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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

EASTERN DIVISION

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

Petitioner-Plaintiff,

v.

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

Respondent-Defendants.

No. 5:25-cv-01207

RESPONSE TO PETITIONER-PLAINTIFF'S MOTION FOR A TEMPORARY RESTRAINING ORDER

Honorable John W. Holcomb
United States District Judge

Introduction

Petitioner is a Venezuelan citizen and national who entered the United States in May 2024 without valid travel documents. Declaration of Jackson Lara ("Lara Dec.") at pp. 2-3. He was placed into removal proceedings under the Immigration and Nationality Act ("INA") and released under the supervision of Immigration and Customs Enforcement ("ICE") but repeatedly violated the terms of his release, which resulted in his detention in March 2024. *Id.* He remains lawfully detained under the INA.

Petitioner seeks an order enjoining his removal under the Alien Enemies Act, 50 U.S.C. §§ 21-24 ("AEA"). ECF No. 1. He expresses a concern that he faces a risk of removal based on a Proclamation issued by the President invoking the AEA as a basis for detention and removal of members of Tren de Aragua ("TdA"). *See* Proclamation No. 10,903, 90 Fed. Reg. 13,033 (Mar. 20, 2025) ("Proclamation"). His premise is that he is in imminent danger of being removed under that authority. ECF No. 1.

But there exists no evidence that Petitioner faces any threat of removal as an alien enemy. ICE's assessment was that Petitioner is not covered by the Proclamation, so Petitioner is neither subject to the Proclamation nor detained pursuant to it, and he has not been issued the applicable notice.

Thus, Petitioner lacks standing to pursue this far-reaching restraint against the Government. Further, this Court thus lacks jurisdiction over this habeas proceeding. A challenge to removal under the AEA may proceed only in habeas. And a habeas proceeding may proceed only where the petitioner is in custody—facing a restraint on liberty—pursuant to the order being challenged. Here, Petitioner is not in custody or facing removal

under the Proclamation or the AEA. The Court should deny the TRO Motion, vacate its order granting the Motion in part, and dismiss without prejudice for lack of jurisdiction.

Background

I. TdA, The Proclamation, and the individuals it covers under the AEA

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

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

The AEA provides the President with authority to issue a "proclamation" identifying an invasion or predatory incursion by a foreign nation or government, and it provides that subjects of the hostile nation or government "shall be liable to be apprehended, restrained, secured, and removed as alien enemies." 50 U.S.C. § 21.

On March 14, 2025, the President, exercising his authority under the AEA, signed the Proclamation. 90 Fed. Reg. at 13,033. finding that TdA is a "hybrid criminal state" that "is perpetrating, attempting, and threatening an invasion or predatory incursion" against the United States. *Id.* at 13,033-34. The President found that TdA is "closely aligned with" Maduro's regime in Venezuela, has "infiltrated" the regime's "military and law enforcement apparatus," and has taken control over certain Venezuelan territory. *Id.* The President also found that TdA is "conducting irregular warfare and undertaking hostile actions against the United States," with the "goal of destabilizing democratic nations." *Id.* And, the President found that TdA has "engaged in and continues to engage in mass illegal migration" to further TdA's objectives. *Id.*

Based on those findings, the President proclaimed that "all Venezuelan citizens 14 years of age or older who are members of TdA . . . and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies" under 50 U.S.C. § 21. *Id.* at 13,034. Any such TdA member is "subject to summary apprehension." *Id.* at 13,035. To that end, the President directed the Attorney General to, "*consistent with applicable law*, apprehend, restrain, secure, and remove every Alien Enemy described" above. *Id.* (emphasis added). Any such TdA member found within the United States is "subject to summary apprehension." *Id.* at 13,035. Alien enemies so apprehended may be detained until their removal to "any such location as may be directed" by the enforcing officers. *Id.*

TdA members remain deportable under other authorities, including Title 8, (the INA). *See id.* at 13,034; *see also* 8 U.S.C. §§ 1182(b)(3)(B), 1227(a)(4)(B). But the

Proclamation permits a particularly expeditious, statutorily authorized removal method for individuals found to present serious national-security threats.

II. DHS's notice and removal procedure under the AEA

The Supreme Court recently held that individuals facing removal under the AEA have due process rights and must receive notice that they face removal under the AEA, as well as an opportunity to seek habeas relief. *See Trump v. J.G.G.*, 604 U.S. ___, 2025 WL 1024097 (U.S. Apr. 7, 2025). In *J.G.G.*, detained Venezuelan nationals "believed to be members of Tren De Aragua" sought to prevent their removal under the AEA. *Id.* at *1. The Court held that individuals subject to removal under the AEA are entitled to notice and an opportunity to be heard under the Fifth Amendment's Due Process Clause. *Id.* at *2. "AEA detainees must receive notice after the date of this order that they are subject to removal under the Act." *Id.* That "notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs." *Id.*; *see also id.* ("The Government expressly agrees that 'TdA members subject to removal under the Alien Enemies Act get judicial review.'").

III. This suit

Petitioner filed a petition for a writ of habeas corpus under 28 U.S.C. § 2241, ECF No. 1, a TRO motion, TRO Mot., ECF No. 2, and a class-certification motion, ECF No. 3. In his Petition, Petitioner raised twenty claims for relief, all of which are premised on his claim that the Proclamation applies to him and that he is facing removal under the AEA. ECF No. 1 at 69-90. This Court enjoined the Government from "removing Arevalo, or any member of the putative class, under the AEA or Proclamation No. 10903." ECF No. 6.

IV. Petitioner is in Removal Proceedings under the INA

Petitioner is in custody under Title 8 at an ICE detention facility in Adelanto, California. CITE. Petitioner was placed into INA removal proceedings over a year ago, in May 2024, and was free from custody from that point until his detention in May 2025 pursuant to an Alternative to Detention program, subject to conditions with which he did not comply. Jackson Dec. pp. 3-4. There is not now, nor has there ever been, a formal notice that Petitioner is subject to the Proclamation and amenable to removal under the AEA. *Id.*

Argument

I. This Court lacks jurisdiction over Petitioner's claims.

A. Petitioner lacks standing to challenge the AEA

Petitioner cannot establish Article III standing because his claim isn't redressable. *See Murthy v. Missouri*, 603 U.S. 43, 58 (2024). He is required to "support each element of standing 'with the manner and degree of evidence required at the successive stages of the litigation.'" *Id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)). "[A]t the preliminary injunction stage, then, [Petitioner] must make a 'clear showing' that he is 'likely' to establish each element of standing." *Id.* (quoting *Winter*, 555 U.S. at 22). Petitioner is not subject to the Proclamation, and he provides no evidence otherwise. Thus, he is a third party to the AEA, challenging its enforcement. It is a bedrock principle that a federal court cannot redress "injury that results from the independent action of some third party." *Murthy*, 603 U.S. at 57.

Although it is possible for a petitioner to establish standing where there is substantial risk of harm, the burden for establishing such a risk is high. *Id.* The Supreme Court explained that it will not "endorse standing theories that require guesswork." *Id.* A

Plaintiff may sometimes satisfy the injury-in-fact requirement by alleging "an intention to engage in a course of conduct . . . and there exists a credible threat of prosecution thereunder." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149 (2014) (citing *Babbitt v. Farm Workers*, 442 U.S. 289, 298 (1979)). But mere speculation or fear of enforcement is not enough; a petitioner must establish a predictable and reliable course of conduct. *Id.* Such an injury must be "imminent," meaning "*certainly* impending." *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

Finding that Petitioner has standing would be error two different ways: (1) it would improperly burden Respondents with establishing that Petitioner would *not* face a substantial risk of injury; and (2) it would fail to avoid the pitfall discussed in *Murthy* of requiring guesswork rather than relying on predictable outcomes. Instead of requiring Petitioner to establish a credible threat of AEA enforcement against him—by showing that he is, in fact, a TdA member, or that ICE has indicated that they would designate him as an alien enemy—Petitioner asks this Court to require Respondents to prove that he does not face a credible threat. That gets the analysis backwards. The burden is on Petitioner to establish standing. The appropriate focus for standing here is on the government's likely conduct vis-à-vis this petitioner, but the only evidence in the record is that the Government does not believe Petitioner is subject to the Proclamation. *See generally* Lara Dec. Any argument that the government could change its mind is pure speculation. *See* ECF No 1.

At bottom, Petitioner challenges a law that both he and the Government agree does not apply to him, supported only by a fear that one day that will change. That cannot provide the basis for a lawsuit. *See Diamond S.G. Enter. V. City of San Jose*, 100 F.4th 1059, 1065-66 (9th Cir. 2024) (finding lack of standing where petitioner made only a "vague

allegation that" he one day might be injured). Such limited fears "do not support a finding of the 'actual or imminent' injury that our cases require." *Lujan v. Defs. Of Wildlife*, 504 U.S. 555, 564 (1992).

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

Standing aside, this Court lacks jurisdiction to review the Proclamation or enjoin the President's exercise of authority under Article II and the AEA. The Supreme Court has long recognized that courts cannot issue an injunction purporting to supervise the President's performance of his duties. *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867) (courts have "no jurisdiction . . . to enjoin the President in the performance of his official duties"); *see also Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) ("With regard to the President, courts do not have jurisdiction to enjoin him.").

Consistent with that general rule, courts have long held that the President's authority under the AEA is not a proper subject for judicial scrutiny: "The authority of the President to promulgate by proclamation or public act 'the manner and degree of the restraint to which they (alien enemies) shall be subject, and in what cases,' is, of course, *plenary and not reviewable.*" *Ex parte Gilroy*, 257 F. 110, 112 (S.D.N.Y. 1919) (emphasis added); *see also, e.g., Ludecke v. Watkins*, 335 U.S. 160, 163–64 (1948) (reasoning, on appeal from "[d]enial of a writ of habeas corpus," that "some statutes 'preclude judicial review'" and "the Alien Enemy Act of 1798 is such a statute," as demonstrated by the clear text and "controlling contemporary construction"); *United States ex rel. Schlueter v. Watkins*, 67 F. Supp. 556, 565 (S.D.N.Y. 1946) (explaining that "courts are without power to review the action of the executive in ordering removal of an alien enemy . . . except with respect to . . . whether the relator is an enemy alien"), *aff'd*, 158 F.2d 853 (2d Cir. 1946).

Ultimately, "[t]he very nature of the President's power to order the removal of all enemy aliens rejects the notion that courts may pass judgment upon the exercise of his discretion." *Ludecke*, 335 U.S. at 164. For that reason, it has long been established that "[u]nreviewable power in the President . . . is the essence of the" AEA. *Citizens Protective League v. Clark*, 155 F.2d 290, 296 (D.C. Cir. 1946).

This Court lacks power to review the President's Proclamation for another reason as well: Whether the AEA's preconditions are satisfied is a political question committed to the President's discretion, no different from the President's determination to trigger the Constitution's Invasion Clause (Article IV, section 4). *See Padavan v. United States*, 82 F.3d 23, 28 (2d Cir. 1996) (holding plaintiffs' Invasion Clause claim nonjusticiable because "[t]he protection of the states from 'invasion' involves matters of foreign policy and defense"); *see also California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997) (collecting cases).

The Supreme Court has held that the political-question doctrine is "essentially a function of the separation of powers." *Baker v. Carr*, 369 U.S. 186, 217 (1962). To guide courts in determining when such a question is raised, the Supreme Court identified six factors that indicate a question has been committed to the political branches. *See, e.g.*, *Padavan*, 82 F.3d at 27. The President's determination under the AEA implicates at least two independently sufficient factors.

First, the determination that an "invasion" or "predatory incursion" is being perpetrated sits at the intersection of two areas the Constitution commits to the political branches: (1) foreign affairs, *see Barclays Bank PLC v. Franchise Tax Bd.*, 512 U.S. 298, 327–28 (1994); and (2) immigration policy, *see Mathews v. Diaz*, 426 U.S. 67, 81 (1976). Such matters are so exclusively entrusted to the political branches of government as to be

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

Second, even without the clear textual commitment to the Executive of the constitutional responsibilities undergirding issuance of the Proclamation, there are no manageable standards permitting courts to assess exactly when hostile entry and criminal and violent acts constitute an "invasion" or "predatory incursion." *See Martin v. Mott*, 25 U.S. 18, 31–32 (1827) (Story, J.). Thus there is no basis for second-guessing the Executive's policy. *See Chi. & S. Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 111 (1948) (recognizing that President "has available intelligence services whose reports neither are nor ought to be published to the world). AEA proclamations are thus conclusive and preclusive. As for whether the Act's preconditions are satisfied, that is the President's call alone.

C. Any challenge to the AEA lies only in habeas

To the extent an AEA designation is reviewable at all, it is only through habeas. *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025) ("Challenges to removal under the AEA … must be brought in habeas."). Such challenges must proceed in habeas "[r]egardless of whether the detainees formally request release from confinement, because their claims for relief necessarily imply the invalidity of their confinement and removal under the AEA . . . ." *Id.* (cleaned up); *see also A.A.R.P. v. Trump*, 2025 U.S. LEXIS 1837, at **7-8 (May 16, 2025) (describing sufficient notice for a due-process-compliant AEA removal as that which allows the petitioner to "actually seek habeas relief") (cleaned up). Thus, to the extent Petitioner purports to challenge the AEA under any other statutory authority, he cannot.[1]

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[1] Petitioner also purports to raise challenges to other laws, such as the PATRIOT Act and the Posse Comitatus Act, among others, *see, e.g.*, ECF No. 2-1 at 4. But as can be seen in his causes of action, each is premised on his being subject to the AEA, which he is not.

D. Petitioner is neither detained nor facing removal under the AEA, so the Court lacks habeas jurisdiction

To the extent Petitioner identifies the habeas statute, 28 U.S.C. § 2241, as a basis of jurisdiction, section 2241 requires that a petitioner be "in custody in violation of the Constitution or laws or treaties of the United States." *Id.* § 2241(c)(3). Petitioner challenges his removal under the Proclamation, arguing that removal under the AEA would be unlawful. *See generally* ECF No. 1. But Petitioner is not facing removal under the AEA. He was, and remains, in INA proceedings, and he presents nothing to show that he is subject to the Proclamation. Lara Dec. at pp. 2-3. He is thus not currently in detention or being removed under the AEA. *Id.*

As a result, this Court lacks jurisdiction. The Supreme Court has held that a court can exercise habeas jurisdiction only where the petitioner challenges a basis for the petitioner's custody. *See Maleng v. Cook*, 490 U.S. 488, 490– 92 (1989) (holding that mere "possibility" that an order of conviction will result in future custody is not enough to serve as a basis for habeas jurisdiction). Since *Maleng*, the Ninth Circuit has recognized that habeas petitions must be dismissed where the petitioner seeks to challenge a conviction that is not a basis of the petitioner's restraint on liberty. *See Veltmann-Barragan v. Holder*, 717 F.3d 1086, 1087-88 (9th Cir. 2013); *Resendiz v. Kovensky*, 416 F.3d 952, 956-58 (9th Cir. 2005).

This principle accords with the Supreme Court's recognition that a court cannot exercise habeas jurisdiction under § 2241 based on events that have not in fact occurred. *See Rumsfeld v. Padilla*, 542 U.S. 426, 448 (2004) ("The dissent cites no authority whatsoever for its extraordinary proposition that a district court can exercise statutory

jurisdiction based on a series of events that did not occur, or that jurisdiction might be premised on 'punishing' alleged Government misconduct.").

Petitioner is in custody under Title 8. Lara Dec. at pp. 2-3. Because ICE has determined that Petitioner is not subject to the Proclamation and is not holding him in detention or removing him under the AEA, the Court lacks habeas jurisdiction over this case.

E. This Court lacks jurisdiction to enjoin the transfer of Petitioner or putative class members outside this district.

The government may detain aliens pending removal proceedings under 8 U.S.C. § 1226(a) and removable aliens under § 1231(a). And the government *must* detain aliens who are inadmissible or removable under certain provisions. *See id.* §§ 1226(c)(1), 1231(a)(2)(A). This Court's temporary restraining order is therefore overbroad insofar as it restrains the government from acting according to those authorities. *See J.G.G.*, 2025 WL 825116.

Indeed, the INA bars this Court from entering injunctive relief with respect to transfers in three different ways. *First*, under 8 U.S.C. § 1231(g)(1), the Executive has great discretion in deciding where to detain Petitioner. Indeed, 8 U.S.C. § 1252(a)(2)(B)(ii) bars relief that would impact where and when to detain Petitioner. *Ali v. Ashcroft*, 346 F.3d 873, 887 (9th Cir. 2003) (citing *Van Dinh v. Reno*, 197 F.3d 427, 433–34 (10th Cir. 1999) (court lacks jurisdiction to review decision to transfer a detainee)). This Court's TRO thus improperly second-guessed the government's decision where to detain Petitioner.

Second, § 1252(g) also bars enjoining transfers under Title 8. It prohibits district courts from hearing challenges to actions to commence removal proceedings. Reading the discretionary language in §§ 1231(g)(1) and 1252(g) together confirms that Congress foreclosed piecemeal litigation over *where* a detainee may be placed into removal

proceedings. *See Liu v. INS*, 293 F.3d 36, 41 (2d Cir. 2002) (habeas petition "must not be construed to be 'seeking review of any discretionary decision,'" *superseded by statute on other grounds as recognized by Ruiz-Martinez v. Mukasey*, 516 F.3d 102, 113 (2d Cir. 2008); *see also Jimenez-Angeles v. Ashcroft*, 291 F.3d 594, 599 (9th Cir. 2002); *Tercero v. Holder*, 510 F. App'x 761, 766 (10th Cir. 2013) (Attorney General's discretionary decision to detain aliens is not reviewable by way of habeas.).

And finally, this Court lacks jurisdiction "to enjoin or restrain the operation of" 8 U.S.C. §§ 1221–32 "other than with respect to the application of such provisions to *an individual alien* against whom proceedings under such [provisions] have been initiated." 8 U.S.C. § 1252(f)(1) (emphasis added). Thus, this Court has no authority to prevent the transfer of any putative class member to a place of its discretion under 8 U.S.C. § 1231(g). *Garland v. Aleman Gonzalez*, 596 U.S. 543, 550 (2022) ("§ 1252(f)(1) 'prohibits federal courts from granting classwide injunctive relief' but 'does not extend to individual cases.'").

F. This Court lacks jurisdiction to consider CAT claims in habeas.

Petitioner's claims under the Convention Against Torture ("CAT"), as codified by the Foreign Affairs Reform and Restructuring Act ("FARRA"), *see* ECF No. 1, ¶¶ 88–91, are also barred. As the Second Circuit recently held, under 8 U.S.C. § 1252(a)(4), federal courts lack jurisdiction in habeas to consider CAT claims. *Kapoor v. DeMarco*, — F.4th —, No. 22-2806, 2025 WL 908234, at *11 (2d Cir. Mar. 26, 2025).

II. Petitioner cannot succeed on the merits of his claims.

A. The Proclamation comports with AEA requirements.

In all events, the Proclamation and its implementation are perfectly lawful. The AEA grants the President discretion to issue a proclamation directing the apprehension, restraint, and removal of alien enemies when two conditions are met. First, there either

must be "a declared war," "invasion," or a "predatory incursion" that is "perpetrated," "attempted," or "threatened against the territory of the United States." 50 U.S.C. § 21. Second, that hostile action must be by a "foreign nation" or "government." *Id.* The Proclamation satisfies both conditions.

1. TdA's actions constitute an invasion or predatory incursion into United States territory.

As to the first prerequisite, the President determined that TdA is perpetrating an invasion *or* a predatory incursion. Although the word "invasion" includes a military entry and occupation of a country, the accepted definition of that term is far broader, as definitions contemporaneous with the passage of the AEA make clear. "Invasion" was defined to include a "hostile entrance," *see, e.g.*, 1 John Ash, *The New and Complete Dictionary of the English Language* (1775), or a "hostile encroachment" on another's territory, *see* Thomas Sheridan, *A Complete Dictionary of the English Language* (2d ed. 1789). Nor is there any requirement that the purpose of the incursion be to possess or hold territory. *See, e.g.*, *United States v. Texas*, 719 F. Supp. 3d 640, 681 (W.D. Tex. 2024). Here, the actions of TdA fit accepted conceptions of an invasion. TdA's illegal entry and continued unlawful presence is an encroachment on U.S. territory that entails hostile acts contrary to the rights of citizens to be free from criminality and violence. *See* Smith Decl. ¶¶ 8–18.

At a minimum, the actions of TdA constitute a "predatory incursion" that justifies invocation of Section 21. The phrase "predatory incursion" encompasses (1) an entry into the United States (2) for purposes contrary to the interests or laws of the United States. *See, e.g.*, *Amaya v. Stanolind Oil & Gas Co.*, 62 F. Supp. 181, 189–90 (S.D. Tex. 1945) (noting use of the phrase to describe raids during hostilities with Mexico falling well short of "invasion"). Here, there is no question that TdA members have effected entries into the

United States and that the purposes of those entries are contrary to the interests and laws of this country. *See* 90 Fed. Reg. at 13,034.

Petitioner's main contention is that "invasion" and "predatory incursion" both *necessarily* entail actions contemplating a declaration of war. *See generally* ECF No. 1 29-36. But the AEA treats declarations of war disjunctively from both invasions and predatory incursions, which unquestionably have broader meanings that are not foreclosed by any source cited by Petitioner. In fact, many of Petitioner's sources contain definitions supportive of the government's argument. *See Webster's Dictionary*, "Invasion" (1828) ("[a] hostile entrance into the possessions of another); *id.*, "Incursion" ("entering into a territory with hostile intention"). Another court recently made this same point. *See A.S.R. v. Trump*, 2025 U.S. Dist. LEXIS 91129, at **39-49 (W.D.PA May 13, 2025) (finding that TdA had made a "predatory incursion" sufficient to support the President's Proclamation under the AEA). This Court should find the same.

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

The Proclamation makes clear that TdA qualifies as a "foreign nation or government" for at least two independent reasons. First, TdA's infiltration of key elements of the Venezuelan state, make it indistinguishable from Venezuela. *See* Proclamation. TdA's growth itself can be attributed to promotion via the actions of an individual later appointed Vice President in the Maduro regime. 90 Fed. Reg. at 13,033. And Maduro's connections to the group, via the regime-sponsored narco-terrorism enterprise Cártel de los Soles, are also clear. *Id.* Given how significantly TdA is intertwined in the fabric of Venezuela's structures, it functions as a governing entity.

Indeed, another court recently held that the AEA was satisfied where "the Proclamation places responsibility for TdA's actions in the United States on the Venezuelan government." *J.A.V. v. Trump*, 2025 U.S. Dist. LEXIS 82827, at *17 (S.D. Tex. May 1, 2025). The Court observed that "[a]lthough the Proclamation focuses on TdA's activities in the United States, it places control of those activities in Maduro, acting in his claimed role of President of Venezuela." *Id.* This Court should conclude the same.

In all events, TdA also acts as a governing authority in the areas where it operates. As the Proclamation recognizes, "Venezuelan national and local authorities have ceded ever-greater control over their territories to transnational criminal organizations, including TdA." 90 Fed. Reg. at 13,033. In those areas where it operates, TdA acts as a criminal governing entity, independent or in place of the normal civil society and government. *See id.*

Although Petitioner tries to depict this invocation of the AEA as novel, the United States has a long history of using war powers against formally nonstate actors. Historically, the United States authorized the use of force against "slave traders, pirates, and Indian tribes." Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2066 (2005). It has engaged militarily, during broader armed conflicts, with "opponents who had no formal connection to the state enemy," including during the Mexican–American and Spanish–American Wars. *Id.* at 2066–67. President Wilson famously "sent more than seven thousand U.S. troops into Mexico to pursue Pancho Villa." *Id.* at 2067. And more recently, President Clinton authorized missile strikes on al Qaeda targets in Africa and elsewhere. *See generally El-Shifa*, 607 F.3d 836.

This history is important because statutes must be read "not in a vacuum, but with reference to the statutory context, 'structure, history, and purpose.'" *Abramski v. United States*, 573 U.S. 169, 2267 (2014) (quoting *Maracich v. Spears*, 570 U.S. 48, 76 (2013)). The AEA is a war powers statute and thus must be read in light of the United States' robust history of employing its war powers against nonstate actors.

Petitioner's contrary arguments miss the point. The government is not arguing that TdA is itself a "nation." But the control and authority TdA exercises in Venezuela is consistent with founding-era definitions of "government." *See* Thomas Dyche & William Pardon, *A New General English Dictionary* (1754) ("the power or authority that one person exercises over another"). Additionally, although the AEA references the possibility that a covered entity *may* be able to enter a treaty governing certain aspects of relations between it and the United States, the statute does not in any way establish treaty-making authority as a prerequisite to inclusion. *See* 50 U.S.C. § 22 (contemplating circumstances "where no such treaty exists").[2]

At bottom, the President is entitled to examine the available evidence, including intelligence not available to others, and make a final determination based on his *own* assessment. *See Zemel v. Rusk*, 381 U.S. 1, 17 (1965) (noting "the changeable and explosive nature of contemporary international relations, and the fact that the Executive is immediately privy to information" unavailable to others). It is not the role of this Court to second-guess those determinations based on nothing more than speculation by individuals

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[2] Petitioner's reliance on § 22 is out of step with reality. The 1836 treaty clearly is only in force where the alien is not chargeable with actual hostility, but the Proclamation by its terms rules this out by recognizing hostile acts. *See, e.g.*, ECF No. 1 at 85-87.

not involved with the assessment of evidence or decisionmaking culminating in the Proclamation. *See Chi. & S. Air Lines*, 333 U.S. at 111.

B. Petitioner is receiving all the process he is due.

Petitioner's arguments about due process are unpersuasive. As an initial matter, the AEA permits absolute discretion to establish the conditions and processes to implement a Presidential Proclamation. *See* 50 U.S.C. § 21; *United States ex rel. Schlueter v. Watkins*, 158 F.2d 853, 853 (2d Cir. 1946) (the AEA authorizes "the making of an order of removal of an alien enemy without a court order and without a hearing of any kind"); *see also Ludecke*, 335 U.S. at 162–63 (noting the entirely administrative process established for determining whether an individual was an alien enemy). The only process due is notice and an opportunity to challenge that designation through habeas relief, where any "questions of interpretation and constitutionality" of the AEA must also be raised. *J.G.G.*, 2025 WL 1024097, at *2.

This very brief proves that Petitioner is receiving the process he is due. He has filed a habeas petition on the very questions the Supreme Court identified and is having them adjudicated with this motion prior to removal. *Id.*; Lara Dec. at pp. 2-3. Under those circumstances, the Government's procedures—individual notice in a language the alien understands, and reasonable time to file a petition for a writ of habeas corpus, Lara Dec. at pp. 1-2—afford Petitioner the requisite "opportunity to present their objections" to their alien-enemy designation in a habeas proceeding in the district of their confinement. *Mullane*, 339 U.S. at 314; *J.G.G.*, 2025 WL 1024097, at *1–2.

Further, given the urgent public interest in detaining and removing criminal gang members who threaten the United States, *see* 90 Fed. Reg. at 13,033, the government's

procedures are sufficient in providing Petitioner an opportunity, at any time prior to his removal, to seek the limited habeas review available. The Constitution does not require that Petitioner be permitted to file their habeas petition immediately upon detention or in a forum of their choosing. *Landon*, 459 U.S. at 35; *see also Boumediene v. Bush*, 553 U.S. 723, 795–96 (2008) (rejecting the notion "that a habeas court should intervene the moment an enemy combatant steps foot in a territory where the writ runs," noting that "[t]he Executive is entitled to a reasonable period of time to determine a detainee's status before a court entertains that detainee's habeas corpus petition."). And, once again, Petitioner is not even subject to the Proclamation. And even if he was, he clearly had sufficient notice to file this habeas petition, which is now being adjudicated. Thus, Petitioner shows no likelihood of success in claiming that the Government's process for notifying them of their AEA designation and permitting them to seek limited habeas relief fall below minimum constitutional requirements.

C. Title 8 is not the sole mechanism through which an alien may be removed.

Nor is Petitioner correct that the INA is the sole mechanism through which an alien may be removed. The determination required under the AEA does not relate to the "admissibility" or "deportability" of any alien, so there is no reason to believe that Title 8 and its "sole and exclusive" means for addressing *those* questions is implicated in this case. *See* 8 U.S.C. § 1229a(a)(3) (removal proceedings are "exclusive" only to the extent the government is determining admissibility or removability, as those terms are defined under Title 8). Rather, the INA and AEA are distinct mechanisms for effectuating the removal of certain aliens, just as Title 42 and the INA constitute different bases for *excluding* aliens. *See generally Huisha-Huisha v. Mayorkas*, 27 F.4th 718 (D.C. Cir. 2022).

In fact, the immigration laws and AEA have been read harmoniously for over 75 years. *See United States ex rel. Von Kleczkowski v. Watkins*, 71 F. Supp. 429, 437 (S.D.N.Y. 1947). Not all alien enemies will be subject to removal under Title 8 because the authority under Title 50 extends to aliens regardless of lawful status. Likewise, not all aliens subject to Title 8 will be subject to removal under the AEA—as removal under the AEA is premised on discrete findings, such as nationality and age, beyond admissibility or removability. And for aliens subject to both Title 8 and Title 50, the Executive has discretion in deciding how and whether to proceed under either or both statutes. *See id.* (recognizing this discretion under pre-INA immigration law). Thus, the AEA, INA, and FARRA coexist with some overlap that gives the Executive discretion to determine how, whether, or when to apply them. *See, e.g.*, *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510 (2018) ("When confronted with two Acts of Congress allegedly touching on the same topic, this Court . . . must . . . strive to give effect to both." (cleaned up)).

Even if there *were* a conflict between the AEA and the INA, it is the AEA that would control in this circumstance. "[I]t is a commonplace of statutory construction that the specific governs the general." *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384 (1992). Here, the AEA provides specific rules for the removal of a subset of aliens—those designated as alien enemies through a discrete mechanism providing authority to the President—against the more general provisions relating to removability provided by the INA. Thus, to the extent there may be any conflict, the AEA provides an exception to the more general applicability of the INA's removal provisions, and this is true regardless of the later enactment of the INA. *See, e.g.*, *Morton v. Mancari*, 417 U.S. 535, 550–51 (1974)

("Where there is no clear intention otherwise, a specific statute will not be controlled or nullified by a general one, regardless of the priority of enactment.").

D. Petitioner is not entitled to seek relief or protection from removal under Title 8.

The Proclamation does not impermissibly prohibit aliens from seeking relief and protection from removal under federal law. As a threshold matter, as mentioned above, there is no jurisdiction to consider CAT claims in habeas. *Kapoor*, 2025 WL 908234, at *11.

There is no direct conflict between the United States' obligations under the CAT as codified by the FARRA and removals under the AEA. The United States continues to abide by its policy not to remove aliens to countries in which they are likely to be tortured. *See Munaf v. Geren*, 553 U.S. 674, 702 (2008). And "[s]eparation of powers principles . . . preclude the courts from second-guessing the Executive's assessment of the likelihood a detainee will be tortured by a foreign sovereign." *Arar v. Ashcroft*, 585 F.3d 559, 578 (2d Cir. 2009) (en banc) (ellipsis in original) (quoting *Kiyemba v. Obama*, 561 F.3d 509, 515 (D.C. Cir. 2009)). "Under *Munaf* . . . the district court may not question the Government's determination that a potential recipient country is not likely to torture a detainee." *Kiyemba*, 561 F.3d at 514.

Nor is there a colorable argument that enemy aliens *must* be permitted to seek relief or protection prior to removal. Such relief is generally permitted only in the exercise of the President's discretion. *See Citizens Protective League*, 155 F.2d at 294 (noting common-law rule that "alien enemies have no rights, no privileges, unless by the king's special favor"). Petitioner's asserted conflict between the INA and the AEA is illusory. The INA provides a system for determining removability and any relief or protection from removal for aliens under the authority of Title 8, whereas the AEA provides its own mechanisms permitting

the President or his delegates to implement procedures and regulations governing removal, detention, and any other issue related to invocation of the AEA, *see* 50 U.S.C. § 21.

With respect to asylum and statutory withholding of removal related to persecution claims, none of the cited provisions constrain the *President's* actions under Title 50. *See* 8 U.S.C. § 1158(b)(1)(A) (Attorney General or Secretary of Homeland Security); 8 U.S.C. § 1231(b)(3) (Attorney General); 8 C.F.R. §§ 1208.16, 1208.18 (immigration judges, via delegation from the Attorney General); *see also Sale v. Haitian Ctrs. Council, Inc.*, 509 U.S. 155, 172–73 (1993) (recognizing distinct grants of authority under the INA to the President and Attorney General among others). Nor are such constraints implicated just because the President has delegated certain authorities, including implementation of the Proclamation, to the Attorney General. *See id.* at 172 n.28 (in implementing the Proclamation, Attorney General is "carrying out an executive, rather than a legislative, command, and therefore would not necessarily [be] bound" by provisions of the INA).

In any event, individuals subject to removal under Title 50 are barred from asylum and withholding of removal. Asylum is a discretionary form of relief, and eligibility for such relief may be foreclosed on a categorical basis. *See Huisha-Huisha*, 27 F.4th at 730–31. Here, the AEA disallows relief for covered enemy aliens, and that represents the Executive's categorical conclusion that such aliens are not entitled to relief in the exercise of discretion. Likewise, aliens subject to removal under the AEA would not be eligible for statutory withholding of removal because the President's invocation of the AEA suggests that "there are reasonable grounds to believe that [such aliens are] a danger to the security of the United States." 8 U.S.C. § 1231(b)(3)(B)(iv).

E. None of Petitioner's remaining arguments are persuasive

Petitioner provides several additional wide-ranging arguments; all are without merit. Petitioner's arguments regarding alleged violations of the Posse Comitatus Act and the USA PATRIOT Act, the Geneva Convention, and the "Separation of Powers and the Declaration of War Requirement," rest on the idea that there has been a *sub rosa* or constructive declaration of war. ECF No. 1 at 84-85, and 87-89. That's clearly error, as the AEA covers both declared wars and invasions/predatory incursions, and the latter grounds are the ones the President invoked. *See* 90 Fed. Reg. 13033; 50 U.S.C. § 21. Petitioner appears to argue that he is due the "ancient common law remedy of release pending legitimate government action" while simultaneously recognizing that his argument is foreclosed by law. ECF No. 1 at 73-74. The Government agrees. Petitioner argues that his First Amendment right of free speech has been violated, having been detained for his artistic expression, but this ignores that he was not detained for such expression, but rather for violating the terms of his conditional release under Title 8. *Id.* at 75-76; Lara Dec. at pp. 2-3.

Petitioner alleges a violation of his Sixth Amendment right to counsel, but the right to counsel in removal proceedings is statutory, sounding ultimately in due process, and at any rate Petitioner is clearly represented now and has been during his removal proceedings. ECF. No. 1 at 78-79; *see Hernandez-Gill v. Gonzales*, 476 F.3d 803, 806 (9th Cir. 2007) (citing 8 U.S.C. §§ 1229a(b)(4)(A) and 1362). Petitioner alleges a violation of the Eighth Amendment for, among other things, "ICE detention and imminent removal," but "[r]emoval, though harsh in some cases, is not punishment" for Constitutional purposes. ECF No. 1 at 79; *Villa-Arreola v. Ashcroft*, 27 F. App'x 771, 771-72 (9th Cir. 2001) (citing

INS v. Lopez-Mendoza, 468 U.S. 1032, 1038 (1984)). Nor is Petitioner facing imminent removal. *See generally* Lara Dec. Petitioner alleges numerous other violations of the Commerce Clause, and Naturalization Clause, among others, but not in any coherent way. *See* ECF No. 1 at 80-84. The Government reserves its right to respond to these claims, should they be clarified. Petitioner's approach appears to be to throw whatever he can at the wall and see what sticks. That only highlights the weakness of his claims.

Lastly, Petitioner alleges a violation of the Administrative Procedures Act ("APA") for the President's having "arbitrarily and capriciously caus[ed] the summary and imminent detention, removal, disappearance," etc., via the Proclamation. ECF No. 1 at 89-90. The AEA grants authority to the President, not an agency, and the APA covers only agencies. *See Franklin v. Massachusetts*, 505 U.S. 788, 800-01 (1992). The President is not himself an agency, and "[o]ut of respect for the separation of powers and the unique constitutional position of the President," the Supreme Court determined that the President is not subject to the APA. *Id.*

III. The equitable factors weigh strongly in the government's favor.

A. Petitioner has not established irreparable harm

First, Petitioner's allegations of irreparable harm through "summary removals" carry no weight. ECF No. 2 at 18-19. He is in Title 8 removal proceedings, where due process is clearly established. As to a hypothetical petitioner, subject to the AEA, the process is adequate to provide notice and opportunity to challenge their designation as an alien enemy or raise questions of interpretation or constitutionality. *J.G.G.*, 2025 WL 1024097, at *2. The adequacy of Petitioner's process completely refutes his due process allegations; Petitioner has failed to show irreparable harm.

Nor has Petitioner made a showing of likely irreparable harm from "life-threatening conditions, persecution and torture" if removed to El Salvador (or anywhere else). ECF No.2 at 18-19. He cites no evidence properly before this Court in support of that claim. *Id.* "Removal does not by itself ordinarily constitute irreparable harm," *id.* (citing *Nken*, 556 U.S. at 435), Petitioner nevertheless emphasizes conditions he fears he may face if removed. But, the United States continues to abide by its policy not to remove aliens to countries where they are likely to be tortured. *See Munaf*, 553 U.S. at 702; *Arar*, 585 F.3d at 578.

Failing to make those showings, Petitioner's chief complaint is of a general "burden of removal." *See Nken*, 556 U.S. at 435. As the Supreme Court held, "it is accordingly plain that" such a burden "cannot constitute the requisite irreparable injury." *Id.*

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

The balance of harms and the equities strongly favor the government here as an injunction irreparably harms the United States' conduct of foreign policy. An injunction effectively usurps the President's statutory and constitutional authority to address an invasion by a group conducting irregular warfare. Such an injunction "deeply intrudes into the core concerns of the executive branch." *Adams v. Vance*, 570 F.2d 950, 954 (D.C. Cir. 1978). The Executive Branch's protection of these interests, including "sensitive and weighty interests of national security and foreign affairs" inherent to combating terrorist groups, warrants the utmost deference. *Humanitarian Law Project*, 561 U.S. at 33–35; *see also Barr*, 819 F.2d at 26.

Additionally, the Supreme Court has warned of "the danger of unwarranted judicial interference in the conduct of foreign policy." *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013); *Biden v. Texas*, 597 U.S. 785, 816 (2022) (Kavanaugh, J., concurring)

("Nothing in the relevant immigration statutes at issue here suggests that Congress wanted the Federal Judiciary to improperly second-guess the President's Article II judgment with respect to American foreign policy and foreign relations."). An injunction does just that, impeding the Executive's ability to swiftly remove alien enemies after an appropriate hearing to confirm the determination that there are alien enemies under the Proclamation. *See, e.g.*, *Nken*, 556 U.S. at 436 (noting there "is always a public interest in prompt execution of removal orders" even where an alien asserts a risk of harm, and that interest "may be heightened" where "the alien is particularly dangerous").

Further, enjoining the Executive's ability to transfer detainees will work harm on the government's immigration-enforcement operations. As a result of this Court's order, ICE may not remove Venezuelan citizens even if they are subject to removal under Title 8. *Id.* This impedes the government's ability to enforce the immigration laws against aliens who may pose a danger to the public.

In contrast to the harm to the government and public, transfer to another district will not prejudice detainees because (1) this Court will retain jurisdiction over any petitions filed here, *see Singh v. Whitaker*, 362 F. Supp. 3d 93, 106 (W.D.N.Y. 2019); and (2) even if the provisionally certified class contains any other members, the government has already committed to providing them the process they are due—reasonable notice and opportunity to seek relief through habeas corpus, *J.G.G.*, 2025 WL 1024097, at *2.

IV. Petitioner must provide security.

Under the federal rules, this Court "may issue a preliminary injunction or a temporary restraining order only if the movant gives security in an amount . . . proper to pay the costs and damages sustained by any party found to have been wrongfully enjoined

or restrained." Fed. R. Civ. P. 65(c). If this Court grants preliminary relief, it should order Petitioner to post security for taxpayer funds expended if it is determined that Respondents were wrongfully enjoined. Moreover, despite Petitioner's argument that indigents are not ordinarily required to post bond under Rule 65(c), Petitioner has not adduced evidence of indigence.

Conclusion

The motion should be denied and the case dismissed.

DATED this 27th day of May, 2025.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel of record for the Defendants certifies that this brief contains 7,655 words which exceeds the word limit of Local Rule 11-6.1. Concurrent with this filing, Defendants have filed an unopposed, ex parte application to exceed the word limit.

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