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13 UNITED STATES DISTRICT COURT
14 FOR THE CENTRAL DISTRICT OF CALIFORNIA
15 EASTERN DIVISION
16

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

19 Petitioner-Plaintiff,

20 v.

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

23 Respondents-Defendants.
24
25
26
27
28

No. 5:25-cv-01207-JWH-PD

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

Honorable John W. Holcomb
United States District Judge

1 **I. INTRODUCTION**

2 The Court should deny Petitioner Arevalo Millan’s Petition for Writ of Habeas
3 Corpus. His fears of being removed under the Alien Enemies Act (AEA) have proven to
4 be unfounded. Following the hearing on May 30, 2025, Petitioner underwent traditional
5 removal proceedings under the Immigration and Nationality Act (INA). And he agreed to
6 stipulate to removal during those proceedings. Although it now appears Petitioner has
7 changed his mind about that stipulation (ECF 63-1, Goldstein Decl. ¶ 36), the Court has
8 twice acknowledged that the government can lawfully detain him during removal
9 proceedings. *See* ECF 40; ECF 58.

10 The twenty-one claims Petitioner brings on behalf of himself and the putative class
11 lack merit. The Court has already recognized that the Judicial Branch cannot second-
12 guess the President’s proclamation that a foreign invasion or predatory incursion has
13 occurred. *See* ECF 29 at 14–16. And since the Court’s ruling, the government has adopted
14 updated notice procedures that satisfy Due Process. *See W.M.M. v. Trump*, — F.4th —,
15 2025 WL 2508869, at * 23–25 (5th Cir. Sept. 2, 2025). As will be explained below, the
16 Court should deny all of Petitioner’s claims.

17 **II. BACKGROUND**

18 **A. The Alien Enemies Act & Proclamation 10903**

19 **1. The Alien Enemies Act**

20 Enacted in 1798, the AEA grants the Executive broad power to designate, detain,
21 and remove enemy aliens from the United States not only during a “declared war,” but
22 also in response to a “threatened” or “attempted” “invasion or predatory incursion.” The
23 AEA was enacted at the start of the Quasi-War, when French privateers (privately owned
24 ships licensed by the government) were seizing American ships but there was no declared
25 war with France. *See J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *8 (D.C. Cir.
26 Mar. 26, 2025) (Henderson, J. concurring).

27 The first sentence of Section 21—the Act’s most significant source of authority—
28 provides:

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

9 50 U.S.C. §21. Section 21's second sentence elaborates on related powers:

10 The President is authorized in any such event, by his proclamation thereof, or other
11 public act, to direct the conduct to be observed on the part of the United States,
12 toward the aliens who become so liable; the manner and degree of the restraint to
13 which they shall be subject and in what cases, and upon what security their residence
14 shall be permitted, and to provide for the removal of those who, not being permitted
15 to reside within the United States, refuse or neglect to depart therefrom; and to
16 establish any other regulations which are found necessary in the premises and for
17 the public safety.

18 *Id.* The Act's remaining provisions outline procedures for implementing the
19 President's broad authority. Section 22 provides that "an alien who becomes liable as an
20 enemy" but who "is not chargeable with actual hostility, or other crime against the public
21 safety," may be afforded some time to settle his affairs before departing from the United
22 States. 50 U.S.C. §22. Section 23 provides an optional process by which an alien enemy
23 can be ordered removed by a federal court following a complaint. 50 U.S.C. §23; *see*
24 *Lockington v. Smith*, 15 F. Cas. 758, 761 (C.C.D. Pa. 1817) (Washington, J.) (endorsing
25 AEA removals outside the Section 23 process). And Section 24 prescribes the marshal of
26 the district's role in implementing AEA removal orders. 50 U.S.C. §24.

27 Presidents have repeatedly relied on the AEA to detain and remove alien enemies.
28 During the War of 1812, President Madison "require[d] the subjects of the enemy" to

1 report to the local marshal, be removed from residing “within forty miles of tide water,”
2 or else be “taken into custody by the marshal.” *Lockington*, 15 F. Cas. at 759. Upon
3 entering World War I, President Wilson issued several proclamations regarding enemy
4 aliens, including that citizens of Austria-Hungary “who may be at large to the danger of
5 the public peace or safety” “will be subject to summary arrest by the United States
6 marshal.” *Ex parte Graber*, 247 F. 882, 883, 887 (N.D. Ala. 1918). In World War II,
7 President Roosevelt issued proclamations for citizens of each Axis power, heavily
8 restricting their movements and providing that those “deemed dangerous to the public
9 peace or safety of the United States by the Attorney General or the Secretary of War, as
10 the case may be, are subject to summary apprehension.” 6 Fed. Reg. 6321. Those
11 proclamations, and the resulting regulations, were “less, rather than greater, in scope than
12 the Act.” *Citizens Protective League v. Clark*, 155 F.2d 290, 295 (D.C. Cir. 1946).

13 **2. Proclamation 10903**

14 Tren de Aragua (TdA) is a transnational criminal organization that is supported and
15 directed in its endeavors by members of the Maduro regime. Ex. A (FBI Intelligence
16 Assessment: Venezuelan Government Officials Use Tren de Aragua to Undermine Public
17 Safety, 23 January 2025); Ex. B (Charles Decl.) ¶ 7. The group originated in Venezuelan
18 prisons, growing rapidly by extorting inmates and ultimately seizing control of the prison
19 in Tocarón where it began. Ex. B ¶ 7. TdA has since expanded—first to neighboring
20 countries, and then into North America, by leveraging Venezuelan nationals’ migration
21 flow. Ex. C (Smith Decl.) ¶¶ 9, 12, 15-16. TdA has “conducted kidnappings, extorted
22 businesses, bribed public officials, authorized its members to attack and kill U.S. law
23 enforcement, and assassinated a Venezuelan opposition figure.” Office of the
24 Spokesperson, U.S. Dep’t of State, Designation of International Cartels (Feb. 20, 2025).¹

25 Now, TdA has infiltrated the United States. Over the past three years, TdA had
26

27
28 ¹ Available at: <https://www.state.gov/designation-of-international-cartels> (last visited Sept. 19, 2025).

1 established a strong presence in “at least 40 states” and Canada. Ex. C ¶ 9. Further, TdA’s
2 proliferation in the United States has fostered crime and endangered communities, as TdA
3 members have committed murder, robbery, human smuggling, human trafficking, sex
4 trafficking, hostage taking, kidnapping, narcotics trafficking, and firearms violations. Ex.
5 C ¶¶ 6, 12, 16, 23–25. TdA has been involved in complex robbery, extortion, and sex
6 trafficking rings from New York to Nashville to Denver. *Id.* ¶¶ 17–18, 20. TdA has even
7 taken over territory—including several apartment complexes across the country, including
8 one in Aurora, Colorado, where TdA members kidnapped and abused Venezuelan
9 migrants. *Id.* ¶¶ 6, 19.

10 Behind TdA stands the Maduro regime, which has used groups like TdA to
11 intimidate, kidnap, and kill dissidents abroad. *See* Ex. A. The FBI has assessed it is
12 “likely” that the Maduro regime will similarly “leverage TdA members in the United
13 States as proxy actors to threaten, abduct, and kill members of the Venezuelan diaspora in
14 the United States who are vocal Maduro critics,” as part of Maduro’s long-term strategy
15 to “destabilize” democratic countries, including the United States, by releasing TdA
16 members from prison and directing and financing them to create “political, social, and
17 security issues” for the United States. *Id.* at 1, 2. The FBI has determined that Maduro
18 himself oversees decisions to use TdA strategically. *Id.* at 2.

19 Shortly after President Trump took office, the Secretary of State designated TdA as
20 a “foreign terrorist organization.” 90 Fed. Reg. 10,030. That designation reflects the
21 Secretary’s finding that TdA engages in “terrorist activity” or “terrorism” or “retains the
22 capability and intent” to do so, and thereby “threatens the security of United States
23 nationals or the national security of the United States.” 8 U.S.C. §1189(a)(1), (d)(4).

24 On March 14, 2025, the President signed Proclamation 10903, invoking his
25 authorities under the AEA against TdA members, citing TdA’s entwinement with the
26 Maduro regime and its hostile designs on the United States. *See* 90 Fed. Reg. 13,033. The
27 Proclamation outlines the President’s findings that TdA members meet the AEA’s
28 statutory criteria for removal. The President found that TdA is entwined with the Maduro

1 regime so as to effectively function as a “hybrid criminal state.” *Id.* TdA is “closely
2 aligned with” Maduro’s regime in Venezuela, and it has “infiltrated” the regime’s
3 “military and law enforcement apparatus.” *Id.* The Proclamation further finds and
4 declares that through TdA, the Maduro regime is “conducting irregular warfare and
5 undertaking hostile actions against the United States,” *id.*, and “is perpetrating an invasion
6 of and predatory incursion into the United States,” posing “a substantial danger” to the
7 Nation. *Id.*

8 Based on these determinations, the President proclaimed that, pursuant to the AEA,
9 “all Venezuelan citizens 14 years of age or older who are members of TdA, are within the
10 United States, and are not actually naturalized or lawful permanent residents of the United
11 States are liable to be apprehended, restrained, secured, and removed as Alien Enemies.”
12 90 Fed. Reg. at 13,034. Further, “all such members of TdA are” “chargeable with actual
13 hostility against the United States” and “are a danger to the public peace or safety of the
14 United States.” *Id.*

15 The Proclamation also deemed all such TdA members “subject to immediate
16 apprehension, detention, and removal.” *Id.* The President directed the “issu[ance of] any
17 guidance necessary to effectuate the prompt apprehension, detention, and removal of all
18 Alien Enemies described” above. *Id.* Aliens apprehended under the Proclamation may be
19 detained until their removal, then may be removed to “any such location as may be
20 directed” by enforcing officers. *Id.*

21 TdA members remain deportable under other authorities, including under the INA
22 as members of a foreign terrorist organization or otherwise. 8 U.S.C. §§1182(b)(3)(B),
23 1227(a)(4)(B); *see also A.A.R.P.*, 145 S. Ct. at 1370. But the Proclamation authorizes the
24 President to use the AEA’s particularly expeditious statutory removal method for
25 particularly dangerous individuals.

26 Since January 20, 2025, ICE Homeland Security Investigations has “conducted
27 1,238 arrests involving TdA members or affiliates,” 384 of which were criminal. Ex. D
28 (Smith Supp. Decl.) ¶6. ICE has been identifying members of TdA based on “investigative

1 techniques and information such as previous criminal convictions for TdA-related
2 activities, surveillance, law enforcement encounters, interviews, computer indices checks,
3 association with other known gang members, and self-identification,” along with other
4 sensitive law enforcement criteria. *Id.* ¶7.

5 **B. Statement of Facts**

6 Darwin Antonio Arevalo Millan (Petitioner) is a twenty-seven year old citizen of
7 Venezuela. ECF 1 ¶ 41. On May 4, 2024, he applied for admission at the Laredo, Texas
8 Port of Entry. ECF 11-1 (Lara Decl.) ¶7. Because he lacked entry documents, U.S.
9 Customs and Border Protection (CBP) issued a Notice to Appear for removal proceedings
10 as being inadmissible under 8 U.S.C. § 1182(a)(7)(A)(i)(I). *Id.* ¶ 8. As an alternative to
11 detention, Petitioner was released on parole and placed in an intensive supervision
12 program. *Id.* ¶¶ 8–9. He broke the terms of supervision by failing to appear for a biometric
13 check-in appointment on December 3, 2024. *Id.* ¶ 10. Although Petitioner was given a
14 second chance, he missed the biometric appointment again on January 3, 2025. *Id.* ¶ 11.
15 Petitioner also changed his residence without obtaining approval from immigration
16 authorities, as required by the terms of his parole. *Id.* ¶ 12. On March 20, 2025,
17 Immigration and Customs Enforcement (ICE) terminated Petitioner’s supervision and
18 placed him into custody. *Id.* ¶¶ 12–14.

19 Petitioner has not been designated as being subject to removal under the AEA. *Id.*
20 ¶ 6. To the contrary, his case proceeded in traditional removal proceedings under the INA.
21 *See, e.g., ECF 30-4* (Order). Following a hearing before an immigration judge (IJ) in June,
22 Petitioner was granted asylum. *See id.* The Department of Homeland Security appealed
23 the IJ’s order to the Board of Immigration Appeals (BIA). ECF 59-2 (BIA Order) at 3.
24 While the appeal was pending, the parties jointly moved to remand the case to the
25 immigration court. ECF 59-1. The parties explained that that Petitioner “no longer wished
26 to remain in detention [during] the pendency of the appeal, and instead wants to be
27 removed from the United States as quickly as possible.” *Id.* at 2. The parties “agreed
28 upon a plan to ask the BIA to remand the case to the immigration judge, upon which a

1 separate joint motion for stipulated removal will be drafted and submitted.” *Id.*

2 The BIA granted the joint motion to remand the case on September 3, 2025. *See*
3 ECF 59-2 (BIA Order) at 2. But it now appears that Petitioner will no longer stipulate to
4 removal. *See* ECF 63-1 (Goldstein Decl.) ¶ 36. In a declaration filed with this Court, his
5 attorney in removal proceedings states he “no longer plan[s] to join DHS by stipulating
6 [to] an order of removal in [Petitioner’s] case, because it does not appear to be in his
7 interests and because [Petitioner] no longer believes that it was the right choice either.”
8 *Id.* Petitioner’s next hearing in immigration court is scheduled for September 22, 2025.
9 *See* ECF 36-1 at 39–40.

10 **C. Procedural History**

11 About three weeks before his asylum hearing in immigration court, Petitioner filed
12 this habeas and class action complaint for declaratory and injunctive relief. *See* ECF 1
13 (Petition). It raises twenty-one claims under: the AEA, the INA, the Administrative
14 Procedure Act (APA), the U.S. Constitution, the California Constitution, the U.S.-
15 Venezuela Treaty of 1836, and the Geneva Conventions. *Id.* at ¶¶ 263–368. On June 2,
16 2025, the Court preliminarily enjoined the government from removing Petitioner or any
17 member of the putative class under the AEA or Proclamation 10903. *See* ECF 29 (Amend.
18 Order) at 25. The Court held that although Petitioner was unlikely to succeed on his claims
19 that Proclamation 10903 was unlawful, his due process claims had merit. *Id.* at 17. The
20 order did not prevent the government from removing Petitioner or any class member
21 pursuant to a lawful order of removal under the INA. *Id.* at 25–26. The government has
22 appealed the ruling to the Ninth Circuit. ECF 54. The Ninth Circuit has stayed the appeal
23 pending resolution of *W.M.M. v. Trump*, No. 25-10534 (5th Cir.). *See Arevalo Milan v.*
24 *Trump*, No. 25-4866 (9th Cir. Aug. 22, 2025), Dkt 6.

25 Despite being granted preliminary relief, Petitioner filed an emergency, ex parte
26 application for a writ of habeas corpus and writ of mandamus. *See* ECF 30. He argued
27 that the government lacked a basis for detention following the IJ’s grant of asylum. *See*
28 *Id.* The Court denied the application, holding that Petitioner’s “detention remains

1 permissible under the INA” because the government intended to appeal the grant of
2 asylum. ECF 40 at 8. The Court later denied Petitioner’s request to reconsider the ruling.
3 ECF 58. A status conference is scheduled for October 3, 2025. *See* ECF 64.

4 **III. ARGUMENT**

5 **A. The AEA confers broad authority and deference to the President. (Claim 1)**

6 The Court has already recognized that “the AEA’s grant of authority to the President
7 is close to ‘unlimited,’” and “includes the ability to decide whether an invasion or
8 predatory incursion has occurred.” ECF 29 (Amend. Order) at 16. Plaintiff’s claim that
9 there is no invasion or predatory incursion therefore fails. *See* ECF 1 ¶ 264–65. Only “the
10 President—and not an Article III court—may proclaim whether an invasion or predatory
11 incursion exists.” ECF 29 at 16. And when the President issues a proclamation, all aliens
12 from the hostile power over the age of fourteen “shall be liable to be apprehended,
13 restrained, secured, and *removed* as alien enemies.” 50 U.S.C. § 21 (emphasis added).
14 The President “is authorized” to direct the government’s conduct toward the alien, the
15 “manner and degree” of restraint, and to establish other regulations necessary “for the
16 public safety.” *Id.*

17 To be sure, the AEA permits the President to “provide for the removal of those who,
18 not being permitted to reside within the United States, refuse or neglect to depart
19 therefrom.” *Id.* But voluntary departure is available under the AEA only if an alien is “not
20 chargeable with actual hostility, or other crime against public safety.” 50 U.S.C. § 22.
21 And Proclamation 10903 designates all members of TdA, “by virtue of their membership
22 in that organization,” are “chargeable with actual hostility against the United States.” 90
23 Fed. Reg. at 13,034. Forcing the President to let aliens charged with actual hostility depart
24 on their own terms conflicts with the text, structure, and purpose of the AEA. Claim One
25 should be denied.

26 **B. The INA is not the sole authority for removal of an alien. (Claim 2)**

27 The Court should reject Plaintiffs’ claim that the INA (Title 8) is the sole authority
28 to remove an alien. *See* ECF 1 ¶270. Removal proceedings under 8 U.S.C. § 1229a

1 address the “admissibility” or “deportability” of aliens as those terms are defined under
2 the INA. *See* 8 U.S.C. § 1229a(a)(3). But the determination required under the AEA does
3 not relate to “admissibility” or “deportability” of any alien. *See* 50 U.S.C. § 21. Therefore,
4 the procedure under the INA is simply not implicated in this case. The INA and AEA are
5 distinct mechanisms for effectuating the removal of certain aliens, just as Title 42 and the
6 INA constitute different bases for excluding aliens. *See generally Huisha-Huisha v.*
7 *Mayorkas*, 27 F.4th 718 (D.C. Cir. 2022).

8 Indeed, the immigration laws and AEA have been read harmoniously for over 75
9 years. *See United States ex rel. Von Kleczkowski v. Watkins*, 71 F. Supp. 429, 437
10 (S.D.N.Y. 1947). Not all alien enemies will be subject to removal under the INA because
11 the authority under Title 50 extends to aliens regardless of lawful status. Likewise, not all
12 aliens subject to the INA will be subject to removal under the AEA—as removal under the
13 AEA is premised on discrete findings, such as nationality and age, beyond admissibility
14 or removability. And for aliens subject to both the INA and the AEA, the Executive has
15 discretion in deciding how and whether to proceed under either or both statutes. *See id.*
16 (recognizing this discretion under pre-INA immigration law). Thus, the AEA, INA, and
17 FARRA coexist with some overlap that gives the Executive discretion to determine how,
18 whether, or when to apply them. *See, e.g., Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 510
19 (2018) (“When confronted with two Acts of Congress allegedly touching on the same
20 topic, this Court . . . must . . . strive to give effect to both.” (cleaned up)).

21 Even if there were a conflict between the AEA and the INA, it is the AEA that
22 would control in this circumstance. “[I]t is a commonplace of statutory construction that
23 the specific governs the general.” *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374,
24 384 (1992). Here, the AEA provides specific rules for the removal of a subset of aliens—
25 those designated as alien enemies through a discrete mechanism providing authority to the
26 President—against the more general provisions relating to removability provided by the
27 INA. Thus, to the extent there may be any conflict, the AEA provides an exception to the
28 more general applicability of the INA’s removal provisions, and this is true regardless of

1 the later enactment of the INA. *See, e.g., Morton v. Mancari*, 417 U.S. 535, 550–51 (1974)
2 (“Where there is no clear intention otherwise, a specific statute will not be controlled or
3 nullified by a general one, regardless of the priority of enactment.”).

4 **C. Eligibility for discretionary relief can be foreclosed on a categorical basis.**
5 **(Claims 3 and 4)**

6 The Proclamation does not impermissibly prohibit aliens from seeking asylum and
7 withholding of removal. The INA provides a system for determining removability and
8 any relief or protection from removal for aliens under the authority of Title 8, whereas the
9 AEA provides its own mechanisms permitting the President or his delegates to implement
10 procedures and regulations governing removal, detention, and any other issue related to
11 invocation of the AEA. *See* 50 U.S.C. § 21. Individuals subject to removal under Title
12 50 are barred from asylum and withholding of removal. Asylum is a discretionary form
13 of relief, and eligibility for such relief may be foreclosed on a categorical basis. *See*
14 *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 730-31 (D.C. Cir. 2022).

15 Here, the AEA disallows relief for covered enemy aliens, reflecting the Executive’s
16 categorical conclusion that such aliens are not entitled to such relief in the exercise of
17 discretion—which is a legally permissible conclusion. Likewise, aliens subject to removal
18 under the AEA would not be eligible for statutory withholding of removal because the
19 President’s invocation of the AEA suggests that “there are reasonable grounds to believe
20 that [such aliens are] a danger to the security of the United States,” which is a bar to
21 receiving a grant of both asylum and statutory withholding of removal whether one is
22 subject to the AEA or not. 8 U.S.C. § 1158(b)(2)(A)(iv) (asylum); 8 U.S.C. §
23 1231(b)(3)(B)(iv) (withholding of removal).

24 Nor is there a colorable argument that enemy aliens must be permitted to seek
25 asylum or withholding of removal prior to removal. Such relief is generally permitted
26 only in the exercise of the President’s discretion. *See Citizens Protective League v. Clark*,
27 155 F.2d 290, 296 (D.C. Cir. 1946) (noting common-law rule that “alien enemies have no
28 rights, no privileges, unless by the king’s special favor”). Thus, the Proclamation is not

1 contrary to law and Claims Three and Four fail.

2 **D. Article III courts cannot second-guess the Executive’s determination that a**
3 **receiving country will not torture an alien. (Claim 5)**

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

16 **E. The President can categorically charge all members of TdA with actual**
17 **hostility. (Claim 6)**

18 The Fifth Circuit recently held that the President properly identified everyone
19 subject to the Proclamation to be a danger to public safety because the President “is
20 directing action only against actual enemies who are Venezuelans.” *W.M.M. v. Trump*,
21 No. 25-10534, 2025 WL 2508869, at *19 (5th Cir. Sept. 2, 2025). Indeed, the Fifth Circuit
22 ruled that the AEA permits “targeting all Venezuelans in this country,” but the President
23 “narrowed what he otherwise would be entitled to do.” *Id.* Thus, Petitioner’s argument
24 that “[t]he government cannot invoke that exception categorically, without individualized
25 assessments” fails. *See ECF 1* ¶ 285. The President is entitled to categorically find that
26 TdA members subject to the Proclamation are a danger to public safety. *See id.*

27 Nor does the Proclamation violate the U.S. Venezuela Treaty of 1836. The
28 obligations under Article 26 of the 1836 Treaty only apply where the alien has not

1 committed conduct that causes them to forfeit the protection of the treaty, but the
2 Proclamation by its terms rules this out by finding and declaring that those subject to the
3 Proclamation are chargeable with actual hostility. *See, e.g., ECF 1* ¶¶ 285–87. The treaty
4 specifically recognizes that “particular conduct shall cause” an individual “to forfeit [its]
5 protection,” which is the case here. *Id.* at ¶ 286. It is absurd that a person deemed to be a
6 member of a foreign terrorist organization and charged with actual hostility would be
7 entitled to permanent residence or to remain in the country for a year to get his affairs in
8 order under the treaty. Anyone subject to the Proclamation would have engaged in
9 conduct that causes them to forfeit any treaty protection. Moreover, Article 26 of the
10 treaty applies only in the case of a declared war between the United States and the Republic
11 of Venezuela, which is not the case. Therefore, Petitioners’ sixth claim for relief fails.

12 **F. The government’s notice procedures expressly recognize the right to seek**
13 **habeas relief in federal district court. (Claim 7)**

14 The Court should reject Plaintiffs’ claim that the government has suspended the
15 right of habeas corpus. *See ECF 1* ¶ 292. Individuals held under AEA must receive notice
16 ““within a reasonable time and in such a manner as will allow them to actually seek habeas
17 relief” before removal.” *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1368 (2025) (quoting *J.G.G.*
18 *v. Trump*, 145 S. Ct. 1003, 1006 (2025)). Following the Supreme Court’s decision in
19 *A.A.R.P.*, the government updated its notice procedure. *See W.M.M. v. Trump*, — F. 4th
20 —, 2025 WL 2508869, at *23 (5th Cir. Sept. 2, 2025) (discussing the procedure). Aliens
21 are notified orally and in writing that they can “contest [their] removal under the Alien
22 Enemies Act . . . by filing a petition for writ of habeas corpus in the United States District
23 Court for the District in which [they] are detained.” *Id.* They are also notified that they
24 “may retain counsel to assist you” and that a “list of attorneys who may be available” will
25 be provided upon request. *Id.* The alien will also “be permitted to make telephone calls
26 for that purpose.” *Id.* Rather than suspending the right to habeas relief, the government’s
27 procedure expressly acknowledges and accommodates that right. *See id.* Claim Seven
28 should be denied.

**G. Petitioner is being detained under the INA, not for his tattoos or clothing.
(Claim 8)**

The Court should reject the claim that the government has administered Proclamation 10903 in a manner that chills speech protected under the First Amendment. See ECF 1 ¶ 296. Petitioner has been detained for removal proceedings under the INA, not the AEA. ECF 11-1 (Lara Decl.); ECF 59-2 (Joint Motion for Remand); ECF 59-3 (BIA Order). His tattoos and clothing have not subjected him to removal under the AEA because he is not being removed under the AEA. See *id.* And even if he were being removed under the AEA, the First Amendment would not provide a basis for relief where the bases for removal are behavioral and risk factors considered in the totality of the circumstances rather than protected speech. See *Holder v. Humanitarian Law Project*, 561 U.S. 1 (2010) (First Amendment did not protect providing humanitarian training to designated terrorist group); see also *U.S. v. Afshari*, 462 F.3d 1150, 1161 (9th Cir. 2005) (statute prohibiting the provision of material support or resources to a designated foreign terrorist organization did not impermissibly restrict First Amendment right to free speech). Even if were designated as a TdA member because of his tattoos and being removed under the AEA (none of which is happening), he would be subject to removal because of his membership in a hostile Foreign Terrorist Organization, not because of the speech contained in his tattoos.

H. The void-for-vagueness doctrine only applies to laws, not internal guidance documents. (Claim 9)

Petitioners ninth claim challenges internal guidance on the AEA as void for vagueness. The void-for-vagueness doctrine applies to laws, not internal guidance documents such as the Alien Enemy Validation Guide. See, e.g., *Hunt v. City of Los Angeles*, 601 F. Supp. 2d 1158, 1169-70 (C.D. Cal. 2009), *aff'd in part, remanded in part*, 638 F.3d 703 (9th Cir. 2011) (discussing the void-for-vagueness doctrine applicability to statutes, especially penal statutes). The Alien Enemy Validation Guide is not a statute, does not regulate speech, and does not chill speech. And the Guide specifically states that

1 a person should not be automatically deemed a member of TdA based on solely
2 symbolism-related evidence such as having certain tattoos. As per Comment 1 of the
3 Guide: “if all tallied points for an alien are from the Symbolism and/or Association
4 categories (with no points scoring in any other category), consult your supervisor and
5 OPLA before determining whether to validate the alien as a member of TDA (and proceed
6 with an AEA removal) or initiate INA removal proceedings.” *See J.G.G. v. Trump*, No.
7 1:25-cv-00766-JEB (D.D.C.), ECF 67-21 at 7.² Accordingly, Petitioners’ claim that this
8 internal guidance document is void as an unconstitutionally vague law that chills protected
9 First Amendment speech and expression fails.

10 **I. Immigration officers can arrest aliens without a warrant. (Claim 10)**

11 Section 287 of the INA grants immigration officers the authority to arrest aliens
12 without a warrant in a variety of circumstances. *See 8 U.S.C. §1367*. And courts have
13 long found this authority to be constitutional. *Fernandez v. United States*, 321 F.2d 283,
14 285 (9th Cir. 1963) (stating 8 U.S.C. § 1357(a) and (c) “represent[] congressional
15 recognition of the right of the United States to protect its own boundaries against the illegal
16 entry of aliens and is, we think, clearly constitutional.”). “The provisions of this section
17 authorizing any [immigration] officer [. . .] to arrest any alien whom such officer has
18 reason to believe is in United States in violation of any immigration law or regulation and
19 is likely to escape before warrant can be obtained for his arrest are constitutional.”
20 *Tsimounis v. Holland*, 132 F. Supp. 754, 757 (E.D. Pa. 1955), *aff’d*, 228 F.2d 907 (3d Cir.
21 1956) (finding the arrest without a warrant “was strictly in accordance with the law and
22 violated no constitutional privileges of plaintiff” where the officers knew the alien was in
23 the United States without a valid immigration visa and had been reported one year before
24 as a deserting seaman). Here, officers know Petitioner is in the United States in violation
25 of U.S. immigration law and failed to abide by the terms of his parole. Thus, his argument
26

27
28 ² Available at: <https://cis.org/sites/default/files/2025-04/Alien-Enemy-Validation-Guide.pdf> (last visited Sept. 19, 2025).

1 that officers needed a warrant before they could arrest him and that the Proclamation
2 violates the Fourth Amendment and California's Constitution³ fails.

3 **J. The government provides aliens designated for removal under the AEA a**
4 **reasonable opportunity to contest removal. (Claim 11)**

5 "Due process requires notice that is 'reasonably calculated, under all the
6 circumstances, to apprise interested parties' and that 'affords a reasonable time to make
7 an appearance.'" *A.A.R.P.*, 145 S. Ct. at 1367–68 (quoting *Mullane v. Central Hanover*
8 *Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). Prior to removal under the AEA, an alien
9 must receive notice "'that they are subject to removal under the Act . . . within a reasonable
10 time and in such a manner as will allow them to actually seek habeas relief' before
11 removal." *Id.* (quoting *J.G.G.*, 145 S. Ct. at 1006). The current AEA process satisfies any
12 due process concerns, as it involves notice of the determination that the individual is
13 subject to the Proclamation and their ability to retain counsel, as well as providing seven
14 days to respond by filing a writ of habeas with the relevant district court. *See W.M.M.*,
15 2025 WL 2508869, at *23-24 (finding Petitioners could not show "a likelihood of success
16 on their procedural due process claim" based on that notice). Plaintiff's Fifth Amendment⁴
17 claim therefore fails.

18
19 ³ The activities of the federal government "are free from regulation by any state."
20 *Mayo v. United States*, 319 U.S. 441, 445 (1943); *see also McCulloch v. Maryland*, 17
21 U.S. 316, 436 (1819) ("the states have no power, by taxation or otherwise, to retard,
22 impede, burden, or in any manner control, the operations of the constitutional laws enacted
by congress to carry into execution the powers vested in the general government").

23 ⁴ Petitioner alternatively cites the due process clauses in the Fourteenth Amendment
24 and California Constitution. *See* ECF 1 ¶¶ 303–04. But the "Fourteenth Amendment
25 applies to actions by a State" and "does not apply" to the federal government. *San*
26 *Francisco Arts & Athletics, Inc. v. U.S. Olympic Comm.*, 483 U.S. 522, 543 n.21 (1987).
27 And "the activities of the Federal Government are free from regulation by any state."
28 *Mayo*, 319 U.S. at 445; *see also Arizona v. United States*, 567 U.S. 387, 309 (2012)
(holding preemption applies when "the challenged state law 'stands as an obstacle to the
accomplishment and execution of the full purposes and objectives of Congress'") (quoting
Hines v. Davidowitz, 312 U.S. 52, 67 (1941)).

K. The Proclamation does not discriminate against a protected class or infringe upon a fundamental right. (Claim 12)

The Court should deny Petitioner’s equal protection claim. *See* [ECF 1 ¶¶ 311–313](#). Action by the federal government is subject to strict scrutiny only when it “discriminates against a protected class or infringes on a fundamental right.” *United States v. Ayala-Bello*, [955 F.3d 710, 714](#) (9th Cir. 2021). Proclamation 10903 does not do so. *See id.* To the contrary, it distinguishes based on membership in TdA—a designated foreign terrorist organization. *See* [90 Fed. Reg. at 13034](#); *see also Ayala-Bello*, [955 F.3d at 714](#) (“criminal defendants are not a protected class”). And “[f]ederal classifications based on alienage receive rational basis review.” *Ayala-Bello*, [995 F.3d at 715](#). The government need not “articulate the purpose of its policy or the reasons for its classifications. *Id.* To the contrary, the party making the “challenge must negate ‘every conceivable basis which might support it.’” *Id.* (quoting *F.C.C. v. Beach Commc’ns, Inc.*, [508 U.S. 307, 315](#) (1993)). The Court should deny this claim because Petitioner fails to do so.⁵ *See id.*

L. The Sixth Amendment applies only to criminal cases, and no one has been denied the assistance of counsel. (Claim 13)

Petitioner’s claim that the government has denied him the assistance of counsel under the Sixth Amendment fails on both the law and the facts. First the law. The plain text of the Sixth Amendment applies only to “criminal prosecutions.” [U.S. Const. Amend. 6](#). The Ninth Circuit “has long held that there is no constitutional right to counsel in a civil case.” *Adir Int’l, LLC v. Starr Indem. & Liab. Co.*, [994 F.3d 1032, 1038–39](#) (9th Cir. 2021) (quotations omitted). And “immigration proceedings are ‘civil proceedings, in which many of the protections afforded in the criminal context do not apply.’” *Rodriguez Diaz v. Garland*, [53 F.4th 1189, 1208 n. 7](#) (9th Cir. 2022) (quoting *El Rescate Legal Servs., Inc. v. Exec. Off. of Immigr. Rev.*, [959 F.2d 742, 751](#) (9th Cir. 1991)). There simply “is

⁵ To the extent Petitioner raises a claim of equal protection under California law, see footnotes three and four above.

1 no Sixth Amendment right to counsel in immigration proceedings.” *Hernandez-Gil v.*
2 *Gonzales*, 476 F.3d 803, 806 (9th Cir. 2007).

3 And now the facts. The government’s notice procedures expressly acknowledge
4 that aliens designated for removal “may retain counsel to assist” them “in the preparation
5 and filing” of a habeas “petition and seeking any related relief.” *W.M.M.*, 2025 WL
6 2508869, at *23. Not only that, a “list of attorneys who may be available will be provided
7 to [them] upon request.” *Id.* The designated aliens “are permitted to make phone calls”
8 to retain and consult with attorneys. *Id.* And Petitioner has had access to counsel here—
9 two in fact. *See, e.g.*, ECF 63 (Notice). Claim 13 should therefore be denied because it
10 has no support in law or fact.

11 **M. The Eighth Amendment’s prohibition on cruel and unusual punishment**
12 **does not apply to civil immigration detention. (Claim 14)**

13 The Eighth Amendment provides that “[e]xcessive bail shall not be required, nor
14 excessive fines imposed, nor cruel and unusual punishments inflicted.” U.S. Const.,
15 Amend. VIII. The amendment “focuses on the question what ‘method or kind of
16 punishment’ a government may impose after a criminal conviction, not on the question
17 whether a government may criminalize particular behavior in the first place or how it may
18 go about securing a conviction for that offense.” *City of Grants Pass, Oregon, v. Johnson*,
19 603 U.S. 520, 542–43 (2024).

20 But as already noted, immigration proceedings are civil. *See Rodriguez Diaz*, 53
21 F.4th at 1208 n. 7; *Briseno v. INS*, 192 F.3d 1320, 1323 (9th Cir. 1999) (noting that
22 “deportation is not ‘cruel and unusual punishment’ even though the ‘penalty’ may be
23 severe”); *Reid v. Donelan*, 17 F. 4th 1, 9 (1st Cir. 2021) (noting immigration detainees
24 subject to mandatory detention under 8 U.S.C. § 1226(c) failed to identify a “court that
25 has treated the prohibition on excessive bail as categorially requiring an opportunity for
26 release within a specific amount of time”); *Edwards v. Johnson*, 209 F.3d 772, 778 (5th
27 Cir. 2000) (holding “the Eighth Amendment’s prohibition against cruel and unusual
28 punishment is inapplicable” to an “INS detainee”). Petitioners are therefore “not entitled

1 to habeas relief on the ground that [their] immigration detention violates the Eighth
2 Amendment’s prohibition against cruel and unusual punishment.” *Lopez v. Garland*, 631
3 F. Supp. 3d 870, 883 (E.D. Cal. 2022) (quoting *Gonzalez v. Bonnar*, No. 18-cv-5321-JSC,
4 2019 WL 330906, at *6 (N.D. Cal. Jan. 25, 2019)). Nor is Petitioner being punished. “To
5 the extent petitioner contends that the length of his immigration detention amounts to
6 punishment in violation of the Eighth Amendment, he fails to cite any caselaw that
7 supports his position.” *Calderon-Rodriguez v. Wilcox*, 374 F. Supp. 3d 1024, 1038 (W.D.
8 Wash. 2019). The Court should deny this claim.⁶ *See id.*

9 **N. The constitutional provisions protecting privileges and/or immunities apply**
10 **only to citizens. (Claim 15)**

11 Article IV provides that the “Citizens of each State shall be entitled to all Privileges
12 and Immunities of Citizens in the several States.” U.S. Const. Art. IV, § 2. Similarly, the
13 Fourteenth Amendment prohibits states from abridging “the privileges or immunities of
14 citizens of the United States.” U.S. Const. Amend XIV, § 1. The plain text of these
15 provisions apply only to citizens. *See id.* But Petitioner and the putative class are neither
16 citizens of a State, nor the United States. *See ECF 1* ¶ 41; *ECF 29* (Amend. Order) at 25.
17 And they cite no precedent extending these constitutional provisions to aliens, much less
18 enemy aliens. *See ECF 1* ¶¶ 318–322. Claim fifteen should therefore be denied.⁷ *See*
19 *Martin v. Hunter’s Lessee*, 14 U.S. 304, 338–39 (1916) (“If the text be clear and distinct,
20 no restriction upon its plain and obvious import ought to be admitted, unless the inference
21 be irresistible.”). Nor is it apparent what additional rights Petitioner believes these
22 provisions would provide him. The answer appears to be none.

23
24
25
26 ⁶ To the extent Petitioner raises a claim of cruel and unusual punishment under
27 California law, see footnotes three and four above.

28 ⁷ To the extent Petitioner raises a claim of privileges or immunities under California
law, see footnotes three and four above.

O. The President has not exceeded his constitutional authority. (Claims 16⁸)

It is unclear what Petitioner is alleging in his sixteenth claims. To the extent he believes the President has “assert[ed] an unlimited, unbounded, monarchical, plenary power” over “detention, removal, disappearance, or extraordinary rendition” of individuals subject to the Proclamation, *see* [ECF No. 1 ¶ 330](#), the argument is belied by the fact that the Proclamation falls within Congress’s delegation of authority under the AEA. *See Youngstown Sheet & Tube Co. v. Sawyer*, [343 U.S. 579, 635-37](#) (1952) (Jackson, J., concurring). The argument is further belied by the fact that individuals can challenge their removal through habeas, *see, e.g., J.G.G.*, [145 S. Ct. at 1005](#). While those claims allow for some challenges to the implementation of the Proclamation, *see Ludecke*, [335 U.S. at 163](#), the discretionary decision to issue the Proclamation under the AEA is not reviewable by this Court. *See, e.g., The Prize Cases*, [67 U.S. 635, 670](#) (1862); *Martin v. Mott*, [25 U.S. 19, 31-32](#) (1827).

To the extent Petitioner instead believes Congress exceeded its authority in the original enactment of the AEA, presumably by similarly “asserting an unlimited, unbounded, monarchical, plenary power” over “detention, removal, disappearance, or extraordinary rendition” of individuals who are designated under the AEA, *see* [ECF 1 ¶337](#), it is well established that “[t]he Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens.” *Arizona*, [567 U.S. at 394](#) (citing *Toll v. Moreno*, [458 U.S. 1, 10](#) (1982)). “This authority rests, in part, on the National Government’s constitutional power to ‘establish an uniform Rule of Naturalization’” under the Constitution, “and its inherent power as sovereign to control and conduct relations with foreign nations.” *Id.* Although the federal government’s domestic authority is limited to the powers enumerated in the Constitution, its authority over “foreign or external affairs” has no such limitation. *See United States v. Curtiss-Wright Exp. Corp.*, [299 U.S. 304, 315-16](#) (1936). As relevant here, the Supreme Court

⁸ The Petition has two claims numbered Sixteen. *See* [ECF 1 ¶¶ 323–337](#).

1 has recognized:

2 When the President acts pursuant to an express or implied authorization of
3 Congress, his authority is at its maximum, for it includes all that he possesses in his
4 own right plus all that Congress can delegate. In these circumstances, and in these
5 only, may he be said (for what it may be worth), to personify the federal sovereignty.
6 If his act is held unconstitutional under these circumstances, it usually means that
7 the Federal Government as an undivided whole lacks power.

8 *Youngstown Sheet & Tube Co.*, 343 U.S. at 635–37 (Jackson, J., concurring).

9 Although the constitutionality of the AEA is reviewable, *see Ludecke*, 335 U.S. at
10 163, it has consistently withstood scrutiny since nearly the beginning of our nation.
11 Petitioner fails to present a coherent challenge to the AEA’s constitutionality, much less
12 one that argues what he needs to establish: “that the Federal Government as an undivided
13 whole lacks” the authority to detain and remove alien enemies at the time of an invasion.
14 *Youngstown Sheet & Tube Co.*, 343 U.S. at 635–37. Such an authority easily exists within
15 the federal government’s “broad, undoubted power over the subject of immigration and
16 the status of aliens,” *Arizona*, 567 U.S. at 394, especially as it relates to the government’s
17 authority over the foreign affairs of the United States beyond simply those enumerated in
18 the Constitution. *Curtiss-Wright Exp. Corp.*, 299 U.S. at 315–16. Not only that, the
19 Supreme Court long ago held that questions arising under Article IV, § 4 (Republican
20 Form of Government) were non-justiciable. *Luther v. Borden*, 48 U.S. 1, 43 (1849). The
21 Court should dismiss both of the claims.

22 **P. Not only does the political question doctrine bar review of Claim 17, but the**
23 **claim also fails on the merits because Presidents have long exercised war**
24 **powers in the absence of a formal declaration of war from Congress.**

25 The political question doctrine bars “review of those controversies which revolve
26 around policy choices and value determinations constitutionally committed for resolution
27 to the halls of Congress or the confines of the Executive Branch.” *Japan Whaling Ass’n*
28 *v. Am. Cetacean Soc.*, 478 U.S. 221, 230 (1986). Petitioner’s claim that the President can

1 only act if there is a formal declaration of war from Congress falls within this category.
2 See ECF 1 ¶¶ 338–43. Cases “involving foreign relations, such as the one before us, are
3 ‘quintessential sources of political questions.’” *El-Shifa Pharm. Indus. Co. v. United*
4 *States*, 607 F.3d 836, 842 (D.C. Cir. 2010) (en banc) (quoting *Bancoult v. McNamara*, 445
5 F.3d 427, 433 (D.C. Cir. 2006)). Whether the President can exercise war powers in the
6 absence of a formal declaration of war “is a question to be decided by him, and this Court
7 must be governed by the decisions and acts of the political department of the Government
8 to which this power was entrusted.” *The Prize Cases*, 67 U.S. at 670.

9 But even assuming jurisdiction, Claim 17 fails on the merits. The plain text of the
10 AEA recognizes that the President can act outside the context of a declared war. See 50
11 U.S.C. § 21. And the statute “is almost as old as the Constitution” itself. *Ludecke*, 335
12 U.S. at 171. Such “early congressional enactments ‘provide contemporaneous and
13 weighty evidence of the Constitution’s meaning.’” *Printz v. United States*, 521 U.S. 898,
14 905 (1997) (quoting *Bowsher v. Synar*, 478 U.S. 714, 723–24 (1986) (cleaned up)).
15 Indeed, the Supreme Court recognized over two hundred years ago that the President can
16 exercise war powers without a formal declaration from Congress. See *Bas v. Tingy*, 4 U.S.
17 37, 4–5 (1800) (Opinion of Washington, J.); see also *id.* at 7 (Opinion of Chase, J.). The
18 Court later approved Lincoln’s blockade of Southern ports without a declaration of war.
19 See *The Prize Cases*, 67 U.S. at 670.

20 Congress has only declared war five times in our nation’s history: the War of 1812,
21 the Mexican-American War, the Spanish-American War, World War I, and World War II.
22 See e.g., Bryce Poole, *The Constitutionality of Targeted Killing*, 34 Regent U. L. Rev. 69,
23 78. Petitioner would have the Court believe that every other military action in American
24 history was unconstitutional. See ECF 1 ¶ 340. But longstanding and accepted
25 government practices should not “‘be laid on the examining table and scrutinized for
26 [their] conformity to some abstract principle’ of ‘adjudication devised by this Court.’”
27 *United States v. Rahimi*, 602 U.S. 680, 727 (5th Cir. 2024) (Kavanaugh, J., concurring)
28 (quoting *Rutan v. Republican Party of Ill.*, 497 U.S. 62, 96 (1990) (Scalia, J., dissenting)).

1 Rather, “such traditions are themselves the stuff out of which the Court’s principles are to
2 be formed.” *Id.* (quoting *Rutan*, 497 U.S. at 95–96 (Scalia, J., dissenting)). To the extent
3 there is jurisdiction over this claim, it fails on the merits.

4 **Q. The 1836 Treaty of Friendship provides no relief for Petitioner. (Claim 18)**

5 The 1836 Treaty of Peace, Friendship, Navigation & Commerce between the United
6 States and the Republic of Venezuela (“treaty”) does not affect Proclamation 10903. Even
7 assuming the treaty is self-executing, Petitioner misstates and misunderstands several
8 important portions of the treaty. First, his allegation that “[t]here was no apparent
9 subsequent repealing treaty or other sovereign act between the United States and
10 Venezuela to unsettle these Articles” is incorrect. See ECF 1 ¶ 346. Venezuela terminated
11 the “Articles with respect to commerce and navigation” by a notice given on November 5,
12 1849, effective January 3, 1851. 8 Stat 466, 12 Bevans 1038 (available at
13 <https://www.loc.gov/resource/lltreaties.lltreaties-ustbv012/?pdfPage=1052>). Nearly all of
14 the articles cited by Petitioner expressly relate to commerce and navigation. For example,
15 Article 7, relates to conducting of business, and Article 9 relates to vessels taking shelter
16 from weather, pirates, or enemies. 12 Bevans 1040–46. Therefore, some of the articles
17 of the treaty that Petitioner relies on, including possibly Article 26, appear to have been
18 terminated by Venezuela more than a century ago.

19 Second, even if the articles were still in effect, Petitioner presents a fanciful view of
20 the treaty’s terms unmoored from the text. “The interpretation of a treaty, like the
21 interpretation of a statute, begins with its text.” *Medellin v. Texas*, 552 U.S. 491, 506
22 (2008). Although Petitioner claims that the treaty should be construed broadly in favor of
23 his rights, he ignores the far more important legal principle that “[i]t is . . . well settled that
24 the United States’ interpretation of a treaty ‘is entitled to great weight.’” *Medellin*, 552
25 U.S. at 513 (quoting *Sumitomo Shoji America, Inc. v. Avagliano*, 457 U.S. 176, 184–185
26 (1982)). Even before applying that “great weight” in favor of the government’s
27 interpretation, Petitioner is incorrect that his interpretation of the treaty’s terms is even a
28 “possible” construction. *Asakura v. City of Seattle*, 265 U.S. 332, 342, amended, 44 S. Ct.

1 634 (1924).

2 Petitioner claims that the treaty gives various rights that the Proclamation impacts
3 or triggers, none of which are accurate. Fundamentally, it provides no cause of action for
4 Petitioner. Nor does it provide for the rights he seeks even in the abstract. For instance,
5 the treaty does not give “rights to be received and treated with humanity as a refugee or
6 asylum seeker.” ECF No. 1 at 86. Article 9 does mention “refuge and asylum,” but only
7 for individuals “with their vessels” seeking protection “in the rivers, bays, ports or
8 dominions” “through stress of weather, pursuit of pirates or enemies” [sic]. 12 Bevans
9 1041. It does not speak to any broader right to seek refuge or asylum. *Id.* To the extent
10 Petitioner claims that Article 13’s provisions about access to courts are implicated by the
11 Proclamation, his own case shows that courts are available to Venezuelans. *See also*
12 *J.G.G.*, 145 S.Ct. at 1005. Finally, the treaty does not create “a right for . . . non-merchants
13 to remain for the rest of their lives as lawful residents of the United States with green cards
14 or other similar legal status from which they can legally adjust their status or naturalize
15 provided that ‘their particular conduct shall cause them to forfeit this protection.’” ECF
16 No. 1 at 86. At most, Article 26 simply allows for non-merchants to be “respected and
17 maintained in the full enjoyment of their personal liberty and property.” 12 Bevans 1046
18 (emphasis added). Petitioner’s fantastic idea that the treaty allows for non-merchants to
19 become lawful permanent residents on a path to U.S. citizenship has no basis in the
20 language of the treaty, which clearly only allows for certain individuals to maintain their
21 status.

22 Indeed, what is further plain from the language of Article 26 is that “particular
23 conduct” can cause any protections it does give to be forfeited. 12 Bevans 1046. This
24 aligns with the AEA, which provides for a similar right to a time to settle affairs and depart,
25 unless the individual is “chargeable with actual hostility.” 50 U.S.C. § 22. The
26 Proclamation explicitly finds that the individuals subject to its terms are so chargeable.
27 *See 90 Fed. Reg. at 103034*. Therefore, even assuming the treaty is self-executing and
28 ignoring the fact that Venezuela terminated the articles related to commerce and

1 navigation, the plain language of the treaty, read in conjunction with 50 U.S.C. § 22,
2 forecloses any possibility that its articles bear on the individuals subject to the
3 Proclamation. Further, even if Petitioner’s claims about the treaty were a plausible
4 construction of its terms, the government’s interpretation of the treaty would prevail due
5 to the “great weight” it merits. *See Medellin*, 552 U.S. at 513.

6 **R. Detention and removal is not “criminal punishment” that triggers the**
7 **Geneva Convention. (Claim 19)**

8 The application of the AEA to any individual is not “criminal punishment” that
9 triggers the Geneva Convention. *See Hamdan v. Rumsfeld*, 548 U.S. 557, 635, 126 S. Ct.
10 2749, 2798 (2006). The AEA allows for alien enemies to be “apprehended, restrained,
11 secured, and removed,” not prosecuted. 50 U.S.C. § 21. Like traditional civil immigration
12 law, AEA detention and removal is wholly separate from any criminal process that results
13 in “the passing of sentences and the carrying out of executions.” *See Hamdan*, 548 U.S.
14 at 630, 126 S. Ct. at 2795 (internal quotation omitted). The Geneva Convention simply
15 does not apply to individuals subject to the Proclamation. Further, to the extent Petitioner
16 relies on 50 U.S.C. § 22 in this claim, that provision cannot trigger the Geneva Convention
17 as it does not apply to the instant Proclamation which recognizes hostile acts.

18 **S. Challenges to removal under the AEA must be brought in habeas, not the**
19 **Administrative Procedure Act. (Claim 20)**

20 The Supreme Court recently held that “challenges to removal under the AEA . . .
21 must be brought in habeas.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1005 (2025). The Court
22 reasoned that the AEA “is a statute which largely precludes judicial review.” *Id.* (quoting
23 *Ludecke*, 335 U.S. at 163–64). Judicial review under the APA was therefore unavailable.
24 *Id.*; *see also* 5 U.S.C. § 701(a)(1) (review under the APA is unavailable where “statutes
25 preclude judicial review”). The same analysis should be applied to Petitioners’ APA claim
26 here. *See* ECF 1 ¶ 362–67. The Court should deny it.

1 **IV. CONCLUSION**

2 For the reasons given above, the Court should deny the Petition for Writ of Habeas
3 Corpus and Class Action Complaint.

4
5 DATED this 19th day of September, 2025.

6 Respectfully submitted,

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