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**UNITED STATES DISTRICT COURT**

**CENTRAL DISTRICT OF CALIFORNIA**

DARWIN ANTONIO AREVALO MILLAN, on his own behalf and on behalf of all others similarly situated

*Petitioner-Plaintiff,*

vs.

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

*Respondents-Defendants.*

Case No.: 5:25-cv-01207

**PETITIONER-PLAINTIFF'S MEMORANDUM OF LAW IN SUPPORT OF EMERGENCY APPLICATION FOR A TEMPORARY RESTRAINING ORDER**

**PETITIONERS-PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF A TRO**

Petitioner-Plaintiff ("Petitioner") respectfully request an immediate Temporary Restraining Order ("TRO") to avoid irreparable harm to Petitioner and the proposed class—and to ensure that this Court is not potentially deprived, permanently, of jurisdiction.

In a Proclamation signed on March 14 but not made public until March 15 (after the government had already attempted to use it), the President invoked a war power, the Alien Enemies Act of 1798 ("AEA"), to summarily seize, remove, disappear, or extraordinary rendition noncitizens from the U.S. and bypass the immigration laws, the constitution, and treaty stipulations. *See* Exec. Proclamation 10903, 90 Fed. Reg. 13033. The AEA permits the President to invoke the AEA only where the United States is in a "declared war" with a "foreign government or nation" or a 'foreign government or nation" is threatening to, or has engaged in, an "invasion or predatory incursion" against the "territory of the United States."

It also allows only the targeting of individuals who are "natives, citizens, denizens, or subjects of [a] hostile nation or government." 50 U.S.C. § 21. But Proclamation 10903 targets only (1) "members" of TdA; who are (2) "natives, citizens, denizens, or subjects" of a nation the United States is at peace with. On both counts it fails.

On the evening of March 15, a D.C. District Court issued an order temporarily pausing removals pursuant to Proclamation 10903 for a provisionally certified nationwide class. *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *2 (D.C. Cir. Mar. 26, 2025). The D.C. Circuit denied the government's motion to vacate that TRO. On April 7, in a 5-4 decision, the Supreme Court granted the government's application to vacate the TRO order on the basis that Plaintiffs had to proceed through habeas, without reaching the merits of whether Proclamation 10903 exceeds the President's power under the AEA. In doing so, however, the Court emphasized that individuals who are designated under the AEA Proclamation are "entitle[d] to due process" and notice "within a reasonable time and in such manner as will allow

them to actually seek habeas relief" before removal. *Trump v. J.G.G.*, No. 24A931, 2025 WL 1024097, at *2 (U.S. Apr. 7, 2025).

To date, the government has not indicated the type of notice they intend to provide or how much time they will give individuals before seeking to remove them under the AEA. However, in a hearing in the Southern District of Texas on Friday, April 11, **the government said they had not ruled out the possibility that individuals will receive no more than 24 hours' notice; the government did not say whether it was considering providing even less than 24 hours**. However, the U.S. Supreme Court explicitly reaffirmed its decision in *J.G.G.* by deciding the following: "Due process requires notice that is 'reasonably calculated, under all the circumstances, to apprise interested parties' and that 'afford[s] a reasonable time . . . to make [an] appearance.'" A.A.R.P. v. Trump, No. 24A1007, slip op. at 3–4 (2025) (per curiam). In *A.A.R.P.*, the Court took one step further, and granted the requested injunction in that case. *Id.* at 7.

Within hours of filing for habeas relief in both New York and D.C., both district courts granted *ex parte* requests for TROs, ordering that the named petitioners and putative class members may not be removed from the United States or transferred out of their respective districts. *See G.F.F. v. Trump*, No. 25-cv-2886 (S.D.N.Y. Apr. 9, 2025), ECF No. 31, *as amended*, ECF No. 35 (S.D.N.Y. Apr. 11, 2025); *J.A.V. v. Trump*, No. 25-cv-72 (S.D. Tex Apr. 9, 2025), ECF No. 12, *as amended*, ECF No. 34 (S.D. Tex. Apr. 11, 2025). Both courts subsequently held TRO hearings, extended the TROs, and scheduled preliminary injunction hearings, S.D.N.Y on April 22 and S.D. Tex. on April 24. Within days, two other district courts in Colorado and Pennsylvania followed suit, issuing TROs for petitioners and putative classes in the District of Colorado and Western District of Pennsylvania. *See D.B.U. v. Trump*, No. 25-cv-1163-CNS (D. Co. Apr. 14, 2025), ECF No. 10, *as amended*, ECF No. 14; *A.S.R. v. Trump*, No. 25-cv-113-SLH (W.D. Pa. Apr. 15, 2025), ECF No. 8. Since then, *J.A.V.*

was decided, habeas corpus was granted, and a permanent injunction was issued. *J.A.V. v. Trump*, 1:25-cv-072, Doc. 58, at *36 (S.D. Tex. 2025).

Like this ongoing litigation, Petitioner contends that Proclamation 10903 is invalid under the AEA for several reasons. Complaint at 45. Unlike it, Petitioner contests his detention, maintains that he is wrongly detained as a military prisoner detained under military proclamation and order, requests release into the United States pending legitimate government action, and he seeks the protection of treaty stipulations under AEA and of their own right. Complaint at 7–8, 73, 90. He also invokes several other grounds under the U.S. Constitution and California Constitution to vindicate his rights here. *See, e.g.*, Complaint at 77–79. In so doing, Petitioner attacks the AEA, USA PATRIOT Act, AUMFs of 2001 and 2002, Exec. Proclamation 10903, 90 Fed. Reg. 13033, Exec. Order No. 14165, 90 Fed. Reg. 8467, Exec. Order No. 14159, 90 Fed. Reg. 8443, Public Notices 12671 & 12672, 90 Fed. Reg. 10030–31 and their implementing regulations, notices, orders, proclamations, memoranda, and other executive acts as altogether unconstitutional, ultra vires, and void. Complaint at 92. However, the form of TRO requested here is quite similar to those granted in ongoing similar litigation, and the heart of Petitioner's case includes the same notice issues being litigated about in other cases. Complaint at 69.

**Accordingly, Petitioners move the Court for a TRO for themselves and the putative class barring their summary removal, disappearance, or extraordinary rendition under the AEA.** Immediate intervention by this Court is required given that the vacatur of the D.C. district court's TRO no longer protects them and the government's failure to specify how much notice they intend to provide individuals. And if there is an unlawful removal, the government has taken the position that the courts would lose jurisdiction and there would be no way to correct any erroneous removal. Indeed, in the government's rush to transfer individuals to El Salvador, the government has mistakenly deported at least one Salvadoran man without legal basis and claims that individual cannot be returned. *See A.A.R.P.*, No. 24A1007 at 7

(apparently granting a District wide injunction not applicable in this District); Noem v. Abrego Garcia, No. 24A949, 2025 WL 1077101, at *1 (U.S. Apr. 10, 2025). And declarations and news accounts suggest that many of the alleged Venezuelan TdA members sent to El Salvador pursuant to Proclamation 10903 at issue here were not in fact TdA members.

The TRO sought here does not seek to prohibit the government from prosecuting any individual who has committed a crime. Nor does it seek release from immigration detention or to prohibit the government from removing any individual who may lawfully be removed under the immigration laws.

## LEGAL AND FACTUAL BACKGROUND

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

> Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies.

This Act has been used only three times in the country's history and each time in a period of war—the War of 1812, World War I, and World War II. *See, e.g.*, United States *ex rel.* Dorfler v. Watkins, 171 F.2d 431, 432 (2d Cir. 1948). When a person "becomes liable as an enemy" as long as he "is not chargeable with actual hostility, or other crime against the public safety, he shall be allowed, for the recovery, disposal, and removal of his goods and effects, and for his departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject." 50 U.S.C. §22. This statutory provision is a clear match for Article 26 of the U.S.-

Venezuela Treaty of Peace, Friendship, Navigation and Commerce of May 31, 1836, 12 Bevans 1038, 18 Stat. 787 ("Treaty of Peace"), which are "perpetual and permanent" provisions that state that if war ever broke out between Venezuela and the United States, that non-merchant Venezuelan citizens would have a legally enforceable right to stay in the United States apparently as long as they wish without being detained. As long as a person is made "liable as an enemy" by Proclamation 10903 here, the AEA requires that the treaty stipulations between the United States and the nation where they are "a native citizen, denizen, or subject" must apply.

The only exception to applying these favorable treaty stipulations is when an alien, after "becom[ing] liable as an enemy," also "becomes chargeable with actual hostility, or other crime against the public safety." 50 U.S.C. § 22. Petitioner is not chargeable with actual hostility under Proclamation 10903, because it precludes notice—which charging documents necessarily give. It violates Articles 13 and 26 of the Treaty of Peace, *supra*, which provides independent grounds for Petitioner to prove that "their particular conduct shall [not] cause them to forfeit this protection, which in consideration of humanity, the contracting parties engage to give them."

Moreover, Article 13 indicates that it was intended that U.S. courts would be left "open and free to them" to ensure U.S. compliance with their treaty. Article 3 of the Geneva Convention (III) Relative to the Treatment of Prisoners of War, Aug. 12, 1949, [1955] 6 U.S.T. 3316, 3318, T.I.A.S. No. 3364 ("Geneva Convention") contains a similar requirement, as they are being held as military prisoners and enemies of the state and under immediate threat of being disappeared to a black site, perhaps CECOT in El Salvador, and so they may similarly pursue application of the UN Convention Against Torture among other international treaties and conventions here. *See* Hamdan v. Rumsfeld, 548 U.S. 557, 632 (2006). Importantly, U.S. citizens in Venezuela depend upon the U.S. adherence to these protections for their own reciprocal safety and rights abroad. Treaty of Peace, *supra*; *see* Asakura v. Seattle, 265 U.S. 332, 341–42 (1924) ("Treaties are to be construed in a broad and liberal

spirit, and, when two constructions are possible, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred."); *cf.* Medillin v. Texas, 552 U.S. 491, 521, 571–73 (2008); Chew Heong v. United States, 112 U.S. 536, 560 (1884).

**II. The Neutrality Acts, the Original Right to Immigrate, and the AEA**

The history of the AEA is built directly upon the previously enacted Neutrality Act of 1794 and its corresponding Proclamation of Neutrality made by President George Washington, which defines the writ of habeas corpus as it existed in 1789. Neutrality Act of 1794, Pub. L. 3–50, 1 Stat. 381, *repealed and replaced by several laws now codified at* 18 U.S.C. §§ 956–60 *et seq.*; *see J.G.G.*, 2025 WL 914682, at *1 ("In 1798, our fledgling Republic was consumed with fear . . . of external war with France."). This Proclamation, prior to the enactment, was upheld in *Henfield's Case* to allow a treason prosecution against Gideon Henfield, a U.S. citizen who was conscripted into the war of France with the world (and especially Great Britain). Henfield's Case, 11 F. Cas. 1099, 1120 (C.C.D. Pa. 1793) (No. 6360). Around this time, the French consul and self-described *Terroriste* Citizen Genet declared an appeal from the president to the people and began instigating a terroristic movement against President Washington and Justice Wilson who determined the case against Henfield. *See* Complaint at 22–23.

In that case, Gideon Henfield declared a fundamental and natural right to immigrate to France, which Justice Wilson affirmed under the U.S. Constitution, but denied that Henfield did actually immigrate allowing the prosecution to proceed. *Henfield's Case*, 11 F. Cas. at 1110, 1120. Eventually, the political party that sent Genet to the United States imploded in the Reign of Terror causing Genet to apply for and receive asylum in the United States. Complaint at 22. The United States always received French asylum seekers, even if they were stateless terrorists and scoundrels. *See, e.g.*, Caignet v. Pettit, 2 U.S. 234, 235 (1795).

This spirit carried forth in several habeas corpus decisions starting with *Ex parte Bollman*, a famous immigrant who was wanted in connection with Aaron Burr's alleged treason of trying to revolutionize Mexico. *Ex parte* Bollman, 8 U.S. 75, 136–37 (1807). Mr. Bollman was released into the United States, defeating President Jefferson's deportation orders to the contrary. Complaint at 18. The Supreme Court of Vermont extended the writ to a man wanted for murder in Canada, releasing him into the United States according to a splintered U.S. Supreme Court decision in *Holmes v. Jennison*. *Ex parte* Holmes, 12 Vt. 631, 641–42 (1840), *extending* Holmes v. Jennison, 39 U.S. 540, 561 (1840) (Opinion of Taney, C.J.). And Chief Justice Taney's opinion in Holmes, favorable to the murderer, was extended to release former Africans slaves as legitimate immigrants into the United States in *The Amistad*. United States v. The Amistad, 40 U.S. 518, 552–53 (1841) (quoting *Holmes*, 39 U.S. at 569 (Opinion of Taney, C.J.)). Petitioner is clearly entitled to a minimum of the writ as it existed in 1789. Boumediene v. Bush, 553 U.S. 723, 746 (2008) (majority opinion) (quoting INS v. St. Cyr, 533 U.S. 289, 301 (2001)); *id.* at 815 (Roberts, C.J., dissenting) (quoting *St. Cyr*, 533 U.S. at 301); *St. Cyr*, 533 U.S. at 305 n.25 ("§ 2241 descends directly from § 14 of the Judiciary Act of 1789 and the 1867 Act. . . . Its test remained undisturbed by either AEDPA or IIRIRA."); Felker v. Turpin, 518 U.S. 651, 659 (1996); *see Ex parte* Yerger, 75 U.S. 85, 105 (1868).

Ultimately, the operation of the writ of habeas corpus in and around 1789 clearly benefited immigrants. Complaint at 19–20. There was no law at the time to keep immigrants out by race or gender or for any reason. *Id.* This was so simply because, for centuries, when the Americans "'claimed the rights of Englishmen, they were scoffingly told, *those things would not follow them to the ends of the earth*.'" *Id.* In response the Americans shouted back: "Monstrous absurdity! Horrid inverted order!" *Id.* And eventually the American Revolution erupted and the War of 1812 was fought to defend the immigrant's right to travel *with* their rights intact. *Id.* at 48.

Controlling case law *Boumediene v. Bush* symbolized this legal split with the British Empire by distinguishing *Rex v. Cowle*. *Boumediene*, 553 U.S. at 751 (distinguishing Rex v. Cowle (1759) 2 Burr. 834, 854–56 (Eng.)).

**III. Congress's Comprehensive Reform of Immigration Law**

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

As part of that reform and other subsequent amendments, Congress prescribed safeguards for noncitizens seeking protection from persecution and torture. These protections codify the humanitarian framework adopted by the United Nations in response to the humanitarian failures of World War II. *See* INS v. Cardoza-Fonseca, 480 U.S. 421, 439-40 (1987); Aliyev v. Mukasey, 549 F.3d 111, 118 n.8 (2d Cir. 2008) ("It is no accident that many of our asylum laws sprang forth as a result of events in 1930s Europe."). First, the asylum statute, 8 U.S.C. § 1158, provides that any noncitizen in the U.S. has a right to apply for asylum. Second, the withholding of removal statute, 8 U.S.C. § 1231(b)(3), provides that noncitizens "may not" be removed to a country where their "life or freedom" would be threatened based on a protected ground. *See* INS v. Aguirre-Aguirre, 526 U.S. 415, 420 (1999) (withholding is mandatory upon meeting statutory criteria). Third, protections under the Convention Against Torture ("CAT") prohibit returning noncitizens to a country where it is more likely than not that they would face torture. *See* Foreign Affairs Reform and Restructuring Act of 1998 ("FARRA") § 2242(a), Pub. L. No. 105-207, Div. G. Title XXI, 112 Stat. 2681 (codified at 8 U.S.C. § 1231 note); 8 C.F.R. § 1208.16-.18.

During World War II, the Americans captured and enemy Japanese General Tomoyuki Yamashita who filed a writ of habeas corpus. *In re* Yamashita, 327 U.S. 1, 30 (1946) (Murphy, J., dissenting). Even an enemy general in World War II got a notice and opportunity to be heard through habeas corpus, which is more than Petitioner according to the executive who thinks disappearing him will destroy this Court's jurisdiction. *Id.*; *see also Ex parte* Quirin, 317 U.S. 1, 24 (1946) (asserting jurisdiction to hear the habeas corpus writ of Nazis saboteurs on American soil). However, when General Yamashita's writ was denied, he was thereafter executed, causing an uproar among the nations. Hamdan v. Rumsfeld, 548 U.S. 557, 619 (2006). So fervent were the world's nation's feelings about Yamashita's denied writ that it caused the Third Geneva Convention to protect prisoners of war when it "extended prisoner-of-war protections to individuals tried for crimes committed before their capture." *Id.* Those protections remain, and apply here.

**IV. The AEA Proclamation and the Unlawful Detentions, Removals, Disappearances, and Extraordinary Renditions**

On March 14, the President signed the AEA Proclamation at issue here. It provides that "all Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies." *See* Exec. Proclamation 10903, 90 Fed. Reg. 13033. Although the AEA calls for a "public proclamation," 50 U.S.C. § 21, the administration did not make the invocation public until around 3:53 p.m. EDT on March 15. As set forth more fully in Judge Boasberg's opinion, even prior to Proclamation 10903's publication the government sought to remove individuals. J.G.G. v. Trump, No. 1:25-cv-766-JEB (D.D.C. Mar. 18, 2025), ECF No. 28-1 (Cerna Decl.) ¶ 5; J.G.G., 2025 WL 890401, at *3 (D.D.C. Mar. 24, 2025) (noting that prior to publication of Proclamation 10903, and after a lawsuit was filed against

the summary removals, it appeared that "the Government . . . was nonetheless moving forward with its summary-deportation plans.").

The most basic problem with Proclamation 10903 and related orders and notices is that it was carried out surreptitiously, without giving notice or an opportunity to be heard on the very basic issue of the Proclamation's legitimacy itself. To be valid, it must target It also allows only the targeting of individuals who are "natives, citizens, denizens, or subjects of [a] hostile nation or government." 50 U.S.C. § 21. But Proclamation 10903 targets only (1) "members" of TdA; who are (2) "natives, citizens, denizens, or subjects" of a nation the United States is at peace with—Venezuela.

Even while there is no basis under Proclamation 10903 to determine that Petitioner is "chargeable with actual hostility, or other crime against the public safety" on behalf of a hostile nation (none were named in the proclamation), still triggers 50 U.S.C. § 22, because Petitioner has become "liable as an enemy" despite Proclamation 10903's lawlessness. As such, the AEA requires treaty stipulations including the Treaty of Peace, *supra*, that appear to grant Petitioner a right to litigate his lawful indefinite and undetailed presence in the United States, because Petitioner has been targeted under the AEA. These provisions of the AEA do not require the treaty stipulations benefiting Petitioner to come from a hostile nation, but only that Petitioner and the class are "natives, citizens, denizens, or subjects" of the treaty that provides the stipulations. Petitioner is from Venezuela, so the stipulations involving Venezuela apply, simply because he was targeted. 50 U.S.C. § 22.

**V. Petitioner**

Petitioner Darwin Antonio Arevalo Millan ("Darwin") is a Venezuelan citizen who is detained at Adelanto ICE Process Center. See Ex. A, Schroeder Decl. ¶ 3. Darwin fled Venezuela because he was persecuted there in the past for their political beliefs and for publicly speaking out against the current Venezuelan government. *Id.* ¶ 10. He came to the United States in 2024. *Id.* He is currently seeking asylum,

withholding, and protection under the Convention Against Torture. *Id.* He has aslyum hearings pending before the Executive Office For Immigration Review. *Id.* Darwin was detained at a scheduled ICE check in on March 20, 2025. *Id.* ¶ 13. ICE has orally accused Darwin of having tattoos that indicate membership in the Tren de Aragua gang. *Id.* Darwin has a number of tattoos including a crown and a basketball. *Id.* ¶¶ 12–13. None of these tattoos are related to TdA and Darwin vehemently denies any connection to TdA. *Id.* ¶ 8. Darwin was suddenly put "in transfer" on the excuse of COVID outbreak and moved to a nearby building within the Adelanto ICE Processing Center. *Id.* ¶¶ 16–18. Darwin is at risk of being classified as an alien enemy under the Aliens Enemy Act and summarily removed, disappeared, or subjected to extraordinary rendition under Proclamation 10903 to El Salvador. Id. ¶¶ 18–19.

Upon information and belief, the government's plans to seize, remove, disappear, and subject to extraordinary rendition Petitioner and his putative class were stymied by several orders made by federal courts across the country, and potentially by costs, practical difficulty, and lack of space. Complaint at 47–48. Upon information and belief, people have been transferred in groups of Venezuelan men, and been told that they appear to be on a list with other Venezuelans and this District does not currently have an order protecting Petitioner or his class. Thus, many individuals in this District are at imminent risk of summary removal pursuant to Proclamation 10903.

## LEGAL STANDARD

To obtain a TRO, a plaintiff "must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." Winter v. Nat. Res. Def. Council, Inc., 555 U.S. 7, 20 (2008).

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## ARGUMENT

### I. Petitioners Are Likely to Succeed on the Merits.

#### A. Proclamation 10903 Does Not Satisfy the AEA.

Proclamation 10903 targets "members" of TdA and names Venezuela, a nation the United States is at peace with, making it defunct, unlawful, ultra vires, nonsensical, and odious. When the government asserts "an unheralded power" in a "long-extant statute," courts "greet its announcement with a measure of skepticism." Util. Air Regul. Grp. v. EPA, 573 U.S. 302, 324 (2014); *see* J.G.G. v. Trump, No. 25-5067, 2025 WL 914682, at *1-13 (D.D.C. Mar. 26, 2025); *J.A.V. v. Trump*, 1:25-cv-072, Doc. 58, at *34 (S.D. Tex. 2025).

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

Proclamation 10903 also fails, on its face, to satisfy an essential statutory requirement: that there be an "invasion or predatory incursion" directed "against the territory of the United States." *See* Webster's Dict., Invasion (1828) ("invasion" is a "hostile entrance into the possession of another; particularly, the entrance of a hostile army into a country for purpose of conquest or plunder, or the attack of a military force"); Webster's Dict., Incursion (1828) ("[I]ncursion . . . applies to the expeditions of small parties or detachments of an enemy's army, entering a territory for attack, plunder, or destruction of a post or magazine."); *see also J.G.G.*, 2025 WL 914682, at *10, 20 (in the Constitution, "invasion" "is used in a military sense" "in every instance" and "predatory incursion" is "a form of hostilities against the United States by another nation-state, a form of attack short of war"); *Ludecke*, 335 U.S. at 169 n.13 ("[T]he life of [the AEA] is defined by the existence of a war."). "Mass illegal migration" or criminal activities, as described in Proclamation 10903, plainly do not fall within the statutory boundaries.

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**2. The Purported Invasion Is Not by a "Foreign Nation or Government."**

This court need not go beyond the face of Proclamation 10903 to find that it fails to satisfy the statutory preconditions of the AEA. In any event, experts are in accord that it is "absolutely implausible that the Maduro regime controls TdA or that the Maduro government and TdA are intertwined." J.G.G., No. 1:25-cv-766-JEB, ECF No. 67-3 (Hanson Decl.) ¶17; *id.* at 67-4 (Antillano Decl.) ¶ 13; id. at 67-12 (Dudley Decl.) ¶¶ 2, 21. Recently unclassified reports from U.S. intelligence agencies appear to corroborate these findings as well. *see Venezuela: Examining Regime Ties to Tren de Aragua*, SOCM 2025-11374 (Apr. 7, 2025), https://static01.nyt.com/newsgraphics/documenttools/32f71f10c36cc482/d90251d5-full.pdf. Thus, the legal fictions of Proclamation 10903 that TdA infiltrated Venezuela and is actually running that country, apparently, instead of or with the Maduro regime are not only nonsensical, but unsupportable. Nor did Proclamation 10903 create a state of war, predatory incursion, or invasion by the power of the presidency when we are actually at peace with Venezuela.

**3. Petitioner and His Class are Military Prisoners**

Litigants in similar ongoing litigation have presented their arguments as though these foregoing mentioned behaviors can be explained by civil law. They cannot. Proclamation 10903 at issue hear explicitly invokes war powers that operate outside the bounds of ordinary law, including the AEA, which is the key to Proclamation 10903's true meaning. "The proclamation is actually and constructively a feudal, unconstitutional, and ultra vires declaration of war," far beyond the foreign affairs power recognized in *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319 (1936). Complaint at 5, 27. Indeed, it is a "plain trespass." Little v. Barreme, 6 U.S. 170, 179 (1804). The U.S. Supreme Court has since ordered that due process requires notice and an opportunity to be heard in *A.A.R.P.*, but this only applies to civil law issues. A.A.R.P. v. Trump, No. 24A1007, slip op. at 7 (2025). Only civil law was

considered, because the litigants only raised civil law apparently believing that Trump is not *seriously* invoking his war powers.

We do not do similarly here. We do not deny or disparage the civil law, and indeed we repeat it as fully and as greatly as it can assist Petitioner and his class, and repeat several arguments made by our colleagues in *A.A.R.P.*, *J.G.G.*, *J.A.V.*, and others. However, we invoke the common law writ of habeas corpus, which *is* civil law, as *gravior lex* over the unbounded military or martial laws now spewing out of the executive branch to control it. *See* Hamdan v. Rumsfeld, 548 U.S. 557, 635 (2006). The executive is being enabled by INA by the USA PATRIOT ACT's amendments, which is military, not civil law, in the habeas corpus context.

Nevertheless, *A.A.R.P.* has granted an injunction based upon the civil law for a notice and opportunity to be heard. We merely ask this court to follow suit to control military powers of the president when they are ultra vires and unconstitutional. This is the most ancient and fundamental way habeas corpus operates, to refute feudalism, as it time and again has vindicated the rights of the people against despots who dare to claim they are like God appointed kings who can do no wrong. Complaint at 59.

**B. Summary Removals Without Notice, a Meaningful Opportunity to Be Heard Before an Impartial Decision Maker.**

As the Supreme Court has now made clear, the government must provide Petitioners notice "within a reasonable time and in such a manner as will allow them to actually seek" relief from summary removals under Proclamation 10903. *J.G.G.*, 2025 WL 102409, at *2 ("detainees subject to removal orders under the AEA are entitled to notice and an opportunity to challenge their removal."); *A.A.R.P.*, No. 24A1007, at 7. Because the government has not stated whether or how it will comply with the Supreme Court's recent orders, a TRO is warranted to ensure that the government provides the Court with protocol for how it will provide notice. *See J.G.G.*, 2025 WL 102409, at *2 ("'It is well established that the Fifth Amendment entitles [noncitizens] to due process of law' in the context of removal proceedings.").

At a minimum, the notice must be translated into a language that individuals can understand, for Venezuelans Spanish and English. Most importantly, there must be sufficient time for individuals to seek review. As during World War II, that notice must be at least 30 days in advance of any attempted removal. And it must be provided to undersigned counsel so that no individual is mistakenly removed. *See, e.g.*, Noem v. Abrego Garcia, No. 24A949, 2025 WL 1077101 (U.S. Apr. 10, 2025). However, it also appears that treaty stipulations triggered by Proclamation 10903 under AEA require that Petitioner and the class have a right to petition the courts especially if war actually broke out between the nations. *See* Articles 13 and 26 of Treaty of Peace, *supra*; Hamdan v. Rumsfeld, 548 U.S. 557, 632 (2006) (citing Article 3 of the Geneva Convention, *supra*; *In re* Yamashita, 327 U.S. 1, 44 (1946) (Rutledge, J., dissenting)).

To be sure, the question of whether habeas corpus jurisdiction extends to such questions is answered with a resounding *yes* in *Boumediene v. Bush*, *Duncan v. Kahanamoku*, and *Ex parte Milligan*. Complaint at 55. Each of these cases abided by the open-door or open-court ruling of *Milligan*, which stated that as long as the courts remain open, even during a war or invasion, habeas corpus jurisdiction holds. *Id.* The invasion or insurrection language in the Suspension Clause extends only to those which actually shutter the doors of the court. *Ex parte* Milligan, 71 U.S. 2, 140 (1866) ("Where peace exists, the laws of peace must prevail."). This Court is open, not shut, and therefore its jurisdiction to collaterally review this matter stands and is required as due process and equal protection under the constitution regardless of whether this Court's ultimate determination is to deny relief. Boumediene v. Bush, 553 U.S. 723, 733 (2008); Duncan v. Kahanamoku, 327 U.S. 304, 324 (1946); *Milligan*, 71 U.S. at 140–41.

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**C. Proclamation 10903 Violates the Specific Protections that Congress Established for Noncitizens Seeking Humanitarian Protection.**

Proclamation 10903 is unlawful for an independent reason: it overrides statutory protections for noncitizens seeking relief from torture by subjecting them to removal without meaningful consideration of their claims. Congress codified the U.N. Convention against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment ("CAT") to ensure that noncitizens have meaningful opportunities to seek protection from torture. *See* 8 U.S.C. § 1231 note; C.F.R. §§ 208.16-.18. CAT categorically prohibits returning a noncitizen to any country where they would more likely than not face torture. 8 U.S.C. §1231 note. CAT applies regardless of the mechanism for removal. The D.C. Circuit recently addressed a similar issue in *Huisha-Huisha v. Mayorkas*, reconciling the Executive's authority under a public-health statute, 42 U.S.C. § 265, with CAT's protections. 27 F.4th 718 (D.C. Cir. 2022). Because § 265 was silent about where noncitizens could be expelled, and CAT explicitly addressed that question, the court held no conflict existed. *Id.* Both statutes could—and therefore must—be given effect. *Id.* at 721, 731–32. This case is on all fours with *Huisha-Huisha*, because the AEA and CAT must be harmonized by applying CAT's protections to AEA removals. Despite this clear statutory framework, Proclamation 10903 overrides all of the INA's protections and deprives those designated under Proclamation 10903 with any opportunity to seek protection against being sent to a place where they will be tortured. *See J.G.G.*, 2025 WL 890401, at *15 ("CAT could stand as an independent obstacle" to "potential torture should Plaintiffs be removed to El Salvador and incarcerated there.").

**D. Proclamation 10903 Violates Several Laws**

Since the last invocation of the AEA more than 80 years ago, Congress has carefully specified the procedures by which noncitizens may be removed. The INA leaves little doubt that its procedures must apply to every removal, unless otherwise specified by that statute. It directs: "Unless otherwise specified in this chapter," the

INA's comprehensive scheme provides "the sole and exclusive procedure for determining whether an alien may be . . . removed from the United States." 8 U.S.C. § 1229a(a)(3); *see also* United States v. Tinoso, 327 F.3d 864, 867 (9th Cir. 2003) ("Deportation and removal must be achieved through the procedures provided in the INA."). Indeed, Congress intended for the INA to "supersede all previous laws with regard to deportability." S. Rep. No. 82-1137, at 30 (Jan. 29, 1952). Proclamation 10903 circumvents this law.

Proclamation 10903 also violates the Neutrality Acts, the Hobbes Act, and the Inter-American Treaty of Reciprocal Assistance, 21 U.N.T.S. 93, 95 (1948) in such a way that President Trump may be able to leverage unconstitutional emoluments from foreign leaders and oligarchs. Complaint at 32, 37. The American taxpayers will pay both from their pocket books and at the sacrifice of their own safety. *Id.* Public officials have been impeached, removed, and jailed by these Courts for much less. United States v. McCabe, 103 F.4th 259, 270–71 (4th Cir. 2024); United States v. Kincaid-Chauncey, 556 F.3d 923, 936 (2009).

**II. Petitioners and the Class Face Imminent Irreparable Harm.**

In the absence of a TRO, Petitioners and the class are at imminent risk of summary removal to places, such as El Salvador, where they face life-threatening conditions, persecution, and torture. *J.G.G.*, 2025 WL 1024097, at *5 ("[I]nmates in Salvadoran prisons are 'highly likely to face immediate and intentional life-threatening harm at the hands of state actors.'"). That easily constitutes irreparable harm. *See* Hernandez v. Sessions, 872 F.3d 976, 994–95 (9th Cir. 2017) (being likely to be unconstitutionally detained for an indeterminate period of time" is "irreparable harm"); *see also* L. v. ICE, 310 F.Supp.3d 1133, 1146 (S.D. Cal.) (separating parents from their children is irreparable harm); *Huisha-Huisha*, 27 F.4th at 733 (irreparable harm exists where petitioners "expelled to places where they will be persecuted or tortured"); Patel v. Barr, No. 20-3856, 2020 WL 4700636, at * 8 (E.D. Pa. Aug. 13, 2020); see also J.G.G., 2025 WL 890401, at *16 ("[T]he risk of torture, beatings, and

even death clearly and unequivocally supports a finding of irreparable harm" if Venezuelans are removed under the AEA Proclamation to El Salvador). And Petitioners and the class may never get out of these prisons. *See J.G.G.*, 2025 WL 1024097, at *5.

Petitioner fled Venezuela for the very purpose of escaping persecution there, and has a pending asylum cases on that basis. Petitioner was persecuted by the Venezuelan government and resisted by speaking out. Ex. A (Schroeder Decl.) ¶ 4. Now, Petitioner's free speech is being used as a basis to keep him in immigrant detention in the United States. *Id.* And returning to Venezuela labeled as a gang member by the U.S. government for participating in free speech only increases the danger, as they will face heightened scrutiny from Venezuela's security agency, and possibly even violence from rivals of TdA. U.S. CONST. amend. I; Article 14 of the Treaty of Peace, *supra*.

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

The balance of equities and public interest merge in cases against the government. *See* Nken v. Holder, 556 U.S. 418, 436 (2009). Here, the balance overwhelmingly favors Petitioners. The public has a critical interest in preventing wrongful removals, especially where it could mean a lifetime sentence in a notorious foreign prison, and where they may (by lack of due process alone) be mistakenly applied against U.S. citizens. *See* Nken, 556 U.S. at 436; *see also* Nunez v. Boldin, 537 F. Supp. 578, 587 (S.D. Tex. 1982) (protecting people who face persecution abroad "goes to the very heart of the principles and moral precepts upon which this country and its Constitution were founded"); Trop v. Dulles, 356 U.S. 86, 102 (1958) (plurality opinion) (naming "banishment, a fate universally decried by civilized people" and noting: "The civilized nations of the world are in virtual unanimity that statelessness is not to be imposed as punishment for crime."). That is especially so

given the government's position that it will not obtain the release of individuals mistakenly sent to the notorious Salvadoran prison.

The public also has a strong interest in the implementation and upholding in this Court of the treaty stipulations and protections sought by Petitioner and the class, because U.S. citizens depend upon reciprocal stipulations for their own protection abroad. Complaint at 83–87. In the habeas corpus context, the U.S. Supreme Court decided the Third Geneva Convention in particular was binding as a part of the "rules and precepts of the law of nations." *Hamdan*, 548 U.S. at 613. This Court may similarly hold these treaty provisions binding upon the executive as he is clearly "bound to comply with the rule of law that prevails in this jurisdiction." *Id.* at 635.

Petitioners and the class, moreover, do not request a TRO that would hinder Respondents' ability to prosecute criminal offenses, detain noncitizens, and remove noncitizens under the immigration laws. *Cf.* J.G.G., 2025 WL 914682, at *30 ("The Executive remains free to take TdA members off the streets and keep them in detention. The Executive can also deport alleged members of TdA under the INA[.]"). Thus, Respondents cannot show how the government's interests "overcome the irreparable injury to [petitioner] absent a stay, or justify denial of a short stay pendente lite." Ragbir v. United States, No. 2:17-CV-1256-KM, 2018 WL 1446407, at *18 (D.N.J. Mar. 23, 2018), appeal dismissed, No. 18-2142, 2018 WL 6133744 (3d Cir. Nov. 15, 2018); *see also Patel*, 2020 WL 4700636, at *9. Conversely, the government can make no comparable claim to harm from an injunction. *See* Washington v. Devos, 481 F. Supp. 3d 1184, 1197 (W.D. Wash. 2020) ("'There is generally no public interest in the perpetuation of unlawful agency action.'" (quoting League of Women Voters v. Newby, 838 F.3d 1, 12 (D.C. Cir. 2016))).

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

In addition to this Court's equitable powers, this is a textbook case for use of the All Writs Act ("AWA"), which provides courts a powerful tool to "maintain the

status quo by injunction pending review of an agency's action through the prescribed statutory channels." F.T.C. v. Dean Foods Co., 384 U.S. 597, 604 (1966); 28 U.S.C. § 1651(a); California v. M&P Inv., 46 F. App'x 876, 878 (9th Cir. 2002) (finding Act should be broadly construed to "achieve all rational ends of law" (quoting Adams v. United States, 317 U.S. 269, 273 (1942))); J.A.V. v. Trump, No. 1:25-CV-072, 2025 WL 1064009, at *1 (S.D. Tex. Apr. 9, 2025) ("A federal court has the power under the All Writs Act to issue injunctive orders in a case even before the court's jurisdiction has been established."). The U.S. Supreme Court has made clear that it is doubly defending its integrity on this matter. A.A.R.P., No. 24A1007 at 3–4, 7.

Whereas a traditional TRO requires a party to state a claim, an injunction based on the AWA requires only that a party identify a threat to the integrity of an ongoing or prospective proceeding, or of a past order or judgment. *See* Forbes Media LLC v. United States, 61 F.4th 1072, 1075 (9th Cir. 2023) ("[T]he AWA may be used to order third parties to assist in the execution of warrants."); ITT Cmty. Dev. Corp. v. Barton, 569 F.2d 1351, 1359 (5th Cir. 1978); In Re: Nat'l Football League Players Concussion Injury Litigation, 923 F.3d 96, 109 (3d Cir. 2019). Courts have explicitly relied upon the AWA in order to prevent even a risk that a respondent's actions will diminish the court's capacity to adjudicate claims before it. *See* Michael v. INS, 48 F.3d 657, 664 (2d Cir. 1995).

**V. The Court Should Not Require Petitioners to Provide Security.**

The Court should not require a bond under Fed. R. Civ. P. 65. That The Ninth Circuit recognized "that Rule 65(c) invests the district court 'with discretion as to the amount of security required, if any.'" Jorgensen v. Cassiday, 320 F.3d 906, 919 (9th Cir. 2003). However, the Ninth Circuit also recognized that "[t]he district court may dispense with the filing of a bond when it concludes there is no realistic likelihood of harm to the defendant from enjoining is or her conduct." *Id.* Alternatively, "the court has discretion to dispense with the security requirement, or to request mere nominal security, where requiring security would effectively deny access to judicial review."

California *ex rel.* Van De Kamp v. Tahoe Regional Planning Agency, 766 F.2d 1319, 1325 (9th Cir. 1985). If the Court denies our request to dispense with the security requirement, the Court should impose a nominal bond of $1. Save Our Sonoran, Inc. v. Flowers, 408 F.3d 1113, 1126 (9th Cir. 2005).

**CONCLUSION**

The Court should grant a TRO as to the named Petitioners and the class.

Respectfully Submitted on May 17, 2025

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**CERTIFICATE OF COMPLIANCE**

The undersigned, counsel of record for Darwin Antonio Arevalo Millan, certifies that this brief contains 6,956 words, and complies with the word limit of L.R. 11-6.1.

DATED: May 17, 2025

By: /s/ Joshua J. Schroeder
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