Joshua J. Schroeder (304992)
SchroederLaw
PO Box 82
Los Angeles, CA 90078
(510) 542-9698
josh@jschroederlaw.com

Attorney for Darwin Antonio Arevalo Millan

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-JWH-PD

PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF APPLICATIONS FOR TRO AND PRELIMINARY INJUNCTION, AND CLASS CERTIFICATION

PETITIONER-PLAINTIFF'S REPLY IN SUPPORT OF APPLICATION FOR TRO AND PRELIMINARY INJUNCTION, AND CLASS CERTIFICATION

INTRODUCTION

As noted in *Boumediene*, "where the underlying detention proceedings lack the necessary adversarial character, the detainee cannot be held responsible for all the deficiencies in the record." Boumediene v. Bush, 553 U.S. 723, 791 (2008). Here, the process for determining Darwin is a member of Tren de Aragua ("TdA") was minimal, he received only oral notice that he was designated TdA, and he did not receive the basic process that the Government implies but does not confirm that it has for determining someone is TdA. Exh. A (noting a checklist that appears to be used in some TdA cases). Even were the Court to determine that Title 8 removal proceedings are mutually exclusive with being targeted as TdA, the process for EOIR is inquisitorial, not adversarial, there are no rules of evidence, and Immigration Judges are so known for their arbitrary rulings that they have been widely studied and commented upon as proof of humanity's inherent lack of reason. Jaya Ramji-Nogales et al., *Refugee Roulette: Disparities in Asylum Adjudication*, 60 STAN. L. REV. 295 (2007), *cited liberally by* DANIEL KAHNEMAN ET AL., NOISE: A FLAW IN HUMAN JUDGMENT 3 (2021) ("We are going to see a lot of roulette."). Under these circumstances, Darwin cannot be blamed for the Government's unnoticed reasons for detaining him that were not shared with Darwin or counsel until it filed its Opposition to his motion for TRO. *Boumediene*, 553 U.S. at 791. And yet, that appears to be what the Government does here.

On May 17, 2025, Petitioner-Plaintiff Darwin Antonio Arevalo Millan ("Petitioner" or "Darwin") filed a Petition for Writ of Habeas Corpus, an Application for Temporary Restraining Order, and a Notice of Motion and Motion to Certify Class. On May 19, 2025, this court granted, in part, Darwin's Application for Temporary Restraining Order ("TRO") and Motion to Certify. Moreover, it set dates for the Government to respond to these applications and a hearing at 8AM on May 30, 2025 upon conclusion of which the TRO will dissolve and the certification of

class will expire. Pursuant to Local Rule 65-1, Darwin filed a notice of lodging with a proposed order to show cause why preliminary injunction should not issue on May 22, 2025. Darwin filed an emergency conference report that included evidence that counsel reached out to the government regarding the hearings and dates set, and that the Government did not object to moving forward with the hearings and arguments regarding the application for TRO as a motion for preliminary injunction.

Moreover, in Darwin's Emergency Conference Report filing he provided more detail regarding his tattoos and confirms receipt of two cell phones containing relevant evidence regarding his asylum status. However, counsel believes that ICE still has custody of the apparel worn by Darwin at the time of his arrest. This is relevant to his request for protection of evidence from spoliation or destruction.

This Petition arises directly under *Boumediene v. Bush*'s "functional approach," which requires the Court to look to the function of the writ over form. *Boumediene*, 553 U.S. at 764. The function of the writ is to allow petitioners to collaterally attack the legal bases of their detention from the outside to see if the Government's bases for detaining an individual are really just "'an empty shell.'" Estep v. United States, 327 U.S. 114, 141 (1946) (Frankfurter, J., concurring in the result) (quoting Frank v. Mangum, 237 U.S. 309, 346 (1915) (Holmes, J., dissenting)). The Government's citation of formalities that tend to delay or obstruct habeas review so that the Government can whisk detainees across the world, where the Government maintains it has no jurisdiction and where irreparable harm will befall the Petitioner, should be denied in favor of habeas function under *Boumediene*. *Boumediene*, 553 U.S. at 764. Even should the Court eventually review the matter under ancient formalism and successfully trigger the return of the Prisoner to this country still alive, *Boumediene* requires that the Court consider practicalities, including the strong possibility that the Court may fail to provide the function of the

writ should it deny injunctive relief here by allowing the TRO to dissolve without ordering a preliminary injunction in its place. *See Boumediene*, 553 U.S. at 764.

ARGUMENT

At this moment, Darwin, a hard working father of two and loving husband, languishes in a cell for an indeterminate term within the United States, without notice of why he is there, without warrant or other immigration document styled as a warrant telling him why he is there—all he had to go on was what they told him when he was arrested. The Government told him they believed he was a member of TdA as the reason why he is detained—specifically, because of a crown tattoo he has on his shoulder. We now know that this crown symbolizes "King James"—a tribute to LeBron James—Darwin's all-time favorite basketball star. ECF 14, at 2–3.

Whenever possible, Darwin would choose the number "23" on his sports jersey—which is reflected on one of the pictures attached as an exhibit to Darwin's habeas corpus petition—because LeBron's number is 23. *Id.* At the ICE check-in when he was arrested he wore socks with the number "23" on them, which referred to Michael Jordan or were Nike/Jordan brand, but we now know that to Darwin this was a reference to his favorite, LeBron. ECF 14, at 3. In another picture, taken while Darwin was in Venezuela, attached to the petition, he donned a stars and stripes tank top, because he daydreamed of being a U.S. basketball champion like LeBron—it is evident that Darwin loves U.S. culture.

Now, because of his love of U.S. culture, Darwin is languishing in a cell for an indeterminate term facing imminent removal, disappearance, or extraordinary rendition without knowing why he is there except by oral accusation that he is TdA. The Government's position, which shocks the conscience, is that this treatment is not punishment for constitutional purposes, and therefore the constitution doesn't apply. ECF No. 12, at 22. The Government does not argue that Darwin's treatment is not cruel and unusual, because it is. The Government maintains that Darwin may be sent

to CECOT in El Salvador, where it is rumored that prisoners are drugged, poisoned, and will only leave in a coffin. *See* Cecilia Vega, *U.S. Sent 238 Migrants to Salvadoran Mega-Prison; Documents Indicate Most Have No Apparent Criminal Records*, CBS News (Apr. 6, 2025, 7:00 AM), https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript ("Among them: a makeup artist, a soccer player and a food delivery driver, being held in a place so harsh that El Salvador's justice minister once said the only way out is in a coffin."). He may be disappeared to South Sudan or Djibouti or Panama or Guantanamo Bay. Or he may be doomed to languish in a cell within the United States for the rest of his life even if he is granted humanitarian asylum status or withholding of removal.

The Government appears to maintain that all these options for Darwin's fate are included in the catch-all term "removal" and that any or all of these options may befall Darwin even if they do not use Proclamation 10903 specifically to carry out the deed. Exec Proclamation 10906, 90 Fed. Reg. 13033 (directing the Government to "remove every Alien Enemy"). For example, in Proclamation 10886, 90 Fed. Reg. 8327, the President proclaimed a general invasion of immigrants like Darwin and the right to treat all immigrants as enemies of the United States. It is not Darwin's burden to clarify the Government's opacity, and it would do disservice to this Court to pretend things were clearer than they are. The point is that the President claims war powers to do what it will with Darwin, and the Government does not deny it.

All the myriad things the United States appears to claim it can do to Darwin it seems to claim are different forms of "removal" according to both war and peace powers, the Alien Enemies Act, the Immigration & Nationality Act, and the USA PATRIOT ACT among other laws working in harmony together. ECF 12, at 19. Respondent Kristi Noem told Congress explicitly that the President's removal power is synonymous with his power to suspend habeas corpus by proclaiming wars and

emergencies that may or may not exist. *Department of Homeland Security Fiscal Year 2026 Budget Request*, C-SPAN (May 20, 2025), https://www.c-span.org/program/senate-committee/department-of-homeland-security-fiscal-year-2026-budget-request/660246. The Government's position here, that immigration law is administered by a mixture of war and peace powers, contradicts controlling habeas wisdom "that 'civil liberty and this kind of martial law cannot endure together; the antagonism is irreconcilable, and, in the conflict, one or the other must perish.'" Duncan v. Kahanamoku, 327 U.S. 304, 324 (1946) (quoting *Ex parte* Milligan, 71 U.S. 2, 124–25 (1866)). Hearing this clarion call from petitioner's counsel in *Milligan*, the U.S. Supreme Court wisely held: "Where peace exists, the laws of peace must prevail." *Milligan*, 71 U.S. at 140.

But the Government appears to say that were peace exists war can also exist, and it argues that when war and peace powers conflict the war powers must prevail. ECF No. 12, at 19 ("Even if there *were* a conflict between the AEA and the INA, it is the AEA that would control the circumstance."); *but see Milligan*, 71 U.S. at 124 (noting that the American Revolution was waged, in part, because the mad King George III rendered "the 'military independent of and superior to the civil power'" (quoting THE DECLARATION OF INDEPENDENCE para. 14 (U.S. 1776))). The Government's position is contradicted by John Quincy Adams's stirring argument on the floor of Congress where he noted that "the war power and the peace power" are "different in their nature, and often incompatible with each other." SPEECH OF JOHN QUINCY ADAMS, ON THE JOINT RESOLUTION FOR DISTRIBUTING RATIONS TO THE DISTRESSED FUGITIVES FROM INDIAN HOSTILITIES IN THE STATES OF ALABAMA AND GEORGIA 3 (1836). He continued: "The war power is limited only by the laws and usages of nations. The power is tremendous: it is strictly constitutional, but it breaks down every barrier so anxiously erected for the protection of liberty, of property, and of life." *Id.* at 4.

Nevertheless, by the Government's own theory of a harmonious mixture of war and peace powers it cannot also say that Darwin is not targeted or immediately targetable as a member of TdA by alleging that merely because he is in removal proceeding under Title 8 that he is safe. Darwin can both be in Title 8 removal proceedings and targeted as TdA or other enemy combatant or militant invader. The Government has cited no effective functional basis for limiting the military powers proclaimed by the President to only a certain, distinct group of individuals.

In fact, the President has clarified himself to be crystal clear that potentially all immigrants are invaders and to be treated as hostiles. *See* Exec. Proclamation 10886, 90 Fed. Reg. 8327. He also asked President Bukele to build more prison space in CECOT in El Salvador to house U.S. citizen criminals. ECF 1, at 48. However, Trump appeared to limit his wartime hostility based on race when he extended asylum to white Afrikaners being oppressed in South Africa for being white. *Id.* at 9. Alarmingly the President appears to favor race as a basis for rights, over U.S. citizenship. *Id.*

Again, this conflicts with ancient habeas corpus wisdom: "Citizenship as a head of jurisdiction and a ground of protection was old when Paul invoked it in his appeal to Caesar." Johnson v. Eisentrager, 339 U.S. 763, 769 (1950). The Supreme Court continued: "The years have not destroyed nor diminished the importance of citizenship, nor have they sapped the vitality of a citizen's claims upon his government for protection." *Id.* Citing to the claims of Chinese Americans to avoid deportation even during the awful reign of the Chinese Exclusion Act, the Court remembered: "This Court long ago extended habeas corpus to one seeking admission to the country to assure fair hearing of his claims to citizenship." *Id.* (citing Chin Yow v. United States, 208 U.S. 8 (1908)). In these cases the Court agreed: "It is better that many Chinese immigrants should be improperly admitted than that one natural born citizen of the United States should be permanently excluded from his

country." Kwock Jan Fat v. White, 253 U.S. 454, 464–65 (1920) (extending *Chin Yow*, 208 U.S. at 8).

The Government cannot reasonably say that Darwin is given due process simply because he is in removal proceedings or because he has counsel in these proceedings. ECF 12, at 18 ("This very brief proves that Petitioner is receiving the process he is due."). It cannot reasonably say that removal, which according to the Government includes different forms of detention, disappearance, and extraordinary rendition, are not cruel and unusual punishment. *Id.* at 22. The Supreme Court has long held that deportation is "'the equivalent of banishment or exile,'" Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (quoting Delgadillo v. Carmichael, 332 U.S. 388, 391 (1947)), which is "a fate universally decried by civilized people." Trop v. Dulles, 356 U.S. 86, 102 (1958) (plurality opinion); *see also* Bridges v. Wixon, 326 U.S. 135, 147 (1945) (granting habeas corpus to release an immigrant from custody, in part because "deportation may result in the loss 'of all that makes life worth living'" (quoting Ng Fung Ho v. White, 259 U.S. 276, 284 (1922)). In *Bridges*, Justice Murphy underlined the Supreme Court's decision to extend civil rights to immigrants by denying the Government's theory that immigrants do not have protections under the Bill of Rights. *Bridges*, 326 U.S. at 160 (Murphy, J., concurring) ("When the immutable freedoms guaranteed by the Bill of Rights have been so openly and concededly ignored, the full wrath of constitutional condemnation descends upon the action taken by the Government. And only by expressing that wrath can we give form and substance to 'the great, the indispensable democratic freedoms,' *Thomas v. Collins*, 323 U.S. 516, 530, to which this nation is dedicated."). It also bears noting here, as well, that extending protections to open immigration was also one of the causes listed in the Declaration of Independence as well. THE DECLARATION OF INDEPENDENCE para. 9 (U.S. 1776).

The Government entirely eschews usual claim that the civil nature of immigration law avoids constitutional issues, and embraces the clear existence of general military immigration enforcement. ECF 12, at 20 ("[T]he immigration laws and AEA have been read harmoniously for over 75 years." (citing World War II precedent during time of war for application here)). This tilts everything on its axis and should, alongside Darwin's request for release, totally distinguish *DHS v. Thuraissigiam*, 591 U.S. 103, 135–36 (2020) (requiring release to be a remedy sought to maintain jurisdiction). Despite denying that Darwin is being treated as a member of TdA, the Government cites to and acknowledges the controlling nature of *Boumediene v. Bush* upon this proceeding and the Government does not even try to distinguish it, which means the Government concedes the military nature of Darwin's treatment. ECF 12, at 18. Accordingly, the Government destroys the very theory it might have depended upon to justify its arguments that Darwin is not protected by the Bill of Rights or the Fourteenth Amendment, because *Boumediene* maintains that he is due all the protections of the U.S. Constitution—especially the privilege of habeas corpus to litigate separation of powers violations that are clearly present here. *Boumediene*, 553 U.S. at 747 ("We know that at common law a petitioner's status as an alien was not a categorical bar to habeas corpus relief." (citing Somerset's Case, 20 How. St. Tr. 1, 80–82 (1772) (Eng.))).

The Government Admits Violations of Due Process

The Government argues that "there exists no evidence that Petitioner faces any threat of removal as an alien enemy" and that "he has not been issued the applicable notice." ECF 12, at 1. According to the Government, there was no adequate notice here regarding why Petitioner was detained except as orally given according to Darwin. ECF 1, at 49. Darwin credibly reports that he was told he was being detained because of his tattoos that indicated a likelihood of Tren de Aragua ("TdA")

membership, in contravention of ICE's parole decision and authorization to work in the United States.

The parole decision appears to be effective now, and seems to indicate that he should be presently detained. The Government provided no evidence that it gave notice to Darwin of the reasons why it says Darwin was detained or that his parole decision was cancelled. The Government swallowed him into its incarceration system whole, detaining him for an indefinite term without any notice even by its own arguments. The Government is also eerily silent about whether tattoos or apparel or other TdA examination material were noted as reasons why he was determined to be detained.

The Existence of War and Invasion is a Testable Matter of Fact

Here the standard of review is a *de novo* to both law and fact, and under *Boumediene* Darwin has the privilege of requesting this Court administer a hearing where he may present exculpatory facts to establish his rights. Cone v. Bell, 556 U.S. 449, 472 (2009). During this hearing, the Court may determine whether there is a war presently occurring in the United States between Venezuela and/or TdA and the United States according to evidence presented. *Boumediene*, 553 U.S. at 780 ("[H]abeas courts in this country routinely allowed prisoners to introduce exculpatory evidence."). If there is such a war, then Darwin is due the treaty stipulations under the AEA and, if the treaty is self-executing, under the treaty itself, and, here, the Government does not deny it. ECF 1, at 31; ECF 12, at 16 n.2 (only arguing that Darwin cannot rely upon the AEA to vindicate the treaty stipulations). The controlling treaty between the United States and Venezuela is extremely favorable to Darwin, and seems to require a green card or similar relief here. ECF 1, at 31.

The Government's only argument against this habeas petition reviewing the treaty rights alleged herein appears to be that the Court cannot question the facts proclaimed by President Trump, especially in Proclamation 10903. ECF 12, at 15

(arguing that it is "unquestionabl[e]" that the Declaration of War requirement does not apply to the AEA or proclamations asserted thereunder); *id.* at 9 ("[w]hether the AEA's preconditions are satisfied is a political question committed to the President's discretion"). If this were true, then the Government appears to admit that habeas corpus is suspended here, and the Court must proceed with a Suspension Clause analysis. ECF 1, at 56. Such an analysis requires this Court to determine whether there is an invasion or rebellion afoot under *Milligan*'s oft-affirmed open court holding, and, in turn, strike down the offending suspension whether it be an executive proclamation or congressional statute. *Boumediene*, 553 U.S. at 733; *Kahanamoku*, 327 U.S. at 324; *Milligan*, 71 U.S. at 140–41. Here, the Government does not even try to deny the military powers at play in the enforcement of immigration law during a time of peace, or that Darwin and others are affected by these military powers whether by Proclamation 10903 or other executive acts, and it wholesale denies that the President's use of these powers is novel. ECF 12, at 16.

Instead, the Government cites to a shameful history when the President pursued Mexican Revolutionaries including Pancho Via as a threat to the neo-feudal system then instituted by U.S. tycoons in Mexico during or around the reign of the dictator Porfirio Diaz. *Id.*; *see* OCTAVIO PAZ, THE LABYRINTH OF SOLITUDE 129 (Lysander Kemp trans., 1961). In that time, U.S. tycoons purchased nearly all of the arable land in Mexico, leaving the majority of the Mexican populace destitute and dependent upon U.S. owners for their food. *Id.* at 131–33; KELLY LYTLE HERNÁNDEZ, BAD MEXICANS: RACE, EMPIRE, & REVOLUTION IN THE BORDERLANDS 11, 35–39 (2022). It is a shame that the Government cites to this history as a basis for the Government's attempt to legitimize war powers enforcement of immigration law—especially because at that time the United States *did not have an immigration law or any semblance of a visa system*. HERNÁNDEZ, *supra*, at It was not until 1924 that the United States invented its first general visa system that caused the general exclusion

of all immigrants without proper documentation, and this system was created in pursuit of a eugenic ideal of racial purity.

In the time period referenced by counsel for the Government, Mexicans could freely and legally cross the Southern border at will. Only Chinese immigrants were excluded, and there were stories of Chinese immigrants then learning a bit of Spanish to sneak through the border. HERNÁNDEZ, *supra*, at 77. But this Chinese immigration only composed about .01% or so of the total flow of immigrants into the United States. *Id.* at 77, 163–65 (noting that around 1920 "the federal government deported fewer than 1,000 immigrants annually"). And, interestingly, the militant enforcement of the neo-feudal system organized by very wealthy U.S. tycoons under the tyranny of the Porfiriato, referenced by the Government here, triggered a mass migration of Mexicans into the United States ironically causing the very immigration that these military interventions were allegedly unleashed to protect the United States from. *Id.* at 219.

Political Question Doctrine Does Obstruct the Court's Review of Facts Here

The Government, at one point in their brief, stated that Darwin is out of touch with reality by asserting his treaty rights here. ECF 12, at 16 n.2. They since filed an errata correcting this turn of phrase, but it still basically maintained the same premise that underlies all of their arguments, which is: That the president establishes unquestionable facts by proclaiming them and that when he so establishes a fact that this Court cannot review it. ECF 12, at 8. The Government's position, therefore, appears to be that the President establishes by fiat the reality that Darwin is out of touch with and that this Court must affirm the President's reality for political reasons without consulting evidence. *Id.* at 8. Yet, *Baker v. Carr* narrowed this basis to deny review, and extended judicial review to decide a question regarding elections according to four factors: (1) the commitment of power to the other branches to decide what is a lawful state government; (2) the unambiguous action of the president

under that power; (3) the need for finality in the executive's decision; and (4) the lack of criteria by which a court could determine which form of government was republican. Baker v. Carr, 369 U.S. 186, 222 (1962). Also of note was that the question in *Luther v. Borden*, as narrowed by *Baker*, was one of state politics regarding a very particular issue of how or whether to establish a constitution for Rhode Island during a time when that state still operated under its Charter from England. Luther v. Borden, 48 U.S. 1, 71 (1849). No such particular question involving original sovereignty of a state exists here, and even if it did *Baker* counsels otherwise. *Baker*, 369 U.S. at 237. Moreover, it is no small point as well that *Luther* may have been a cause of the Civil War, as it turned a blind eye to political violence breaking out in a state by rationalizing that peaceful resolution under the guarantees of the U.S. Constitution is not possible in political matters. *Luther*, 48 U.S. at 70 (allowing "the occurrence merely of some domestic violence" to carry on in the states without asserting judicial review as a peaceful way to resolve differences).

Here, the Government asks this Court to believe that Proclamation 10903 established the fact of a predatory invasion or incursion that this Court cannot question, and that the fact that Proclamation 10903 declared the invasion or incursion into existence somehow does not violate the declaration of war requirement. ECF 12, at 8. The Government asks this Court to believe that it "continues to abide by its policy not to remove aliens to countries in which they are likely to be tortured," when it is systematically disappearing people to Guantanamo Bay, CECOT in El Salvador, a hotel and prison camp in Panama, South Sudan, Laos, and Djibouti. *Id.* at 20. It asks this Court to believe that Venezuela or TdA or both are attacking the United States with no evidence except for Proclamation 10903. *Id.* The Government asks this Court to deny treaty provisions explicitly mandated by the Alien Enemies Act ("AEA") to anyone targeted as a member of TdA solely because Proclamation 10903 makes its targets chargeable of an imaginary presidential crime of being a member of

TdA that was apparently created by the proclamation itself. *Id.* at 16. All actual chargeable crimes are established by common law or statute law and require that the Government could potentially draft a charging document like an indictment to charge members of TdA with a crime. *Id.* at 16 n.2. But there is no argument made by the Government indicating what crime, if any, it could ethically file an indictment to charge against members of TdA.

While appearing to declare the President a font of unquestionable facts, the Government maintains that Darwin "repeatedly violated the terms of his release" without providing evidence or notice. *Id.* at 1. Darwin was not given notice that he violated his biometrics appointment and that is why he is subject to an indefinite term of confinement that may not end even if an Immigration Judge grants him humanitarian relief. Darwin believed he followed all the rules and met every obligation required by the Government and remains unaware of this alleged error that caused him to be detained indefinitely. Though the Government claims Darwin "repeatedly" violated the terms of his parole the only evidence Darwin violated terms appears to be missing a biometrics appointment, because as the Lara Declaration says, Darwin allegedly failed to notify ERO before moving—it does not contain any declaration that Darwin did not notify ICE of the address change. Darwin disputes the declarations that contact was regained by email, questions what that declaration means, and denies prior notice of the alleged violations the Government claims here was given to Darwin.

Darwin agrees that the Government is entitled to a reasonable period of time to determine a detainee's status before a court entertains that detainee's habeas petition. ECF 12, at 18. This rule from *Boumediene* precludes the error that occurred in *Ex parte Merryman* where suspected Southern Confederate terrorists were released into the United States prior to President Lincoln's ability to ascertain whether they were dangerous likely helping to cause the Civil War. Ex parte Merryman, 17 F. Cas. 144,

153 (C.C. Md. 1861) (No. 9,487). But the Government appears to claim a right to detain Darwin for an indefinite term long after it had this reasonable period and potentially even if he wins his asylum case or is granted withholding of removal. Noem v. Abrego Garcia, No. 24A949, slip op. at 1 (2025) (noting that a man protected by withholding of removal order, for example, was removed to CECOT in El Salvador where he remains in a state of "administrative error").

This is a Mixed Question of Law and Fact Upon Which Fundamental Rights Depend

The Court has the jurisdiction to determine mixed questions of law and fact where fundamental rights depend. Crowell v. Benson, 285 U.S. 22, 92 (1932) ("[F]undamental rights depend, as not infrequently they do depend, on the facts."). This case has to do with the indefinite detention by an executive, which depends on several factual claims made in Proclamation 10903 involving whether a war, invasion, or incursion exists, or whether Venezuela and/or TdA are a foreign nation presently at war with the United States, and whether Darwin is or was targeted as TdA. It also involves questions about asylum and other designations of humanitarian immigration status. As recently held in *Jarkesy v. SEC*, under a new interpretation of *Murray's Lessee*, the Court must assert jurisdiction over such common law matters presumably including habeas corpus writs. *See* SEC v. Jarkesy, 603 U.S. 109, 140 (2024) ("When a matter 'from its nature, is the subject of a suit at the common law,' Congress may not 'withdraw [it] from judicial cognizance.'" (quoting Murray's Lessee v. Hoboken Land and Improv. Co., 59 U.S. 272, 284 (2024))).

The Government Argues This Court Will Never Have Habeas Jurisdiction

The Government argues that Darwin cannot access habeas corpus when he is detained by the U.S. government according to an executive proclamation and orders prior to his removal, and that he will be outside of habeas jurisdiction if he is removed, disappeared, or further detained in a foreign black site. This contradicts

Boumediene in more than one way, as the writ does extend functionally to foreign countries under the functional application of the critical factor test of *Eisentrager* as modified by *Boumediene*, which requires every factor of *Eisentrager* with the additions from *Boumediene* to be present prior to habeas jurisdiction failing. The Government has not argued, nor can it satisfy this burden here.

The critical factors of Eisentrager functionally extended and modified by Boumediene include that the petitioner "(a) is an enemy alien; (b) has never been or resided in the United States; (c) was captured outside of our territory and there held in military custody as a prisoner of war; (d) was tried and convicted by a Military Commission sitting outside the United States; (e) for offenses against laws of war committed outside the United States; (f) and is at all times imprisoned outside the United States." *Boumediene*, 553 U.S. at 766 (quoting Johnson v. Eisentrager, 339 U.S. 763, 777 (1950)). Boumediene added three more factors: "(1) the citizenship and status of the detainee and the adequacy of the process through which that status determination was made; (2) the nature of the sites where apprehension and then detention took place; and (3) the practical obstacles inherent in resolving the prisoner's entitlement to the writ." *Id.* All of these factors weigh in favor of hearing the writ, especially that Darwin is detained in the United States, by the United States, and that the military decision-makers detaining Darwin are also within the United States.

Proclamation 10903 and Related War Orders Violate *Curtiss-Wright*

The U.S. Government claims that this Court should not review the war powers it is exerting to allegedly enforce immigration laws. ECF 12, at 24. In part, it claims an inherent foreign affairs power that the Court is liable to disrupt if it decides this case. *Id.* However, the Court has long reviewed such proclamations in light of war and peace. *Id.*

In *United States v. Curtiss-Wright Export Corp.*, the Supreme Court vindicated the President as "the sole organ of the nation in its external relations, and its sole representative with foreign nations" by deciding that a presidential proclamation blocking the sale of machine guns to the Chaco region of South America was valid and enforceable even without codification. United States v. Curtiss-Wright Export Corp., 299 U.S. 304, 319 (1936) (internal quotation and source omitted). However, the Court's forceful vindication of executive foreign affairs powers in *Curtiss-Wright* were not boundless. *Id.* at 323. The Court wisely limited the foreign affairs power to actions that preserve neutrality and peace. *Id.* Here, the Government appears to contend that, basically, the President can openly violate the Neutrality Acts of the United States that originally codified President Washington's Proclamation of Neutrality that originally vindicated the foreign affairs power. ECF 12, at 24; *see* ECF 1, at 24; Little v. Barreme, 6 U.S. 170, 179 (1804) (interpreting a presidential order to do violence under the law as a plain trespass without legal support).

Here, the Government is dangerously citing to war-time precedents as though they have direct application in times of peace. ECF 12, at 7. The Declaration of War requirement is ignored here, even though it relevant and may be reviewed. *Id.*; ECF 1, at 25 (citing Sarnoff v. Schultz, 409 U.S. 929, 930 (1972) (Douglas, J., dissenting). A mixture of war powers is attempting to coexist with peace powers, and in the end only one can prevail. Duncan, 327 U.S. at 324 (quoting *Milligan*, 71 U.S. at 124–25).

The Government's Detention of Darwin Made Him Indigent

Prior to being detained, Darwin had a job making money in a kitchen and before that he had a job working at a car wash. His earnings were meager but honorable. He worked under an authorization to work by the federal government. His coworkers and managers vouch for his character and his dependability with kind words. Exh. B. But now that he is incarcerated and his wife, mother, and children are force to make do without his help and financial support, he is indigent. Counsel in

this matter is working for Darwin pro bono, as it is counsel's credible belief that Darwin could never pay the fees for this work.

All Four *Winter* Factors Weigh in Favor of Granting a Preliminary Injunction

For all of the foregoing reasons, Darwin has satisfied each of the four factors for preliminary injunction including a likelihood of success on the merits, a likelihood of suffering irreparable harm if the injunction is not granted, a balance of equities that favors the injunction, and that the injunction is in the public interest. Winter v. Natural Resources Defense Council, Inc., 555 U.S. 7, 20 (2008). He also satisfied the requirements for class representation and the preliminary injunction should be extended to protect the entire proposed class.

The Requirements of FRCP 23 Are Satisfied

For all of the foregoing reasons, Darwin established jurisdiction and standing to proceed here. One of the central arguments of the Government to deny Darwin's class proposal is that this Court lacks jurisdiction. However, even though the president is the sole organ in foreign affairs, as discussed above under *Curtiss-Wright*, it does not absolve jurisdiction here to dispute the separation of powers, especially where the declaration of war requirement appears to be violated. *Boumediene*, 553 U.S. at 765 ("[T]he writ of habeas corpus is itself and indispensable mechanism for monitory the separation of powers."); *Curtiss-Wright*, 299 U.S. at 319. Darwin clearly satisfies the critical factor test provided by *Eisentrager*, applied according to *Boumediene*'s functional approach above.

FRCP 23's four requirements to certify a class are also clearly met including numerosity, commonality, typicality and adequacy of representation. It does not matter that some immigrants who are targeted as TdA are given an informal check-list appearing to justify their designation as a target and some, like Darwin, are not. There is no law creating this process, no clear regulation for it, and no apparent adjudicative review about it except for habeas petitions like this one. The fact that

some immigrants are targeted as TdA without the process or with variations on the process that the Government seems to have to decide who is TdA strengthens Darwin's position as class representative, because he is not going to unfairly exclude individuals for formalistic reasons that would violate *Boumediene*'s functional approach. The Government appears to claim only that the president has absolute powers to administer removals under the AEA, which seems to corroborate Darwin's claims that the president is using unbounded executive powers that resemble the feudal powers of English kings. Such absolute powers are not bounded by laws, and at most the Government can only claim that the AEA confirms or supports the President's claims of absolute removal powers.

Moreover, the Government's implied argument that a class should be represented only by somebody who has been threatened with some sort of clear and unequivocal notice that the representative is being imminently removed under the AEA is unpersuasive. The Government has provided no evidence that the Government provides any notice to those it removes under the AEA. We expect that Darwin, should he be so removed, would also be given no notice. Requiring him to wait for such clear and unequivocal notice of imminent removal would likely require him to suffer removal prior to raising this writ, which would at a minimum destroy venue in the Central District of California. The Government's position appears to be that once someone is so removed, they are outside of any federal court jurisdiction, despite *Boumediene*, which controls here.

The Government's further argument against commonality, typicality, and numerosity appear to rely solely upon the arbitrariness of the absolute executive powers that the President wielded in Proclamation 10903 and related orders and proclamations. But *Boumediene* states that "common-law habeas corpus was, above all, an adaptable remedy. Its precise application and scope changed depending upon the circumstances." *Boumediene*, 553 U.S. at 779. It appears that, like the room of

requirement in the fanciful Harry Potter book series, that habeas corpus is capable of bending and shaping itself around the circumstances required in the moment. *Id.* Therefore, the Government's arguments to the contrary violate *Boumediene*'s functional approach by relying too heavily upon rigid formalities in a time when the President has invoked the most free flowing and potentially boundless power to enforce immigration ever seen from a President in the history of the United States. According to *Boumediene*, habeas corpus is built to adapt even to this circumstance.

Darwin's presence in removal proceedings in which he may or may not be granted humanitarian asylum relief does not exempt him from the full brunt of Proclamation 10903. *See* Noem v. Abrego Garcia, No. 24A949, slip op. at 1 (2025). If putting TdA members in removal proceedings can exempt them from receiving habeas corpus relief, then the Respondents could simply do so for the sole purpose of destroying habeas corpus jurisdiction, i.e., habeas corpus suspension. But this itself becomes a suit under the Suspension Clause, which Darwin is ready to vigorously litigate on behalf of the class. All other arguments made by the Government attacking class certification similarly depend upon the arbitrariness and capriciousness of the President's use of war powers here so that we cannot exactly know what he will do next. But this should not be reason enough to deny class certification here.

There is at least one other litigant we know of who already received injunctive relief individually and who might be included in Arevalo Millan's proposed class. We were informed by counsel for that individual to request that this Court exclude individuals who already received preliminary injunctive relief from Arevalo Millan's class in the interest of judicial economy and fairness. This request is originally made and extended here in Darwin's Emergency Conference Report. ECF 14 (requesting that this Court exclude "petitioner in Gutierrez Contreras v Warden, CV 25-965-SSS per his counsel's request" by including specific language in the class proposal such as

"excluding individual who already have a preliminary injunction in their respective cases protecting against removal pursuant to Proclamation 10903 or functional equivalent."

Respectfully Submitted on May 29, 2025

/s/ Joshua J. Schroeder
Joshua J. Schroeder
SchroederLaw
Attorney for Darwin Antonio Arevalo Millan

CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Darwin Antonio Arevalo Millan, certifies that this brief contains 6,660 words, and complies with the word limit of L.R. 11-6.1.

DATED: May 29, 2025

By: /s/ Joshua J. Schroeder
Joshua J. Schroeder
Attorney for Petitioner-Plaintiff