the class of enemies the AEA
15 could be applied to before and therefore the court lacked case or controversy
16 jurisdiction before.

17 230. No court has had an opportunity to determine whether the AEA and/or
18 Proclamation 10903 exceeds the powers of peace recognized in *Curtiss-Wright* under
19 the Acts of Neutrality and foreign sovereignty sometimes litigated under the Foreign
20 Sovereign Immunities Act and recognized in *Biden v. Texas* regarding immigration
21 policies specifically.

22 231. No court has had an opportunity to determine whether Proclamation 10903 and
23 related orders, designations, regulations, and memoranda are arbitrary, capricious,
24 unconstitutionally vague, or compliant with either the APA or INA. 5 U.S.C. § 706; 8
25 U.S.C. § 1231(b)(3); *see* *Kwock Jan Fat v. White*, 253 U.S. 454, 465 (1920) (“It is
26 better that many Chinese immigrants should be improperly admitted than that one
27 natural born citizen of the United States should be permanently excluded from his
28

country.”), *extended by* *Crowell v. Benson*, 285 U.S. 22, 57, 60 (1932) (applying judicial review of administrative agencies “wherever fundamental rights depend” according to constitutional avoidance doctrine); Pfander, *supra*, at 659.

232. No court has had an opportunity to determine whether the AEA is repealed or otherwise rendered inoperable under the APA and Immigration Laws. 5 U.S.C. § 706; 8 U.S.C. § 1231(b)(3).

233. No court has had an opportunity to determine whether ICE can duly or legally arrest any person on the basis of a suspicion of criminal association alone without a duly issued warrant with particularized suspicion and particularized descriptions of the person or things to be seized or previously establishing removability or any other basis of detention under the law as required under the Fourth Amendment of the United States Constitution and CAL. CONST., art. I, § 13.

234. No court has had an opportunity to determine whether the detention of Darwin is an unreasonable seizure under the Fourth Amendment and CAL. CONST., art. I, § 13.

235. No court has had an opportunity to determine whether the term of Darwin’s detention is unconstitutionally indefinite. U.S. CONST. amends. IV, V, VIII, IX; CAL. CONST., art. I, §§ 7, 13, 17.

236. No court has had an opportunity to determine the underlying constitutionality of INA under its original legislation among the state according to their police powers to protect health and safety of its citizens. *NFIB v. Sebelius*, 567 U.S. 519, 581 (2012); *New York v. Miln*, 36 U.S. 102, 136 (1837); *Collet v. Collet*, 2 U.S. 294, 296 (1792) (allowing state grants of citizenship to foreigners that the United States was bound to respect upon a more liberal basis than the federal law required).

237. No court has had the opportunity to determine the question of whether the plenary power to exclude immigrants is a legitimate constitutional basis to enact laws to detain asylum seekers within the United States without due process, whether the

1 plenary power to exclude can exist in a system of separated powers where no branch
2 has plenary power and where the branches may constantly disagree with one another
3 and as federal powers have been considered limited and supreme rather than plenary,
4 whether the federal plenary power to exclude immigrants violates the Ninth, Tenth,
5 and Eleventh Amendments, whether the plenary power to exclude immigrants can
6 legitimately be considered necessary and proper from the U.S. Constitution's
7 Naturalization Clause, which necessarily delegated a power to include, or from the
8 Eleventh Amendment in conjunction with the Fugitive Slaves Clause, which appears
9 to be where the Supreme Court originally derived the federal power to exclude
10 immigrants especially those attempting to enter free states, or from the Commerce
11 Clause under *Gibbons v. Ogden*, which struck down a New York law that would
12 hinder immigration into that state and again leads back to cases regarding the slave
13 trade that are an extremely questionable basis for modern post-Reconstruction
14 Amendment laws.

15 238. No court has had the opportunity to address the eugenic origins of immigration
16 law in *Buck v. Bell* cost-benefit balancing tests taken from *Jacobson v.*
17 *Massachusetts*, which was an arbitrary ad hoc tradition that was extended through
18 *Mathews v. Eldridge* to *Landon v. Plasencia* and extended in *DHS v. Thuraissigiam*
19 to dangerously narrow the application of *Boumediene v. Bush*. *DHS v. Thuraissigiam*,
20 591 U.S. 103, 136 (2020) (distinguishing *Boumediene*); *id.* at 139 (deriving the feudal
21 maxim that "the power to admit or exclude aliens is a sovereign prerogative" from the
22 mere dicta of a non-habeas corpus *Mathews* cost-benefit balancing test case: *Landon*
23 *v. Plasencia*, 459 U.S. 21, 32 (1982)). This same kind of balancing test was extended
24 in the plurality of *Hamdi v. Rumsfeld*, 542 U.S. 507, 529 (2004) (plurality opinion)
25 (citing *Mathews v. Eldridge*, 424 U.S. 319 (1976)) that was properly decried by
26 Justice Scalia with all due forcefulness here:

27 Having found a congressional authorization for detention of citizens
28 where none clearly exists; and having discarded the categorical

1 procedural protection of the Suspension Clause; the plurality then
2 proceeds, under the guise of the Due Process Clause, to prescribe what
3 procedural protections *it* thinks appropriate. It ‘weigh[s] the private
4 interest . . . against the Government’s asserted interest,’ (citations
5 omitted), and—justice as thought writing a new Constitution—comes up
6 with an unheard-of system in which the citizen rather than the
7 Government bears the burden of proof, testimony is by hearsay rather
8 than live witnesses, and the presiding officer may well be a ‘neutral’
9 military officer rather than judge and jury. (citation omitted). It claims
10 authority to engage in this sort of “judicious balancing” from *Mathews*
11 *v. Eldridge* (citations omitted), a case involving . . . the withdrawal of
disability benefits! Whatever the merits of this technique when newly
recognized property rights are at issue (and even there they are
questionable), it has no place where the Constitution and the common
law already supply an answer.

12 *Hamdi*, 542 U.S. at 575–76 (Scalia, J., dissenting). The ultimate betrayal arising from
13 *Hamdi* was that the cost-benefit test the plurality opinion hoped beyond hope that the
14 government would apply to the rights of a U.S. citizen were all denied, and instead
15 *Hamdi* facilitated the government act of stripping a U.S. citizen of his citizenship,
16 banishing him, and putting him on a no fly list without a trial. Dahlia Lithwick,
17 *Nevermind: Hamdi Wasn’t So Bad After All*, SLATE (Sept. 23, 2004),
18 <https://slate.com/news-and-politics/2004/09/hamdi-wasn-t-so-bad-after-all.html>. A
19 similar interest-balancing test was extended from *Janus v. AFSCME* into *Dobbs v.*
20 *Jackson Women’s Health Organization* and many other cases as an anti-precedent
21 precedent that may end *stare decisis* in the United States altogether. *Dobbs v.*
22 *Jackson Women’s Health Org.*, 597 U.S. 215, 266 (2022) (citing *Janus v. AFSCME*,
23 585 U.S. 878, 917 (2018)); see Joshua J. Schroeder, *Rethinking Rights in a*
24 *Disappearing Penumbra: How to Expand Upon Reproductive Rights in Court After*
25 *Dobbs*, 54 N.M. L. Rev. 15, 17–19 (2024) (noting *Janus*’s extension as an anti-
26 precedent precedent overrule a growing number of cases).

27 239. No court has had the opportunity to determine whether the *Hamdi* decision
28 specifically inspired the activism of former law professor John C. Eastman to propose

1 that *Wong Kim Ark* is unconstitutional, and that the INA is also unconstitutional for
2 recognizing natural born citizenship, even though it appears that the illegal and
3 unconstitutional immigration system that Darwin is being oppressed by here is
4 inspired by Eastman's radical scholarship. John C. Eastman, *Born in the U.S.A.?*
5 *Rethinking Birthright Citizenship in the Wake of 9/11*, 42 U. RICHMOND L. REV. 955,
6 956–57, 961, 963 (2008) (citing *Elk v. Wilkins*, 112 U.S. 94, 101 (1884) and *Plessy v.*
7 *Ferguson*, 163 U.S. 537, 542–43 (1896) with strong approval), *rejected by* Margaret
8 Stock & Nahal Kazemi, *The Non-Controversy Over Birthright Citizenship:*
9 *Defending the Original Understanding of Jus Soli Citizenship*, 24 CHAPMAN L. REV.
10 1, 2, 14 (2021). Respondents recently issued a full-throated argument that it can
11 constitutionally deny U.S. citizenship to people born in the United States through
12 executive order, in clear violation of *Wong Kim Ark* while *Wong Kim Ark* is still in
13 force, according to Eastman's radical scholarship. *See Elk*, 112 U.S. at 101 (citing
14 *The Slaughterhouse Cases*, 83 U.S. 36, 73 (1873)), *cited by* Application for a Partial
15 Stay of the Injunction Issued by the United States District Court for the District of
16 Maryland, at 7, *Trump v. CASA*, No. 24A (2025).

17 240. No court has determined whether *Boumediene* was intended to correct *Hamdi's*
18 error, by applying a critical factor test taken from *Johnson v. Eisentrager*.

19 241. No court has had the opportunity to determine whether the *Eisentrager* critical
20 factor test as extended by *Boumediene's* functional approach was misapplied in both
21 the Ninth Circuit and the Third Circuit as yet another *Hamdi*-styled cost-benefit
22 balancing test in *USDHS v. Thuraissigiam* and *USDHS v. Castro* that the U.S.
23 Supreme Court reversed by distinguishing *Boumediene* from the *Landon* cost-benefit
24 balancing strategy applied in *Thuraissigiam*. *Thuraissigiam*, 591 U.S. at 136
25 (distinguishing *Boumediene* in order to apply a *Landon* balancing test), *explicitly*
26 *reversing* 917 F.3d 1097, 1105, 1109 n.11 (9th Cir. 1097) (appearing to apply
27 *Boumediene* as if it embodied a *Hamdi* balancing test with three factors and adopting
28

1 a problematic term “finality era” that conveniently covers up the eugenic or Chinese
2 exclusion era from *Castro* (citing *Hamdi*, 542 U.S. at 542 (plurality opinion);
3 *Boumediene*, 553 U.S. at 745)), and implicitly reversing or replacing *Castro v.*
4 *USDHS*, 835 F.3d 422, 429, 434 (3d Cir. 2016) (falsely arguing that *Boumediene*
5 prescribed “a balancing of the petitioner’s interest,” which it never did, and inventing
6 the term “finality era” from whole cloth apparently to cover up the eugenic
7 ideology that actually pervaded that era).

8 242. No court has determined whether *Boumediene*’s decision to distinguish English
9 feudal law represented by *Rex v. Cowle* also necessarily distinguishes U.S. common
10 law from the geographic limitations upheld in the contemporaneous decision of the
11 House of Lords in *Ex parte Bancoult*.⁴ *Boumediene*, 553 U.S. at 751 (distinguishing
12 *Rex v. Cowle* (1759) 2 Burr. 834, 854–56 (Eng.)); *R. v. Secretary of State for Foreign*
13 *and Commonwealth Affairs, Ex parte Bancoult* [2008] UKHL 61, ¶¶ 32, 36, 81–84,
14 87, 125, 146–49 (Eng.) (affirming *Campbell v. Hall* (1774) 1 Cowp. 206, 208, 211–
15 12 (Eng.)); *Campbell*, 1 Cowp. at 209–10 (noting that taxation without representation
16 is specifically constitutional and proper because a conquering king might otherwise
17 “put[] the inhabitants to the sword or exterminate[] them” because “all the lands
18 belong to him,” and as such, regarding anyone the monarch allows to survive, “the
19 King might change part or the whole of the law or political form of government of a
20 conquered dominion”); see *THE REVOLUTIONARY WRITINGS OF JOHN ADAMS* 274–75
21 (2000) (noting how the feudal rationale for habeas corpus in *Cowle* was potentially
22 the original English basis for “treating the Americans as rebellious vassals, to subdue
23 them, and take possession of their country,” and lambasting *Cowle*’s unjust
24 limitations of habeas corpus as fictions of law only); but see *Dred Scott v. Sandford*,
25 60 U.S. 393, 467 (1857) (slavery case) (Nelson, J., concurring) (citing *Somerset*’s

26
27 ⁴ It appears that this sharp split in common law between England and the United States is fundamental and clearly
28 remains in contention. 2 COLLECTED WORKS OF JAMES WILSON 1049–51 (Kermit L. Hall & Mark David Hall eds.,
2007) (quoting 1 WILLIAM BLACKSTONE, COMMENTARIES *107; *Calvin’s Case*, 7 Co. Rep. 1a, 17a (Eng.)).

1 Case for a geographic limitation on habeas corpus so that slaves only become free in
2 England); *Prigg v. Pennsylvania*, 41 U.S. 539, 612 (1842) (slavery case) (citing
3 *Somerset's Case* (1772) 20 How. St. Tr. 1, 79 (Eng.) for the geographic limitation of
4 freedom to England, which appears to be what caused the U.S. Supreme Court to
5 determine that state fugitive slaves laws should defeat state sanctuary laws).

6 243. No court has had the opportunity to address the president's apparent policy of
7 almost never releasing detainees even where the law requires, allows, or where the
8 interests of the people of the United States would be served by release of immigrants
9 into society and even where there are immigration court orders to the contrary. Based
10 on information and belief, it appears that the Trump administration has ordered ICE
11 detention facilities to disobey bond hearing decisions and time limits set by law by
12 keeping a maximum number of immigrants detained indefinitely making any
13 potential hearing in EOIR for Darwin's release futile.

14 244. Likewise, individuals targeted by Proclamation 10903 were also given no
15 opportunity to contest their designation as members of the TdA gang and therefore
16 did not even fall with Proclamation 10903. And more and more evidence is emerging
17 that many (perhaps most) of these individuals lacked any ties to the gang and were
18 mistakenly placed under Proclamation 10903. For example, it is widely reported that
19 President Donald Trump thought that a photo of now famous detainee at CECOT
20 Kilmar Abrego Garcia's hand actually had "MS13" tattooed on it, when that term was
21 photo-shopped into an image of Mr. Garcia's hand as a loose interpretation of his
22 actual tattoos that appear to have no obvious or apparent link to a gang. Yet, Mr.
23 Garcia was disappeared and detained at CECOT.

24 245. That more individuals are not languishing in a Salvadoran prison is the result
25 of a nationwide class Temporary Restraining Order issued by Judge Boasberg in the
26 District of Columbia. *J.G.G. v. Trump*, No. 1:25-cv-766-JEB, 2025 WL 825115, at
27 *1 (D.D.C. Mar. 15, 2025). The D.C. Circuit declined to stay the TRO, *J.G.G. v.*

1 Trump, No. 25-5067, 2025 WL 914682, at *1 (D.C. Cir. Mar. 26, 2025), but the
2 Supreme Court vacated the TRO, Trump v. J.G.G., No. 24A931, 2025 WL 1024097,
3 at *1 (U.S. Apr. 7, 2025). However, the Supreme Court made clear that review was
4 available by habeas, that individuals subjected to Proclamation 10903 are entitled to
5 “due process” and must be given “notice . . . within a reasonable time and in such a
6 manner as will allow them to actually seek habeas relief in the proper venue before
7 such removal occurs.” *Id.* at *2.

8 246. Moreover, the Supreme Court ordered Kilmar Abrego Garcia to be returned to
9 the United States, an order which the president has not complied with. This creates a
10 constitutional crisis, which stresses the importance of the Court ordering the release
11 of prisoners now, when they are still on American soil—release into the United States
12 pending legitimate government action, i.e., *due process* and equal protection of the
13 law.

14 247. In *A.A.R.P. v. Trump*, the U.S. Supreme Court controversially used its shadow
15 docket at *A.A.R.P. v. Trump*, No. 24A1007 (Apr. 19, 2025) (misc. order) to
16 apparently temporarily block the president from deporting immigrants in Texas. This
17 move may indicate the Supreme Court’s preference for non-nationwide injunctions,
18 but it is unclear what to procedurally make of this order. Subsequently, the U.S.
19 Supreme Court decided *per curiam* to grant an injunction in *A.A.R.P.*, and determined
20 that due process requires notice and an opportunity to be heard. *A.A.R.P. v. Trump*,
21 No. 24A1007, slip op. at 7 (2025) (*per curiam*).

22 248. Finally, in *J.A.V. v. Trump*, the Fifth Circuit District Judge Fernando Rodriguez
23 granted a permanent injunction to protect immigrants from being disappeared under
24 the AEA that extends to a class of individuals detained within the Southern District of
25 Texas. *J.A.V. v. Trump*, 1:25-cv-072, *36 (S.D. Tex. 2025).

26 249. Accordingly, given that Petitioner and the putative class are no longer
27 protected by the TRO in the *J.G.G.* case in D.C., nor the *A.A.R.P.* or *J.A.V.* cases in
28

1 Texas, they file this habeas action given the Supreme Court's ruling that habeas is the
2 proper mechanism to challenge Proclamation 10903's application. Although
3 Petitioner has not been given notice yet of his designation, the government has made
4 clear that they believe he is a member of TdA and has further stated that they may
5 give as little as 24 hours' notice, to those it designates, notwithstanding the Supreme
6 Court's express statement that individuals must be given notice adequate to allow
7 them to seek judicial review.

8 250. Nor did any of these previous similar cases raise the AEA's requirement that
9 Proclamation 10903 mandatorily triggered the treaty stipulations in the U.S.-
10 Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836,
11 12 Bevens 1038.

12 251. No court has had the opportunity to determine whether the AEA requires the
13 Respondents to facilitate the grant of a green card or similar life-long legal status
14 according to all Venezuelan citizen non-merchant like Darwin, by which Darwin can
15 eventually naturalize as was intended under the U.S.-Venezuela Treaty of Peace,
16 Friendship, Navigation and Commerce of May 31, 1836, 12 Bevens 1038 should war
17 ever break out between Venezuela and the United States as Proclamation 10903
18 appears to proclaim.

19 252. This Court's intervention is also necessary to protect the public from increased
20 infection rates of diseases, including COVID that spread easily in closed, confined
21 spaces that members of the putative class are more likely to carry and spread
22 proximately and actually because of their unlawful and unjust detention without due
23 process. Based on information and belief, Darwin is presently exposed to COVID
24 and may fall sick without adequate medical attention, and he may die or sustain great
25 bodily harm if he remains detained. Moreover, increasing detentions of human
26 beings in general increases the risk that serious infectious diseases spread into the
27 greater population of the United States. Edmund L. Andrews, *COVID-19 Spreads*
28

1 *Faster in American Jails than on Cruise Ships*, MED. PRESS (Sept. 25, 2020),
2 <https://perma.cc/KXS4-NNLU>, cited by Maybell Romero, *Law Enforcement as*
3 *Disease Vector*, U. CHIC. L. REV.: ONLINE, [https://lawreview.uchicago.edu/online-](https://lawreview.uchicago.edu/online-archive/law-enforcement-disease-vector)
4 [archive/law-enforcement-disease-vector](https://lawreview.uchicago.edu/online-archive/law-enforcement-disease-vector).

5 253. Petitioner in this action seeks actual release from detention pending legitimate
6 or “due” process and equal protection under the law, which is the common law
7 habeas corpus remedy mandated by *DHS v. Thuraissigiam*, and which was granted to
8 foreign nationals in *Boumediene v. Bush* tracing back to the origin of Supreme Court
9 review of habeas corpus in *Ex parte Bollman*.

10 **CLASS ACTION ALLEGATIONS**

11 254. Petitioner brings this action under both Federal Rules of Civil Procedure 23(a)
12 and 23(b)(2) and principles of habeas corpus and equity on behalf of himself and a
13 class of all other persons similarly situated.

14 255. Petitioner seeks to represent the following Proposed Class: All noncitizens in
15 custody in the Central District of California who were, are, or will be subject to the
16 March 2025 Presidential Proclamation 10903 entitled ‘Invocation of the AEA
17 Regarding the Invasion of the United States by Tren De Aragua’ and/or its
18 implementation.

19 256. The proposed class satisfies the requirements of Rule 23(a)(1) because the
20 class is so numerous that joinder of all members is impracticable. Hundreds if not
21 thousands of Venezuelans living in California and the greater Western U.S. region
22 will potentially be subjected to summary detention and removal under Proclamation
23 10903 and its implementation by Respondents. As of May 5, 2025 the government
24 already transferred 278 people that we know of to the CECOT black site, this number
25 grew since the March 15, 2025 removal of at least 137 Venezuelans, and based on
26 information and belief this number is likely to continue growing. Based on the
27 litigation currently available in federal courts, it appears that the government has
28

1 suddenly transferred hundreds Venezuelan men from detention centers all over the
2 country to northern Texas, despite their pending removal proceedings in immigration
3 court. Upon information and belief, people have been transferred in groups of
4 Venezuelan men, and been told that they appear to be on a list with other
5 Venezuelans. These Venezuelan men are being held up by court orders currently be
6 litigated in court, likely pausing the movement of those men to Texas, but which may
7 cause their movement into the Central District of California for processing and
8 removal. Thus, many individuals in this District are at imminent risk of summary
9 removal pursuant to Proclamation 10903. California contains one of the largest
10 populations of Venezuelans in the United States amounting to around 3% of the
11 population presently in the United States. The proposed class also includes numerous
12 future noncitizens who will be subjected to Proclamation 10903, as the government
13 has repeatedly stated that it intends to using Proclamation 10903 absent court
14 intervention. Because ICE continues to track the TdA members who are amenable to
15 removal proceedings, and more individuals will be designated under Proclamation
16 10903, the class includes unknown, unnamed future members. Importantly, the
17 Trump administration seems to have an elastic view of who may be a member of TdA
18 and subject to Proclamation and thus an unknown and unknowable member of the
19 class as several non-Venezuelans were also disappeared to CECOT as though they
20 were Venezuelans according to Proclamation 10903 and this class may expand
21 according to the administer due legal process that is required to properly determine
22 who affected by Proclamation 10903 is actually Venezuelan or only treated as one.
23 257. The class satisfies the commonality requirements of Rule 23(a)(2). The
24 members of the class are subject to a common practice: summary detention, removal,
25 disappearance, and extraordinary rendition under Proclamation 10903 contrary to the
26 AEA, the INA, and due process. The suit also raises threshold questions of law
27 common to members of the proposed class, including whether Proclamation 10903
28

1 and its implementation satisfy the statutory requirements of the AEA; whether the
2 AEA is constitutional; whether Proclamation 10903 may lawfully override the
3 protections afforded noncitizens under the INA and treaty law; whether the lack of
4 due process violates the Fifth Amendment; whether the lack of warrant violates the
5 Fourth Amendment; and whether the removal, disappearance, extraordinary rendition
6 implemented under Proclamation 10903 is cruel and unusual punishment under the
7 Eighth Amendment.

8 258. The proposed class satisfies the typicality requirements of Rule 23(a)(3),
9 because the claims of the representative Petitioners are typical of the claims of the
10 class. Each proposed class member, including the proposed class representatives, has
11 experienced or faces the same principal injury (unlawful detention, removal,
12 disappearance, and extraordinary rendition), based on the same government practice
13 (Proclamation 10903 and its implementation), which is unlawful as to the entire class
14 because it violates the AEA, the INA, due process, and warrant requirement.

15 259. The proposed class satisfies the adequacy requirements of Rule 23(a)(4). The
16 representative Petitioners seek the same relief as the other members of the class—
17 among other things, an order declaring Proclamation 10903 unlawful, the AEA
18 unconstitutional, and an injunction preventing enforcement continue of Proclamation
19 10903. In defending their rights, Petitioners will defend the rights of all proposed
20 class members fairly and adequately.

21 260. The proposed class is represented by experienced attorneys at SchroederLaw.
22 Proposed Class Counsel includes a multi-published legal scholar in this specific area
23 of law and author of a guide for immigration lawyers to assert habeas corpus for
24 immigrants written from his experience drafting habeas corpus writs for noncitizens
25 and who has extensive experience in state and federal courts on behalf of noncitizens.
26 Proposed Class Counsel will work closely with Darwin's immigration lawyers who
27 also have extensive experience in detained immigration work.

1 261. The proposed class also satisfies Rule 23(b)(2). Respondents have acted (or
2 will act) on grounds generally applicable to the class by subjecting them to summary
3 detention and removal, disappearance, or extraordinary rendition under Proclamation
4 10903 rather than affording them the protection of immigration laws. Injunctive and
5 declaratory relief is therefore appropriate with respect to the class as a whole.

6 262. The proposed class also satisfies the requirements for a class guided by Rule 23
7 but certified under equity habeas principles.

8 **CAUSES OF ACTION⁵**

9 **FIRST CLAIM FOR RELIEF**

10 Ultra Vires, Violation of 50 U.S.C. § 21, *et seq.* (All Respondents)

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

13 264. The AEA does not authorize the removal of noncitizens from the United States
14 absent a “declared war” or a “perpetrated, attempted, or threatened” “invasion or
15 predatory incursion” against the “territory of the United States” into the United States
16 by a “foreign nation or government.” *See* 50 U.S.C. § 21.

17 265. Proclamation 10903 and its implementation do not satisfy these statutory
18 preconditions.

19 266. Additionally, the AEA permits removal only where noncitizens alleged to be
20 “alien enemies” “refuse or neglect to depart” from the United States. 50 U.S.C. § 21.
21 The AEA also requires the government to afford noncitizens alleged to be “alien
22 enemies” sufficient time to settle their affairs and to depart the United States. *See* 50
23 U.S.C. § 22.

24 267. However, Petitioners and the class are being subject to forced detention,
25 removal, disappearance, or extraordinary rendition without being afforded the
26

27
28 ⁵ No injunctive relief is sought against Respondent President Donald J. Trump.

1 privilege of voluntary departure, let alone any notice or an opportunity to respond to
2 the designation of alien enemy.

3 268. The application of Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order
4 No. 14165, 90 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their
5 implementing regulations, notices, orders, proclamations, memoranda, and other
6 executive acts to Petitioner and the class is therefore *ultra vires* and contrary to law.

7 **SECOND CLAIM FOR RELIEF**

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

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

11 270. The INA provides that a removal proceeding before an immigration judge
12 under 8 U.S.C. § 1229a is “the sole and exclusive procedure” by which the
13 government may determine whether to remove an individual, “[u]nless otherwise
14 specified” in the INA. 8 U.S.C. § 1229a(a)(3).

15 271. The INA’s “exclusive procedure” and statutory protections apply to any
16 removal of a noncitizen from the United States, including removals authorized by the
17 AEA.

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

20 273. Because Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No.
21 14165, 90 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their
22 implementing regulations, notices, orders, proclamations, memoranda, and other
23 executive acts provides for the removal of Petitioners and the class without the
24 procedures specified in the INA, they violate the INA.

25 ///

26 ///

27 ///

THIRD CLAIM FOR RELIEF

Violation of 8 U.S.C. § 1158, Asylum (All Respondents)

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

275. The INA provides, with certain exceptions, that “[a]ny alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien’s status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.” 8 U.S.C. § 1158(a)(1).

276. Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing regulations, notices, orders, proclamations, memoranda, and other executive acts prevents Petitioners and the class from applying for asylum in accordance with 8 U.S.C. § 1158(a)(1) and is therefore contrary to law.

FOURTH CLAIM FOR RELIEF

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

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

278. With certain limited exceptions, the “withholding of removal” statute, INA § 241(b)(3), codified at 8 U.S.C. § 1231(b)(3), bars the removal of noncitizens to a country where it is more likely than not that they would face persecution.

279. Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing regulations, notices, orders, proclamations, memoranda, and other executive acts violate the withholding of removal statute because it does not provide adequate safeguards to ensure that Petitioners and the class are not returned to a country where

1 it is more likely than not that they would face persecution. As a result, Respondents'
2 actions against Petitioners and the class are contrary to law.

3 **FIFTH CLAIM FOR RELIEF**

4 Violation of the Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA"),
5 codified at 8 U.S.C. § 1231 note (All Respondents)

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

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

10 282. Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90
11 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing
12 regulations, notices, orders, proclamations, memoranda, and other executive acts
13 violate FARRA because they do not provide adequate safeguards to ensure that
14 Petitioners and the class are not returned to a country where it is more likely than not
15 that they would face torture. As a result, Respondents' actions against Petitioners and
16 the class are contrary to law.

17 **SIXTH CLAIM FOR RELIEF**

18 Ultra Vires, Violation of 50 U.S.C. § 22 (All Respondents)

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

21 284. The AEA requires that noncitizens whose removal is authorized by the AEA,
22 unless "chargeable with actual hostility, or other crime against the public safety," be
23 allowed the full time stipulated by treaty to depart or a reasonable time in which to
24 settle their affairs before departing. See 50 U.S.C. § 22. Proclamation 10903 on its
25 face denies Petitioners and the class anytime under Section 22 to settle their affairs,
26 because it declares everyone subject to Proclamation 10903 to be "chargeable with
27 actual hostility" and to be a "danger to public safety."
28

1 285. The government cannot invoke that exception categorically, without
2 individualized assessments. Each noncitizen must specifically be “chargeable with
3 actual hostility” or a crime against public safety to lose eligibility for voluntary
4 departure.

5 286. Moreover, Proclamation 10903 violates the treaty stipulations between the
6 United States and Venezuela that are mandated by the AEA and triggered by
7 Proclamation 10903 in Articles 7, 9, 13, 14, and 26 of the U.S.-Venezuela Treaty of
8 Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans 1038, 18
9 Stat. 787. Among these stipulations are rights to access the court, rights to freedom
10 of conscience, religion, and speech, rights to be treated as a U.S. citizen, rights to be
11 received and treated with humanity as a refugee or asylum seeker, and a right for
12 merchants residing in the interior to have one year to depart and non-merchants to
13 remain for the rest of their lives as lawful residents of the United States “unless their
14 particular conduct shall cause them to forfeit this protection, which, in consideration
15 of humanity, the contracting parties engage to give them.” 18 Stat. 787, 793.

16 287. Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90
17 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing
18 regulations, notices, orders, proclamations, memoranda, and other executive acts thus
19 contravenes 50 U.S.C. § 22, are ultra vires, and contrary to law.

20 **SEVENTH CLAIM FOR RELIEF**

21 **Suspension of Habeas Corpus (All Respondents)**

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

24 289. Detainees have the right to file petitions for habeas corpus to challenge the
25 legality of their detention, removal, disappearance, or extraordinary rendition under
26 Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg.
27 8467, and Exec. Order No. 14159, 90 Fed. Reg. 8443.

1 290. Where a habeas petitioner asserts the ancient common law remedy of release
2 pending legitimate government action the functional approach of *Boumediene v. Bush*
3 applies, and *DHS v. Thuraissigiam* is distinguished. *Boumediene v. Bush*, 553 U.S.
4 723, 771 (2008) (“We hold that Art. I, § 9, cl. 2, of the Constitution has full effect at
5 Guantanamo Bay.”), *distinguished by* *DHS v. Thuraissigiam*, 591 U.S. 103, 119, 122
6 (2020) (noting that “*Boumediene*, is not about immigration at all,” narrowing its
7 ruling to only cases where petitioner “does not seek an order releasing him”).

8 291. However, if the disparaging dicta of *Thuraissigiam* is applied in this case, it
9 appears to indicate by its own terms that Petitioners should be released into the
10 United States after two months of detention with binding treaty stipulations that they
11 never be detained for the same reason again. Article 32 of the U.S.-Venezuela Treaty
12 of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans 1038;
13 18 Stat. 787, 794 (requiring “if they be not sent back [to the masters of their ships]
14 within two months, to be counted from the day of their arrest,” Petitioner and the
15 class under Article 32 “shall be set at liberty, and shall be no more arrested for the
16 same cause”); *DHS v. Thuraissigiam*, 591 U.S. 103, 119 (2020) (“While respondent
17 does not claim an entitlement to release, the Government is happy to release him—
18 provided the release occurs in the cabin of a plane bound for Sri Lanka.” (citing *Ex*
19 *parte* *D’Olivera*, 7 F. Cas. 853, 854 (C.C.D. Mass. 1813) (No. 3,967))).

20 292. The summary and imminent detention, removal, disappearance, and
21 extraordinary rendition of Petitioners and the class under Exec. Proclamation 10903,
22 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467, Exec. Order No.
23 14159, 90 Fed. Reg. 8443, and their implementing regulations, notices, orders,
24 proclamations, memoranda, and other executive acts suspends the privilege and right
25 of Petitioners and the class to file habeas corpus. *See* 28 U.S.C. § 2241; U.S. Const.
26 art. I, § 9, cl. 2 (Suspension Clause).

27 ///

EIGHTH CLAIM FOR RELIEF

Violation of the First Amendment, Prior Restraint (All Respondents)

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

294. The First Amendment provide in relevant part that: “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people to peaceably assemble, and to petition the Government for a redress of grievances.” U.S. CONST. amend. I.

295. Certain First Amendment protections are also required by the AEA under the treaty stipulations triggered by Exec. Proclamation 10903, 90 Fed. Reg. 13033 set forth in Article 14 of the U.S. Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans 1038.

296. By administering Proclamation 10903 as a prior restraint on speech to chill protected speech by detaining Petitioner and Petitioner’s class and subjecting them to imminent detention, removal, disappearance, and extraordinary rendition for expressing themselves through tattoo art and by wearing sports memorabilia among other things, Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing regulations, notices, orders, proclamations, memoranda, and other executive acts violates the First Amendment.

NINTH CLAIM FOR RELIEF

Violation of the First Amendment, Vagueness (All Respondents)

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

298. By administering an arbitrary and capricious “check list,” known as the “Alien Enemy Validation Guide,” to determine who is an “alien enemy” subject to

1 Proclamation 10903, which includes several open ended categories involving hand
2 gestures, graffiti, tattoo art, text messages and phone conversation, and articles of
3 clothing worn that allow the interviewer to determine what constitutes indicia of
4 membership in TdA without any objective definition or guiding principle, Exec.
5 Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467,
6 Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing regulations,
7 notices, orders, proclamations, memoranda, and other executive acts are void for
8 vagueness under the First Amendment because it will have the direct effect of
9 chilling legitimate speech and expression. *See Exhibit A.*

10 **TENTH CLAIM FOR RELIEF**

11 Violation of Reasonable Seizure and Warrant Requirement under Fourth Amendment
12 and CAL. CONST., art. I, § 13 (All Respondents)

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

15 300. The Fourth Amendment provides in relevant part that: “The right of the people
16 to be secure in their persons, houses, papers, and effects, against unreasonable
17 searches and seizures, shall not be violated, and no Warrants shall issue, but upon
18 probable cause, supported by Oath or affirmation, and particularly describing the
19 place to be searched, and the persons or things to be seized.” U.S. CONST. amend. IV.

20 301. By facilitating seizure Petitioner and Petitioner’s class without a warrant
21 supported by probable cause and without sufficient particularity apparently acting
22 under a writ of assistance or general warrant and without serving and I-200 or any
23 other ulterior notice or informal paperwork sometimes styled as an administrative or
24 immigration warrant explaining why Petitioner and Petitioner’s class was seized and
25 how long they would be detained, Exec. Proclamation 10903, 90 Fed. Reg. 13033,
26 Exec. Order No. 14165, 90 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg.
27 8443, and their implementing regulations, notices, orders, proclamations,
28

1 memoranda, and other executive acts violated the Fourth Amendment and CAL.
2 CONST., art. I, § 13.

3 **ELEVENTH CLAIM FOR RELIEF**

4 Violation of Due Process Under the Fifth and Fourteenth Amendments, and CAL.
5 CONST. art. I, § 7 (All Respondents)

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

8 303. The Due Process Clause of the Fifth and Fourteenth Amendments provide in
9 relevant part that: “No person shall be deprived of life, liberty, or property, without
10 due process of law.” U.S. CONST. amends. V, XIV.

11 304. Article I, Section 7 of the California Constitution states in relevant part: “A
12 person may not be deprived of life, liberty, or property without due process of law.”

13 305. In denying Petitioners and the class meaningful procedural protections to
14 challenge their detention, removal, disappearance, or extraordinary rendition Exec.
15 Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467,
16 and Exec. Order No. 14159, 90 Fed. Reg. 8443 and their implementing regulations,
17 notices, orders, proclamations, memoranda, and other executive acts violates due
18 process.

19 **TWELFTH CLAIM FOR RELIEF**

20 Violation of Equal Protection Clause of the Fourteenth Amendment and CAL. CONST.
21 art. I, § 7 (All Respondents)

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

24 307. The Equal Protection Clause of the Fourteenth Amendments provide in
25 relevant part that: “No State shall . . . deny to any person within its jurisdiction the
26 equal protection of the laws.” U.S. CONST. amend. XIV.

27
28

1 308. Article I, Section 7 of the California Constitution states in relevant part: “A
2 person may not be . . . denied equal protection of the laws.”

3 309. Certain equal protections of Venezuelans in the United States are also required
4 by the AEA under the treaty stipulations triggered by Proclamation 10903 set forth in
5 Articles 7 and 13 of the U.S. Venezuela Treaty of Peace, Friendship, Navigation and
6 Commerce of May 31, 1836, 12 Bevans 1038 that requires the United States to treat
7 Venezuelans “as citizens in the country in which they reside” including granting
8 Venezuelan rights to access U.S. courts and rights to trial.

9 310. In denying Petitioners and the class meaningful procedural protections to
10 challenge their detention, removal, disappearance, or extraordinary rendition Exec.
11 Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467,
12 Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing regulations,
13 notices, orders, proclamations, memoranda, and other executive acts violates equal
14 protection.

15 **THIRTEENTH CLAIM FOR RELIEF**

16 **Violation of Right to Counsel the Sixth Amendment (All Respondents)**

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

19 312. The Sixth Amendment was held to include “a federal constitutional right to
20 counsel” in *Gideon v. Wainwright*, 372 U.S. 335, 338 (1963), *expounding U.S.*
21 CONST. amend. VI.

22 313. In denying Petitioners and the class a right to counsel to assist them in
23 challenging their classification as terrorists, criminals, and enemies of the state
24 described in foregoing paragraphs, resulting in detention, removal, disappearance, or
25 extraordinary rendition, Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order
26 No. 14165, 90 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their
27
28

1 implementing regulations, notices, orders, proclamations, memoranda, and other
2 executive acts violates due process.

3 **FOURTEENTH CLAIM FOR RELIEF**

4 Violation of Cruel and/or Unusual Punishment Clauses of the Eighth Amendment and
5 CAL. CONST. art. I, § 17 (All Respondents)

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

8 315. The Eighth Amendment provides in relevant part that: "Excessive bail shall not
9 be required, nor excessive fines imposed, nor cruel and unusual punishments
10 inflicted." U.S. CONST. amend. VIII.

11 316. Article I, Section 17 of the California Constitution states in relevant part:
12 "Cruel or unusual punishment may not be inflicted or excessive fines imposed."

13 317. In denying Petitioners and the class any process for bail and by inflicting the
14 cruel and unusual punishment of indefinite ICE detention and imminent removal,
15 disappearance, and extraordinary rendition in violation of the UN Convention
16 Against Torture, the UN Declaration of Human Rights, Article 3 of the Geneva
17 Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949,
18 [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No. 3364, and several of the treaty stipulations
19 mandated under AEA and triggered by Proclamation 10903 to challenge their
20 detention, removal, disappearance, or extraordinary rendition Exec. Proclamation
21 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467, Exec. Order
22 No. 14159, 90 Fed. Reg. 8443, and their implementing regulations, notices, orders,
23 proclamations, memoranda, and other executive acts violates the Cruel and/or
24 Unusual Punishment Clauses.

25 **FIFTEENTH CLAIM FOR RELIEF**

26 Violation of the Privileges and/or Immunities Clauses of U.S. Const. Art. VI, § 2, the
27 Fourteenth Amendment, and CAL. CONST., art. I, § 7 (All Respondents)

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

3 319. The Privileges and/or Immunities Clauses of U.S. Const. Art. VI, § 2 and the
4 Fourteenth Amendment provide in relevant part that: “The Citizens of each State
5 shall be entitled to all Privileges and Immunities of Citizens in the several states,” and
6 that “No State shall make or enforce any law which shall abridge the privileges or
7 immunities of citizens of the United States. U.S. CONST. art. VI, § 2; *id.* at amend.
8 XIV.

9 320. Article I, Section 7 of the California Constitution states in relevant part that: “A
10 citizen or class of citizens may not be granted privileges or immunities not granted on
11 the same terms to all citizens.”

12 321. The privileges and immunities of Venezuelans in the United States are also
13 required by the AEA under the treaty stipulations triggered by Proclamation 10903
14 set forth in Articles 7, 13, and other provisions of the U.S. Venezuela Treaty of
15 Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans 1038 that
16 requires the United States to treat Venezuelans “as citizens in the country in which
17 they reside” including granting Venezuelan rights to access U.S. courts and rights to
18 trial.

19 322. In denying Petitioners and the class meaningful procedural protections to
20 challenge their detention, removal, disappearance, or extraordinary rendition, Exec.
21 Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467,
22 Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing regulations,
23 notices, orders, proclamations, memoranda, and other executive acts violates the
24 Privileges and/or Immunities Clauses.

25 **SIXTEENTH CLAIM FOR RELIEF**

26 Violation of the Commerce Clause, Naturalization Clause, the Necessary and Proper
27 Clause, and the Eleventh Amendment, ultra vires (All Respondents)
28

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

3 324. The Commerce Clause states in relevant part: "The Congress shall have Power
4 . . . to regulate commerce with foreign nations, among states, and with the Indian
5 tribes." U.S. CONST. art. I, § 8, cl. 3.

6 325. The Naturalization Clause states in relevant part: "The Congress shall have
7 Power . . . to establish a uniform rule of naturalization." *Id.* at art. I, § 8, cl. 4.

8 326. The Necessary and Proper Clause States in relevant part: "The Congress shall
9 have Power . . . To make all Laws which shall be necessary and proper for carrying
10 into Execution the foregoing Powers, and all other Powers vested by this Constitution
11 in the Government of the United States, or in any Department or Officer thereof." *Id.*
12 at art. I, § 8, cl. 18.

13 327. The Eleventh Amendment states in relevant part: "The Judicial power of the
14 United States shall not be construed and extend to any suit in law or equity,
15 commenced or prosecuted against one of the United States by Citizens of another
16 State, or by Citizens or Subjects of any Foreign State." *Id.* at amend. XI.

17 328. The outer bounds of the limited but supreme federal government of the United
18 States is controlled under the foregoing provisions of the U.S. Constitution by
19 *McCulloch v. Maryland*, 17 U.S. 316, 421 (1819), which held: "Let the end be
20 legitimate, let it be within the scope of the Constitution, and all means which are
21 appropriate, which are plainly adapted to that end, which are not prohibited, but
22 consist with the letter and spirit of the Constitution, are Constitutional." *Id.* at 421.

23 329. Of the Eleventh Amendment, the U.S. Supreme Court once expounded: "That
24 its motive was not to maintain the sovereignty of a State from the degradation
25 supposed to attend a compulsory appearance before the tribunal of the nation may be
26 inferred from the terms of the amendment. It does not comprehend controversies
27 between two or more States, or between a State and a foreign State." *Cohens v.*
28

1 Virginia, 19 U.S. 264, 406 (1821). Relying upon Alexander Hamilton, the Court
2 further expounded that if the States had final jurisdiction over the same causes it
3 would cause ““a hydra in government from which nothing but contradiction and
4 confusion can proceed.”” *Id.* at 415–16 (quoting THE FEDERALIST PAPERS No. 80
5 (Alexander Hamilton)).

6 330. By asserting an unlimited, unbounded, monarchical, plenary power to exclude
7 Petitioners to order their detention, removal, disappearance, or extraordinary
8 rendition, Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90
9 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing
10 regulations, notices, orders, proclamations, memoranda, and other executive acts
11 violates the anti-feudal limited and supreme constitutional structure of the United
12 States delineated by Clause 8, Article I of the U.S. Constitution, which was not
13 explicitly or implicitly expanded, widened, or transformed by the Eleventh
14 Amendment.

15 SIXTEENTH CLAIM FOR RELIEF

16 Violation of republican federalism mandated by the Guarantee Clause, the Titles of
17 Nobility and Emoluments Clauses, and State Rights and Powers Under the Ninth and
18 Tenth Amendments (All Respondents)

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

21 332. The Guarantee Clause states in relevant part: “The United States shall
22 guarantee to every State in this Union a Republican Form of Government, and shall
23 protect each of them against Invasion; and on Application of the Legislature, or of the
24 Executive (when the Legislature cannot be convened) against domestic Violence.”
25 U.S. CONST. art. IV, § 4.

26 333. The Titles of Nobility and Emoluments Clauses state in relevant part: “No Title
27 of Nobility shall be granted by the United States: And no Person holding any Office
28

1 of Profit or Trust under them, shall, without the Consent of the Congress, accept and
2 present, Emolument, Office, or Title, of any kind whatever, from any King, Prince, or
3 foreign State.” *Id.* at art. I, § 9, cl. 8. The U.S. Constitution continues: “No State shall
4 . . . grant any Title of Nobility.” *Id.* at art. I, § 10, cl. 1.

5 334. The Ninth Amendment states in relevant part: “The enumeration in the
6 Constitution, of certain rights, shall not be construed to deny or disparage others
7 retained by the people.” *Id.* at amend. IX.

8 335. The Tenth Amendment states in relevant part: “The powers not delegated to the
9 United States by the Constitution, nor prohibited by it to the States, are reserved to
10 the States respectively, or to the people.” *Id.* at amend. X.

11 336. The U.S. Supreme Court always drew upon the republican federalist character
12 of the limited and supreme powers of the federal government and the separation of
13 powers to reject feudalism from its beginnings. *Chisholm v. Georgia*, 2 U.S. 419,
14 457–58 (1793) (denying the concept central to feudal sovereignty that “no suit or
15 action can be brought against the King, even in civil matters; because no Court can
16 have jurisdiction over him,” and rather vindicating the idea that “The Sovereign,
17 when traced to his source, must be found in the man,” i.e., the consent of the
18 governed), *extended by* *United States v. Lee*, 106 U.S. 196, 206 (1882).

19 337. By asserting an unlimited, unbounded, monarchical, plenary power to exclude
20 Petitioners to order their detention, removal, disappearance, or extraordinary
21 rendition, Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90
22 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing
23 regulations, notices, orders, proclamations, memoranda, and other executive acts
24 violates the anti-feudal republican federalist character of the limited and supreme
25 constitutional structure of the United States mandated by the Guarantee Clause, the
26 Titles of Nobility and Emoluments Clauses, and State Rights and Powers Under the
27 Ninth and Tenth Amendments.

SEVENTEENTH CLAIM FOR RELIEF

Violation of the Separation of Powers and Declaration of War Requirement (All Respondents)

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

339. The limited and federal powers of the federal government are divided into three co-equal branches of government, the legislative, the executive, and the judiciary. U.S. CONST. arts. I, II, III; *Boumediene v. Bush*, 553 U.S. 723, 746, 765 (2008) (“[T]he writ of habeas corpus is itself an indispensable mechanism for monitoring the separation of powers.”).

340. The separation of powers is implicated here, in part, because a president asserted war powers in contravention of Congress’s power to declare war all to justify violating the laws and constitutions of the United States and the rights of the people to detain, remove, disappear, and extraordinary rendition Petitioner and the class under the AEA during a time of peace.

341. Article I, Section 8, Clause 11 of the U.S. Constitution states in relevant part: “The Congress shall have Power . . . To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water.”

342. Whether Congress’s power to declare war is suable in this Court as a standalone action by injured parties was never resolved by the U.S. Supreme Court despite the Korean and Vietnam Wars being fought without declaration, but Justice Douglas repeatedly asserted that the federal courts do have this jurisdiction in a variety of situations. *See Sarnoff v. Shultz*, 409 U.S. 929, 930 (1972) (Douglas, J., dissenting) (noting that the constitutionality of presidential war powers without a congressional declaration war remains undecided (citing *Flast v. Cohen*, 392 U.S. 83 (1968))); *see also Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 589

1 (1952) (“The Founders of this Nation entrusted the lawmaking power to the Congress
2 alone in both good and bad times.”).

3 343. By asserting an unlimited, unbounded, monarchical, plenary power to exclude
4 Petitioners to order their detention, removal, disappearance, or extraordinary
5 rendition, Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90
6 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing
7 regulations, notices, orders, proclamations, memoranda, and other executive acts
8 violates the separation of powers’ anti-feudal checks and balances that administer the
9 limited and supreme constitutional structure of the United States.

10 **EIGHTEENTH CLAIM FOR RELIEF**

11 Violation of U.S.-Venezuela Treaty, 12 Bevans 1038, 18 Stat. 787 (All Respondents)

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

14 345. Articles 7, 9, 13, 14, and 26 of the U.S.-Venezuela Treaty of Peace, Friendship,
15 Navigation and Commerce of May 31, 1836, 12 Bevans 1038, 18 Stat. 787 regard the
16 peace and friendship between the United States and according the Article 34 these
17 Articles are perpetual and permanent.

18 346. There was no apparent subsequent repealing treaty or other sovereign act
19 between the United States and Venezuela to unsettle these Articles.

20 347. The U.S.-Venezuela Treaty of Peace, Friendship, Navigation and Commerce of
21 May 31, 1836, 12 Bevans 1038, 18 Stat. 787 is a form of bilateral treaty known as a
22 Friendship, Commerce, and Navigation “FCN” Treaty, of which there are several
23 between the United States and other nations with similar terms including the “access
24 to courts” provisions of Article 13 that several decisions of the U.S. Supreme Court
25 determined to indicate the FCN treaties are self-executing. *See* Medillin v. Texas,
26 552 U.S. 491, 521, 571–73 (2008) (noting that FCN treaties were generally found or
27 assumed to be self-executing in many Supreme Court decisions); *see, e.g.,* Asakura v.
28

1 Seattle, 265 U.S. 332, 341–42 (1924) (“Treaties are to be construed in a broad and
2 liberal spirit, and, when two constructions are possible, one restrictive of rights that
3 may be claimed under it and the other favorable to them, the latter is to be preferred.”
4 (citing *Hauenstein v. Lynham*, 100 U.S. 483, 487 (1879); *Geofroy v. Riggs*, 133 U.S.
5 258, 271 (1890); *Tucker v. Alexandroff*, 183 U.S. 424, 437 (1902))); *Shanks v.*
6 *Dupont*, 28 U.S. 242, 249 (1830).

7 348. Moreover, AEA requires these stipulations are triggered on a statutory basis by
8 Proclamation 10903. 50 U.S.C. § 22.

9 349. Among the stipulations of Articles 7, 9, 13, 14, and 26 of the U.S.-Venezuela
10 Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans
11 1038, 18 Stat. 787 are rights to access the court, rights to freedom of conscience,
12 religion, and speech, rights to be treated as a U.S. citizen, rights to be received and
13 treated with humanity as a refugee or asylum seeker, and should war break out
14 between Venezuela and the United States a right for merchants residing in the interior
15 to have one year to depart and non-merchants to remain for the rest of their lives as
16 lawful residents of the United States with green cards or other similar legal status
17 from which they can legally adjust their status or naturalize provided that “their
18 particular conduct shall cause them to forfeit this protection, which, in consideration
19 of humanity, the contracting parties engage to give them.” 18 Stat. 787, 793.

20 350. Petitioner and the class are intended beneficiaries of and subjects to the U.S.-
21 Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836,
22 12 Bevans 1038, 18 Stat. 787, and they have standing to enforce its terms in this
23 Court.

24 351. By proclaiming that a military conflict has broken out between Venezuela and
25 the United States by the invasion of TdA, Proclamation 10903 triggered treaty
26 stipulations of the U.S.-Venezuela Treaty of Peace, Friendship, Navigation and
27
28

1 Commerce of May 31, 1836, 12 Bevans 1038, 18 Stat. 787, including immigration
2 benefits of Article 26 now due Petitioner and the class as a result.
3 352. By summarily detaining, removing, disappearing, and the extraordinary
4 rendition of Petitioner and the class, Exec. Proclamation 10903, 90 Fed. Reg. 13033,
5 Exec. Order No. 14165, 90 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg.
6 8443, and their implementing regulations, notices, orders, proclamations,
7 memoranda, and other executive acts violated and breached several self-executing
8 treaty terms protecting Petitioner and the class now that they are accused of being
9 terrorists invading on behalf of Venezuela against the United States, which
10 Petitioners and the class may now seek to enforce as to its provisions concerning
11 peace and friendship especially, but not limited to, its open and liberal terms for when
12 and if hostilities break out between the Venezuela and the United States, and the
13 rights to travel or immigrate traditionally discussed as a U.S. Citizen's right under the
14 Privileges and Immunities Clause but which is extended to Petitioner and the class
15 under the treaty.

16 **NINETEENTH CLAIM FOR RELIEF**

17 Violation of the Geneva Convention (III) Relative to the Treatment of Prisoners of
18 War, Aug. 12, 1949, [1955] 6 U.S.T. 3316, T.I.A.S. No. 3364 (All Respondents)
19 353. All of the foregoing allegations are repeated and realleged as if fully set forth
20 herein.

21 354. Article 3 of the Geneva Convention prohibits sentences and executions passed
22 out "without previous judgment pronounced by a regularly constituted court,
23 affording all the judicial guarantees which are recognized as indispensable by
24 civilized peoples." Article 3 of the Geneva Convention (III) Relative to the Treatment
25 of Prisoners of War, Aug. 12, 1949, [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No. 3364.
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1 355. Petitioner and the class are being detained as prisoners of war according to
2 Proclamation 10903, and they are accused of participating in a military invasion, and
3 therefore Proclamation 10903 triggers the Geneva Convention.

4 356. In *Hamdan v. Rumsfeld*, the U.S. Supreme Court overruled or at least
5 forcefully repudiated and abrogated *In re Yamashita* as the international
6 embarrassment that it was, and explicitly extended Article 3 of the Geneva
7 Convention to preempt, repeal, or oust “the common law of war” asserted in support
8 of a military tribunal judgment made in the executive branch. *Hamdan v. Rumsfeld*,
9 548 U.S. 557, 632 (2006) (citing Article 3 of the Geneva Convention (III) Relative to
10 the Treatment of Prisoners of War, Aug. 12, 1949, [1955] 6 U.S.T. 3316, 3318,
11 T.I.A.S. No. 3364; *In re Yamashita*, 327 U.S. 1, 44 (1946) (Rutledge, J., dissenting)).

12 357. *Hamdan* determined that the Geneva Convention is included in the “rules and
13 precepts of the law of nations,” as applied by *Ex parte Quirin* in the context of habeas
14 corpus, thereby making the Geneva Convention applicable here. *Hamdan*, 548 U.S. at
15 613.

16 358. Alternatively, AEA mandates the treaty stipulations of the Geneva Convention
17 subject to carrying out detention, removal, disappearance, and extraordinary rendition
18 under the AEA. 50 U.S.C. § 22.

19 359. *Hamdan* held that “in undertaking to try Hamdan and subject him to criminal
20 punishment, the Executive is bound to comply with the rule of law that prevails in
21 this jurisdiction.” *Id.* at 635.

22 360. By passing out sentences and executions “without previous judgment
23 pronounced by a regularly constituted court, affording all the judicial guarantees
24 which are recognized as indispensable by civilized peoples,” Exec. Proclamation
25 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467, Exec. Order
26 No. 14159, 90 Fed. Reg. 8443, and their implementing regulations, notices, orders,
27 proclamations, memoranda, and other executive acts violated Article 3 of the Geneva
28

1 Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949,
2 [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No. 3364.

3 361. Moreover, EOIR and the United States Alien Terrorist Removal Court
4 (“USATRC”) are also deficient and would violate Article 3 of the Geneva
5 Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949,
6 [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No. 3364 according to *Hamdan*’s inclusion of it
7 in the “rules and precepts of the law of nations.” *Hamdan*, 548 U.S. at 613; see
8 DANIEL KAHNEMAN ET AL., NOISE: A FLAW IN HUMAN JUDGMENT 6–7, 91, 174 (2021)
9 (citing Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum*
10 *Adjudication*, 60 STAN. L. REV. 295 (2007)).

11 TWENTIETH CLAIM FOR RELIEF

12 Violation of the APA, 5 U.S.C. § 706 (All Respondents)

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

15 363. The APA, 5 U.S.C. § 702 grants Petitioner and the class a right of review to
16 persons “suffering legal wrong because of agency action, or adversely affected or
17 aggrieved by agency action within the meaning of a relevant statute.”

18 364. The statute further provides that this review “shall not be dismissed nor relief
19 therein be denied on the ground that it is against the United States or that the United
20 States is an indispensable party” if “an officer or employee” of the United States
21 “acted or failed to act in an official capacity or under color of legal authority” subject
22 to provisos.

23 365. Petitioner and the class was harmed by the foregoing allegations in all previous
24 claims of relief, each of which the Respondents violated in contravention of the APA.

25 366. The APA, 5 U.S.C. § 704 makes agency action reviewable by “statute or final
26 agency action for which there is no other adequate remedy in a court . . . subject to
27 judicial review.”

1 367. The APA, 5 U.S.C. § 706 empowers this Court to “compel agency action
2 unlawfully withheld or unreasonably delayed,” and to “hold unlawful and set aside
3 agency action, findings, and conclusions” that are “(A) arbitrary, capricious, an abuse
4 of discretion, or otherwise not in accordance with the law; (B) contrary to
5 constitutional right, power, privilege, or immunity; (C) in excess of statutory
6 jurisdiction, authority, or limitations, or short of statutory right; (D) without
7 observance of procedure required by law; (E) unsupported by substantial evidence in
8 a case subject to sections 556 and 557 of this title or otherwise reviewed on the record
9 of an agency hearing provided by statute; or (F) unwarranted by the facts to the extent
10 that the facts are subject to trial de novo by the reviewing court.”

11 368. By arbitrarily and capriciously causing the summary and imminent detention,
12 removal, disappearance, and extraordinary rendition of Petitioners and the class based
13 on vague and undefined criteria involving tattoo art and sports apparel, Exec.
14 Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467,
15 Exec. Order No. 14159, 90 Fed. Reg. 8443, and their implementing regulations,
16 notices, orders, proclamations, memoranda, and other executive acts are reviewable
17 final agency actions that violated 5 U.S.C. § 706 contrary to constitutional right,
18 power, privilege, and immunity, in excess of statutory jurisdiction, without
19 observance of procedure required by law, without the support of substantial evidence
20 or facts.

21 PRAYER FOR RELIEF

22 WHEREFORE, Petitioner respectfully pray this Court to:

- 23 a. Assume jurisdiction over this matter;
- 24 b. Certify this action on behalf of the proposed Petitioner Class, appoint the
25 Petitioners as class representatives, and appoint the undersigned counsel as
26 class counsel;
- 27
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- 1 c. Grant a temporary restraining order to preserve the status quo pending further
2 proceedings;
- 3 d. Enjoin Respondents from transferring Petitioner and the Petitioner Class out of
4 this district during the pendency of this litigation without advance notice to
5 counsel;
- 6 e. Grant a writ of habeas corpus that releases Petitioner and the Petitioner Class
7 into the United States pending legitimate government action;
- 8 f. Grant leave to Petitioner to admit and present exculpatory evidence;
- 9 g. Grant a protective order to preserve evidence from destruction or spoliation
10 including any property of Petitioner in ICE custody;
- 11 h. Grant a nationwide, circuit-wide, and district-wide injunction finding that
12 Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90
13 Fed. Reg. 8467, and Exec. Order No. 14159, 90 Fed. Reg. 8443 trigger and
14 violate the foregoing treaty stipulations, multilateral and bilateral, between the
15 sovereign nations of the United States and Venezuela, directing the
16 Respondents to comply with all foregoing treaty stipulations between the
17 United States and Venezuela, and providing an avenue of due judicial process
18 to Petitioner and the class under applicable treaty stipulations and the law;
- 19 i. Enjoin Respondents from detaining, removing, disappearing, or extraordinary
20 renditioning Petitioners and the Petitioner Class pursuant to Exec.
21 Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg.
22 8467, or Exec. Order No. 14159, 90 Fed. Reg. 8443;
- 23 j. Enjoin Respondents from removing Petitioner and the Petitioner Class pursuant
24 to Proclamation 10903;
- 25 k. Enjoin Respondents from detaining Petitioner and the Petitioner Class pursuant
26 to pursuant to Exec. Order No. 14165, 90 Fed. Reg. 8467;
- 27
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- 1 1. Enjoin Respondents from criminalizing Petitioner and the Petitioner Class or
2 otherwise making them removable and inadmissible without due process or
3 equal protection of the law pursuant to 8 U.S.C. § 1325 and Exec. Order No.
4 14159, 90 Fed. Reg. 8443;
- 5 m. Enjoin Respondents to provide a duly issued warrant that complies with the
6 Fourth Amendment, CAL. CONST., art. I, § 13, and the foregoing treaty
7 stipulations triggered by Proclamation 10903 under the AEA;
- 8 n. Enjoin Respondents from using tattoo art or sports memorabilia to detain,
9 remove, disappear, or extraordinary rendition Petitioner as it is a prior restraint
10 of speech that violates the First Amendment with no valid exception;
- 11 o. Enjoin Respondents from using vague criteria that is not sufficiently defined
12 remove, disappear, or extraordinary rendition Petitioner as it violates the First
13 Amendment and chills legitimate speech with no valid exception;
- 14 p. Enjoin Respondents from unreasonably detaining Petitioner or anyone in
15 Petitioner's class for an indefinite amount of time;
- 16 q. Enjoin Respondents from continuing to detain Petitioner or anyone in
17 Petitioner's class in facilities with active outbreaks of diseases, including
18 COVID-19;
- 19 r. Enjoin Respondents to compensate Petitioner or anyone in Petitioner's class for
20 top of the line treatment for COVID-19 exposure, if they request it, including
21 monoclonal anti-body treatment if necessary for exposing them to dangerous
22 disease outbreaks without a legitimate emergency reason or legal basis
23 whatsoever;
- 24 s. Declare unlawful and unconstitutional Exec. Proclamation 10903, 90 Fed. Reg.
25 13033;
- 26 t. Declare unlawful and unconstitutional Exec. Order No. 14165, 90 Fed. Reg.
27 8467;

- 1 u. Declare unlawful and unconstitutional Exec. Order No. 14159, 90 Fed. Reg.
2 8443;
- 3 v. Declare unlawful and unconstitutional Public Notices 12671 & 12672, 90 Fed.
4 Reg. 10030-31;
- 5 w. Declare unconstitutional and void the AEA, USA PATRIOT Act, and the
6 AUMFs of 2001 and 2002;
- 7 x. Declare that Petitioner and the Members of Petitioner's class non-merchant
8 Venezuelan citizens that are due green cards or other similar legal status by
9 which they can naturalize and other stipulations under the AEA according to its
10 legal invocation by Proclamation 10903 that triggers the stipulations of Article
11 7, 9, 13, 14, and 26 of the U.S. Venezuela Treaty of Peace, Friendship,
12 Navigation and Commerce of May 31, 1836, 12 Bevans 1038;
- 13 y. Declare that Petitioner and the Members of Petitioner's class non-merchant
14 Venezuelan citizens that were due treatment "as citizens in the country in
15 which they reside," or, at a minimum, "be placed on a footing with the subjects
16 or citizens of the most favored nation" in the United States under the AEA
17 according to its legal invocation by Proclamation 10903 that triggers the
18 stipulations of Article 7 of the U.S. Venezuela Treaty of Peace, Friendship,
19 Navigation and Commerce of May 31, 1836, 12 Bevans 1038 and the UN
20 Convention Against Torture and the UN Declaration of Human Rights;
- 21 z. Declare that Petitioner and the Members of Petitioner's class non-merchant
22 Venezuelan citizens that were "forced to seek refuge or asylum" and thereby
23 due a humane reception and treatment "giving them all favour and protection"
24 under the AEA according to its legal invocation by Proclamation 10903 that
25 triggers the stipulations of Article 9 of the U.S. Venezuela Treaty of Peace,
26 Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans 1038, the
27 UN Convention Against Torture, and the UN Declaration of Human Rights;
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- 1 aa. Declare that Petitioner and the Members of Petitioner's class non-merchant
2 Venezuelan citizens that are due "open and free" access to "tribunals of
3 justice" in the United States under the AEA according to its legal invocation by
4 Proclamation 10903 that triggers the stipulations of Article 13 of the U.S.
5 Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31,
6 1836, 12 Bevans 1038 and the Sixth and Seventh Amendments;
- 7 bb. Declare that Petitioner and the Members of Petitioner's class non-merchant
8 Venezuelan citizens that are due protections of their liberties of conscience,
9 religion, and speech under the AEA according to its legal invocation by
10 Proclamation 10903 that triggers the stipulations of Article 14 of the U.S.
11 Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31,
12 1836, 12 Bevans 1038 and the First Amendment;
- 13 cc. Declare the U.S. Venezuela Treaty of Peace, Friendship, Navigation and
14 Commerce of May 31, 1836, 12 Bevans 1038 violated by Exec. Proclamation
15 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467, and
16 Exec. Order No. 14159, 90 Fed. Reg. 8443 and grant Petitioner and the class
17 standing thereunder to avail themselves of its benefits, and grant Petitioner and
18 the class all relevant benefits of that treaty;
- 19 dd. Declare that Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No.
20 14165, 90 Fed. Reg. 8467, and Exec. Order No. 14159, 90 Fed. Reg. 8443
21 violated Article 3 of the Geneva Convention (III) Relative to the Treatment of
22 Prisoners of War, Aug. 12, 1949, [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No.
23 3364, and grant Petitioner and the class standing thereunder to avail themselves
24 of its benefits, and grant Petitioner and the class all relevant benefits of that
25 convention;
- 26 ee. Declare that Petitioner is a refugee;
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1 ff. Declare all facts necessary to grant Petitioner's asylum claim, withholding of
2 removal, or other relief and mandate a time and place for the members of
3 Petitioner's class to access this Court to establish critical facts necessary each
4 person's asylum or other relief that effectively binds EOIR and the
5 Respondents;

6 gg. Declare EOIR structurally unconstitutional and illegitimate;

7 hh. Declare EOIR unlawful and insufficient or incapable to satisfy relevant treaty
8 stipulations;

9 ii. Declare Respondents' assertion and application of unlimited, unbounded,
10 monarchical, plenary power to exclude Petitioners to order and carry out their
11 detention, removal, disappearance, or extraordinary rendition under Exec.
12 Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg.
13 8467, and Exec. Order No. 14159, 90 Fed. Reg. 8443 unlawful,
14 unconstitutional, odious, and void;

15 jj. Declare *People v. Hall*, 4 Cal. 399 (1854) and all similar California decisions
16 upholding eugenic ideology on debunked racial categories in the area of
17 immigration law or as to immigrants in California as odious, unconstitutional,
18 and void according to the principles upheld in *Skinner v. Oklahoma ex rel.*
19 *Williamson*, 316 U.S. 535, 541 (1942);

20 kk. Reverse *Madrigal v. Quilligan*, 1978 U.S. Dist. LEXIS 20423 (C.D. Cal. 1978)
21 for implicitly endorsing eugenic systems in California under *Buck v. Bell*,
22 which includes the original purpose of immigrant exclusion as described in
23 Linda Lorraine Currey's thesis *The Oregon Eugenic Movement: Benethia*
24 *Angelina Owens-Adair* at pages 35 and 36, in violation of the "fundamental
25 right to choose or refuse contraceptives" enshrined at CAL. CONST. art. I, § 1.1
26 and equal protection;

1 ll. Declare Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No.
2 14165, 90 Fed. Reg. 8467, and Exec. Order No. 14159, 90 Fed. Reg. 8443 and
3 related orders, designations, regulations, memoranda, and executive actions an
4 arbitrary and capricious violation of the APA, 5 U.S.C. § 706;

5 mm. Award Petitioners' counsel reasonable attorneys' fees under the Equal
6 Access to Justice Act, and any other applicable statute or regulation; and
7 nn. Grant such further relief as the Court deems just, equitable, and appropriate.
8

9 Respectfully Submitted on May 17, 2025

10 /s/ Joshua J. Schroeder
11 Joshua J. Schroeder
12 SchroederLaw
13 Attorney for Darwin Antonio
14 Arevalo Millan
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