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

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

14 *Petitioner-Plaintiff,*

15 vs.

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

19 *Respondents-Defendants.*

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

**PETITIONER-PLAINTIFF'S *EX*
PARTE EMERGENCY MOTION
FOR PERMANENT INJUNCTIVE
RELIEF AND OPPOSITION TO THE
GOVERNMENT'S *EX PARTE*
MOTION TO STAY THESE
PROCEEDINGS**

[Filed Concurrently With Exhibit A
(Darwin's I-213 Attached to a Proposed
Order of Removal); Declarations of
Darwin Antonio Arevalo Millan and
Attorney Joshua J. Schroeder; Proposed
Judgment]

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21 **PETITIONER-PLAINTIFF'S *EX PARTE* EMERGENCY MOTION FOR**
22 **PERMANENT INJUNCTIVE RELIEF AND OPPOSITION TO THE**
23 **GOVERNMENT'S *EX PARTE* MOTION TO STAY THESE PROCEEDINGS**
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INTRODUCTION

The Court should deny government's request to stay these proceedings pending the government shut down, because Petitioner has been or is imminently being ordered removed and the stay will functionally suspend habeas corpus in this matter. Schroeder Decl.; Boumediene v. Bush, 553 U.S. 723, 764 (2008) (rejecting functional suspensions of the writ). In the light of the government shutdown, the potential of a stay that could stop vital litigation while my client is potentially removed, and the fact that the immigration court took the unexpected action of issuing an order of removability in my client's case it appears that this Court is imminently at risk of losing jurisdiction to hear this petition. *Boumediene*, 553 U.S. at 779 (explaining that habeas corpus is "above all, an adaptable remedy"). As such, we intend to put new evidence that was gathered in preparation of our motion for summary judgment here, and to ask the Court for permanent relief on an individual and classwide basis strictly regarding the lack of due process issue pursuant to which this Court issued preliminary relief already. Exh. A; Arevalo Millan Decl. This request fits the narrow reasons one should file an emergency application as noted in this Court's guidance, which I am familiar with. *See In re Intermagnetics Am., Inc.*, 101 B.R. 191, 194 (Bankr. C.D. Cal. 1989) (noting that when imminent changes in circumstances and evidence can justify an *ex parte* application); *Mission Power Engineering Co. v. Continental Casualty Co.*, 883 F. Supp. 488, 491–92 (C.D. Cal. 1995) (noting that when "the tomatoes are about to spoil or the yacht is about to leave the jurisdiction and that all will be lost unless immediate action is taken" *ex parte* applications are okay). Here, it was reasonable to believe that time for a motion for summary judgment existed. So, we expressed our intent to proceed with an ordinary motion for summary judgment and scheduled a meet and confer to take place today on October 1, 2025. Government's *Ex Parte* Motion. But this was prior to the government shutdown and simultaneous order of removability issued against my client that means

1 this could be the last moment the Court could make a decision on this motion for
2 permanent relief. *Id.*

3 The Government's *ex parte* application does not cite to these standards and
4 does not explain why this case should be stayed, when others are proceeding.
5 Government's *Ex Parte* Motion. It appears that this petition is deemed non-essential
6 to the government, which means that the government is abandoning its case as the
7 writ of habeas corpus shall not be suspended. *Id.* Habeas corpus is constitutionally
8 essential and cannot be suspended unless there is an actual insurrection or rebellion
9 that makes it impossible to access the actual court for process. *Boumediene*, 553 U.S.
10 at 769; *Duncan v. Kahanamoku*, 327 U.S. 304, 323–24 (1946) (extending *Ex parte*
11 *Milligan*'s open court ruling). Merely failing to pay a lawyer for their services, which
12 could be a serious violation of their rights not to be an indentured servant, is not
13 grounds to suspend habeas corpus. *Ex parte Milligan*, 71 U.S. 2, 121 (1866)
14 (invasions or insurrections that Congress can suspend habeas corpus cannot exist
15 "where the courts are open and their process unobstructed"). Finally, given the
16 timing of this request for stay right when Petitioner's order of removal is issued
17 functionally suspends habeas corpus in this case, because Petitioner can still receive a
18 permanent injunction on behalf of himself and his class pursuant to the original bases
19 the Court indicated for granting the preliminary injunction. *Arevalo Millan v. Trump*,
20 2025 U.S. Dist. LEXIS 104504, at *32 (C.D. Cal. 2025) ("Arevalo is likely to
21 succeed on the merits of his due process claim."); Schroeder Decl. This is all we
22 request here.

23 My client, hereby, specifically and narrowly requests that this Court enter a
24 permanent injunction that protects him and his putative class from all three of these
25 elements inclusive: (a) being removed to CECOT in El Salvador, Guantanamo Bay,
26 or other similar military black site inside or outside of the United States, (b) pursuant
27 to the Alien Enemies Act, (c) without due process. The Court should also deny
28 Respondents' request for a stay. Prior to filing this I sent notice to attorney of record

1 Michael Ross explaining the emergency situation, which resulted in an automatic
2 email indicating he is furloughed due to the shut down and likely cannot respond. I
3 also forwarded it to his colleague Anthony Nicastro asking for his position, but his
4 email also stated he is furloughed and will respond when funding is restored. I have
5 not received a response. In the interests of justice, the Court should proceed without
6 notice.

7 The Court should grant this permanent injunctive relief on an individual and
8 class-wide basis as it has already found that Petitioner would be likely to win on the
9 basis of a lack of Due Process and already granted this relief on a classwide basis in
10 the Central District of California. *Arevalo Millan*, 2025 U.S. Dist. LEXIS 104504, at
11 *32. This emergency motion is based upon the documents already filed into the
12 record, the concurrently filed motion for class certification, Darwin's I-213 as
13 attached to a proposed stipulated order of removal that Darwin refused to sign, and
14 the new declaration of Darwin Antonio Arevalo Millan. In addition, we ask the Court
15 for any other relief it finds reasonable and in the interests of justice.

16 We are willing to further brief the court on any matter material to this motion
17 including any claim made in the petition, should the Court request it. The President's
18 decision to assassinate enemy Venezuelans in three boats, facts addressed below,
19 strongly indicates that the President believes we are at war, not merely that a
20 predatory incursion is happening, which has a material effect on the application of the
21 U.S.-Venezuela Peace Treaty that may grant Petitioner independent relief here. Ryan
22 Lucas, *With 'Drug Boat' Strikes, Trump Leans Into War on Terror Tactic Against*
23 *Cartels*, NPR (Sept. 30, 2025), [https://www.npr.org/2025/09/30/g-s1-91091/trump-](https://www.npr.org/2025/09/30/g-s1-91091/trump-bombing-drug-boats-terror)
24 [bombing-drug-boats-terror](https://www.npr.org/2025/09/30/g-s1-91091/trump-bombing-drug-boats-terror) (noting there are "three and counting" boat strikes so far);
25 ECF No. 1, at 85–86 (Eighteenth Claim); U.S.-Venezuela Treaty of Peace,
26 Friendship, Navigation and Commerce of May 31, 1836, art. 26, 12 Bevans 1038, 18
27 Stat. 787; 50 U.S.C. § 22. We submit to the Court's judgment about whether to brief
28

1 the Court on these alternative bases listed above, and do not proceed to argue on
2 those bases here.

3 **FACTUAL BACKGROUND**

4 On September 30, 2025, the immigration court indicated that it would order
5 Petitioner removable due to his apparent waiver of his right to asylum against the
6 advice of counsel. Schroeder Decl. This was not the result we were anticipating, as
7 Petitioner's agreement to stipulate remand to the Executive Office for Immigration
8 Review ("EOIR"), which is like the district court of immigration review, was
9 specifically for the purpose of entering a stipulated order of removal to a safe third
10 party country. *Id.* DHS also knew that the stipulated order of removal was pending
11 before EOIR, because they sent a blank stipulated order of removal form with a
12 proposed statement renouncing Petitioner's credible fear of being removed to
13 Venezuela to which Petitioner's I-213 was attached indicating that he was detained
14 because he was a member of Tren de Aragua due to certain tattoos he has on his
15 body. Exh. A.

16 The I-213 form is created to officially revoke an immigrant's release from
17 detention—a document among others that Petitioner maintains he never received
18 from the government. Exh. A. This document clearly shows that the government
19 believed that Petitioner was a member of Tren de Aragua because of his tattoos and
20 that this was why he was detained. *Id.* It does not contain documentation of
21 Petitioner's failure to update the government with his address, but merely cites
22 "multiple violations," that he "previously moved without authorization," and that he
23 "failed to follow program guidelines." *Id.* Notice of the actual violations as given in
24 the government's answer are not present in this document making it insufficient even
25 if it was received by Petitioner or counsel, which it was not. *Id.*

26 The bulk of this I-213 focuses on Petitioner being "a suspected member of the
27 Venezuelan criminal gang, Tren de Aragua." Exh. A. Even though it stated "None
28 known" under his criminal record, the form proceeds to list out nine tattoos that it

1 claimed as the basis for his identification as a member of TdA. *Id.* It further stated
2 that Petitioner was served with the I-200 Warrant of Arrest and I-286 Notice of
3 Custody Determination, which we maintain Petitioner was not. *Id.* It is highly
4 questionable that the government did not file or share this evidence that Petitioner
5 was allegedly served with these documents if it was true, and rather only shared
6 portions of the evidence with the Court that supported its position that Petitioner was
7 not being detained or removed under the AEA. *See generally* [ECF No. 65](#). Petitioner
8 maintained, as stated in his complaint, that he was orally informed that he was
9 suspected of being a member of TdA and that this was why he was being detained.
10 [ECF No. 1](#), at 3.

11 The I-213 further states that Petitioner is being held “pending a hearing with
12 and [sic] Immigration Judge” which is even more perplexing. Exh. A. In the
13 government’s answer, it claimed that it has a specific form of giving notice and
14 process to individuals implicated under the Alien Enemies Act. *Id.* Here, the
15 government seems to have explicitly held Petitioner under pretextual grounds that it
16 could defend as long as nobody retrieved the I-213 until it secured passage for
17 Petitioner to CECOT in El Salvador or other terrible fate, after which it would be too
18 late for Petitioner to contest the government action under the AEA. *Id.*

19 The I-213 appears to show how the government planned to avoid giving the
20 Petitioner notice and an opportunity to be heard prior to removing him like other
21 Venezuelans. Exh. A. It also proves that the government, here, materially
22 misrepresented its basis for detaining Petitioner in its answer and elsewhere was
23 because he was undergoing ordinary asylum process when it simultaneously
24 identified him as a terrorist and enemy of the state. *Id.*; [ECF No. 65](#), at 2 (arguing that
25 Petitioner’s “fears of being removed under the Alien Enemies Act (AEA) have
26 proven to be unfounded” as no evidence was produced that the government
27 designated Petitioner as TdA). It potentially destroys the government’s claim that it is
28 uniformly treating Venezuelan suspects of terrorism with a specific version of notice

1 and process apparent in other TdA cases that is not apparent here. Exh. A; ECF No.
2 65, at 1 (“[T]he government has adopted updated notice procedures that satisfy Due
3 Process.”); *id.* at 12 (noting how the government accommodates the right to assert
4 habeas corpus by giving notice of when a person is designated as a member of TdA
5 “in writing” as the way the Court knows that habeas corpus was not suspended in
6 TdA cases). Yet on its initial appeal, the government did not tick the box indicating
7 the terrorism bar, and seemed to disclaim its former position that Petitioner was a
8 member of a terrorist faction, but this appears to have been a ruse. Schroeder Decl.

9 10 **LEGAL STANDARDS**

Four factors are applied pursuant to *eBay Inc. v. MercExchange, L.L.C.*, 547
11 U.S. 388, 391 (2006) to decide whether a permanent injunction shall issue, which
12 are: “(1) that [Petitioner] has suffered an irreparable injury; (2) that remedies
13 available at law, such as monetary damages, are inadequate to compensate for that
14 injury; (3) that, considering the balance of hardships between the plaintiff and
15 defendant, a remedy in equity is warranted; and (4) that the public interest would not
16 be disserved by a permanent injunction.”

17 The standard of review for a writ of habeas corpus is *de novo* review of law
18 and fact. *Cone v. Bell*, 556 U.S. 449, 472 (2009) (“[T]he claim is reviewed *de*
19 *novo*.”); *see Boumediene*, 523 U.S. at 786. Where, as here, the administrative law
20 supports the Court’s rulings, as in the old cases where U.S. Citizens of Chinese
21 ancestry sued and won based upon evidence of their citizenship, the old maxim given
22 by Justice Holmes applies: “It is better that many Chinese immigrants should be
23 improperly admitted than that one natural born citizen of the United States should be
24 permanently excluded from his country.” *Kwock Jan Fat v. White*, 253 U.S. 454, 464
25 (1920). This slant toward lenity, grace, and generosity is the heart of administrative
26 law as extended by *Crowell* and adopted into the Administrative Procedures Act
27 (“APA”), tracing back to John Adams’ old defense of the Red Coats on a similar
28 basis. *Crowell v. Benson*, 285 U.S. 22, 57 (1932) (citing *Ng Fung Ho v. White*, 259

1 U.S. 276, 285 (1922)); Wong Yang Sung v. McGrath, 339 U.S. 33, 37 (1950); Loper
2 Bright Enters. v. Raimondo, 603 U.S. 369, 412 (2024) (“*Chevron* is overruled.”);
3 SEC v. Jarkesy, 603 U.S. 109, 140 (2024) (quoting Murray’s Lessee, v. Hoboken
4 Land & Improv. Co., 59 U.S. 272, 284 (1855)); *cf.* Colorado River Water Conserv.
5 Dist. v. United States, 424 U.S. 800, 817 (1976) (noting “a virtually unflagging
6 obligation” to assert jurisdiction here); 3 LEGAL PAPERS OF JOHN ADAMS 243 (L.
7 Kinvin Wroth & Hiller B. Zobel eds., 1965) (noting several English sources including
8 Chancellor Fortescue stating variations of the maxim that: “Indeed one would rather,
9 much rather, that twenty guilty persons escape the punishment of death, than one
10 innocent person be condemned, and suffer capitally.”); *cf.* APA, 5 U.S.C. § 706.

11 **ARGUMENT**

12 Here, all four elements for a permanent injunction are clearly met. *eBay Inc.*,
13 547 U.S. at 391. Petitioner has suffered the irreparable injury of being designated
14 TdA and liable to be removed to a foreign black site without due process. *Id.*
15 Monetary damages are clearly inadequate for the same reasons already noted by the
16 Court. *Arevalo Millan*, 2025 U.S. Dist. LEXIS 104504, at *32. And the balance of
17 hardships and public interest are also clearly in favor of Petitioner for the same
18 reasons already argued by Petitioner and accepted by the Court. *Id.* These points are
19 further supported by the following argument:

20 We are filing this within hours of learning that Petitioner is ordered removable
21 by the immigration court without appeal and with a motion for a potential stay due to
22 the government shutdown that could render this filing moot. Schroeder Decl. Given
23 the multiple time pressures on filing this request for relief, we also ask this Court to
24 proceed immediately to extend its original grant of class certification that made
25 Petitioner class represented and undersigned counsel class counsel to a final
26 permanent injunction along the same lines as the preliminary injunction. *Id.*; ECF No.
27 3, at 1 (naming Petitioner’s putative class). If the Court requires further filings, or if
28 time permits due to further developments, we will perfect this filing with a new

1 motion for class certification. *Arevalo Millan*, 2025 U.S. Dist. LEXIS 104504, at
2 *11–12 (“Class certification ‘is inherently tentative,’ so ‘the judge remains free to
3 modify it in the light of subsequent developments in the litigation.’” (internal
4 quotation marks and source citations omitted).

5 Respondents’ Answer represents that there is one, basically uniform, way the
6 government is going about notice and process for those targeted under the AEA. ECF
7 No. 65, at 1, 12. However, the evidence here appears to suggest that the government
8 is pursuing several strategies of pursuing individuals under the AEA without notice
9 given about the strategies the government is using. Exh. A. The problem, here, was
10 not the government’s apparent change of position about Petitioner in its filings, but
11 the government’s outright denial that it had ever held this position in an apparent
12 attempt to gaslight this Court into believing that Petitioner’s counselor was lying or
13 trumping up the facts of this case to get relief for Petitioner. ECF No. 65, at 2
14 (characterizing Petitioner’s allegations that he was designated TdA “proven to be
15 unfounded”). The government is trumping up sanctions motions against good faith
16 attempts to protect immigrant rights in other cases as well, and in those cases the
17 other shoe may drop like it did here to show the government’s misrepresentations to
18 the Court. *Preventing Abuses of the Legal System and the Federal Court*,
19 Presidential Memo (Mar. 22, 2025), [https://www.whitehouse.gov/presidential-](https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/)
20 [actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/](https://www.whitehouse.gov/presidential-actions/2025/03/preventing-abuses-of-the-legal-system-and-the-federal-court/)
21 (alleging without evidence that “the immigration bar . . . frequently coach clients to
22 conceal their past or lie about their circumstances when asserting their asylum
23 claims”).

24 The recent development of the Department of Justice filing sanctions motions
25 pursuant to a Presidential memo directing them to do this demonstrates the
26 asymmetrical litigation that this always was. *Id.* Petitioner cannot, apparently,
27 challenge his order of removal, because the presumption of regularity requires his
28 counselors to presume that his orders of removal are being carried out in a regular

1 fashion. *Cruz v. Bondi*, 146 F.4th 730, 739 (9th Cir. 2025) (arguably leaving an open
2 question regarding the reviewability of how the executive carries out an order of
3 removability if the order is pretextually used to justify a different act that the order
4 does not permit, like an extraordinary rendition to CECOT, including Respondents
5 attempts here to use ordinary immigration process to remove and potentially
6 extraordinarily rendition Petitioner without due process as to the actual reason for
7 removal by appearing to hide or at least misrepresent evidence). The Department of
8 Justice is attempting to enforce this presumption with sanctions motions even as it
9 clearly is carrying out removals of people it thinks are terrorists by administering
10 “ordinary” removal process as a subterfuge that cannot effectively be reviewed by the
11 federal courts because of the extremely long review process initiated by 8 U.S.C.
12 § 1252 (stripping this Court of habeas corpus jurisdiction pursuant to an alternative
13 statutory review process contained here). Meanwhile, as attested to in Petitioner’s
14 last declaration, individuals in his detention facility are apparently dying for lack of
15 medical attention—an issue alleged in Petitioner’s complaint. Arevalo Decl.

16 There is legitimate and reasonable bases to suspect that Petitioner will be
17 removed to CECOT in El Salvador, Guantanamo Bay, or other government black site
18 under the guise of an ordinary immigration removal. Exh. A. This pretextual strategy
19 is only possible, because of the presumption of regularity and general trust the federal
20 courts have in the underlying immigration system, in the trustworthiness of
21 government lawyers, and the jurisdiction stripping provisions of the REAL ID Act
22 that would otherwise be challengeable under the Suspension Clause. *Cruz*, 146 F.4th
23 at 739; 8 U.S.C. § 1252. Here, the government repeatedly told this court that
24 Petitioner’s suspicion that the government identified him as a member of TdA was
25 unfounded and imaginary, when all along they knew and had documentation that it
26 was a fact. Exh. A.

27 Moreover, the immigration court itself is fracturing and is being radically
28 transformed into something it was never intended to be, but Petitioner’s Complaint

1 alleged it always really was. ECF No. 1, at 8. Hundreds of military personnel are
2 being slated to work as immigration judges after several immigration judges are
3 removed or pressured into complicity. Margy O'Herron, *Using Military Lawyers as*
4 *Immigration Judges is Ill-Advised and Potentially Illegal*, BRENNAN CTR. JUSTICE
5 (Sept. 29, 2025), [https://www.brennancenter.org/our-work/analysis-opinion/using-](https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially)
6 [military-lawyers-immigration-judges-ill-advised-and-potentially](https://www.brennancenter.org/our-work/analysis-opinion/using-military-lawyers-immigration-judges-ill-advised-and-potentially). Petitioner's
7 complaint was correct that the immigration court is a military tribunal, or at least it is
8 more like a military tribunal than a "civil" court for purposes of habeas corpus
9 review. ECF No. 1, at 8 (noting that judges being "deployed" implies a military
10 force). This fact greatly heightens this Court's jurisdiction to review and issue
11 judgements about immigration court here. *Boumediene*, 553 U.S. at 783 ("Where a
12 person is detained by executive order, rather than, say, after being tried and convicted
13 by a court, the need for collateral review is most pressing.").

14 Here, there is an issuance of an immigration court to remove Petitioner as an
15 ordinary asylum seeker that appears to be a pretext to remove him as a member of
16 Tren de Aragua. Schroeder Decl. If he is actually removed as a member of Tren de
17 Aragua pursuant to an "ordinary" order of removability he likely will be sent to
18 CECOT in El Salvador or some other dark prison where he will leave in a casket one
19 day as President Bukele liked to brag. Devin B. Martinez, *CECOT: Bukele's Mega*
20 *Prison Where "the Only Way Out Is In a Coffin"*, PEOPLES DISPATCH (Apr. 18, 2025),
21 [https://peoplesdispatch.org/2025/04/18/cecot-bukeles-mega-prison-where-the-only-](https://peoplesdispatch.org/2025/04/18/cecot-bukeles-mega-prison-where-the-only-way-out-is-in-a-coffin/)
22 [way-out-is-in-a-coffin/](https://peoplesdispatch.org/2025/04/18/cecot-bukeles-mega-prison-where-the-only-way-out-is-in-a-coffin/). The United States will be liable not to send him back to the
23 country he was allegedly sent here by as a military incursion if that is what President
24 Trump actually maintains about Petitioner. Exec. Proclamation 10903, 90 Fed. Reg.
25 13033.

26 He is also liable to be killed or assassinated by the government, who has
27 openly assassinated people riding boats from Venezuela according to claims that they
28 were drug traffickers and therefore to be engaged with as enemies. Lucas, *supra*.

1 President Trump, furthermore, cited to Petitioner's class to justify using all due force
2 in liberal cities, by using liberal locales in the United States as training practice for
3 the military. Rhianna Schmunk, *Trump Suggests Using Some American Cities As*
4 *Military 'Training Ground'*, CBC (Sept. 30, 2025),
5 [https://www.cbc.ca/news/world/trump-national-guard-training-ground-us-cities-](https://www.cbc.ca/news/world/trump-national-guard-training-ground-us-cities-1.7647736)
6 [1.7647736](https://www.cbc.ca/news/world/trump-national-guard-training-ground-us-cities-1.7647736). The President has taken unprecedented actions like naming a domestic
7 group terrorists, which is illegal, to further expand his use of the military in local
8 affairs, in apparent violation of the federalism protected by the Tenth Amendment as
9 discussed in *Printz*. *Printz v. United States*, 521 U.S. 898, 935 (1997).

10 Here, the government did not give Petitioner proper notice of his status as a
11 member of TdA, was detained for being a member of TdA, and is potentially subject
12 to removal pursuant to the AEA. Compare ECF No. 65, with Exh. A. There is no
13 meaningful or arguable contradiction of material fact that the government's own
14 process for giving notice to Petitioner was not followed here. ECF No. 65, at 1, 12.
15 He was not issued a similar document as other TdA cases outlining the reasons he
16 was a member of TdA, nor was he attempted to be removed outside of "ordinary"
17 removal procedures. Exh. A; Schroeder Decl.; Arevalo Decl. The new evidence we
18 have now appears to tell the story that Petitioner was a member of TdA that the
19 government was attempting to remove via ordinary removal procedures while
20 denying that he was a member of TdA or a member of a terrorist bar. Exh. A;
21 Arevalo Decl. We have reason to believe that the order of removal, now imminent in
22 this case, could be used as a basis to block judicial review while removing Petitioner
23 to CECOT in El Salvador or to some other black site prison system. Exh. A. Others in
24 Petitioner's class could be similarly situated, and the government in its answer
25 appears to allow for a wide interpretation of Proclamation 10903 and surrounding
26 presidential documents to apply against all Venezuelans, which strongly supports the
27 Rule 23 requirements for class certification. ECF No. 65, at 11 (noting that "the AEA
28 permits 'targeting all Venezuelans'" (citation omitted)).

1 According to a 2023 Census estimate, there were about 8,531 Venezuelans in
2 the Los Angeles area. *Hispanic or Latino Ethnic Origin (of Any Race) Los Angeles*
3 *County*, <https://www.laalmanac.com/population/po18.php> (last visited on Oct. 1,
4 2025, 4:28 PM); EFC No. 3 (noting evidence and bases for Rule 23 factors).
5 Moreover, it can be hard to approximate how many people are in a class when the
6 government will not even admit that the class representative is a member of the
7 putative class, which he is. ECF No. 65, at 2. Using the pretext of ordinary
8 immigration enforcement as a pretext to remove, disappear, or extraordinary rendition
9 TdA members without having to give them due process pursuant to *Ludecke* is a
10 potential way to avoid class action requirements of numerosity, commonality,
11 typicality, and representativeness in AEA cases. *Ludecke v. Watkins*, 335 U.S. 160,
12 172–73 (1948); *cf.* ECF No. 65, at 2.

13 As long as Petitioner is in the Central District of California and not removed,
14 this issue is not moot. *FBI v. Fikre*, 601 U.S. 234, 239 (2024) (applying a heightened
15 standard for mootness). If the Court is not ready to rule immediately, we request that
16 it issue a protective order to maintain jurisdiction prior to ruling on this motion. *Nken*
17 *v. Holder*, 556 U.S. 418, 425–26 (2009); *Arevalo Millan*, 2025 U.S. Dist. LEXIS
18 104504, at *32 (already finding a likelihood of success for the relief requested here).
19 Based on new evidence, we believe that Petitioner is at risk of being removed to
20 CECOT in El Salvador under a pretext of the “ordinary” removal procedures as
21 outlined in the I-213 we received. Exh. A. This evidence overcomes or lies beyond
22 the presumption of regularity, as it is not regular for the government to identify a
23 person as a member of a terrorist group and then to not argue that they are a terrorist
24 as a reason to deny them asylum and withholding of removal. *Cruz*, 146 F.4th at 739.
25 We also have Petitioner’s new declaration, which testifies to the threats on his life
26 that ICE made regarding his TdA status, which is not regular. *Arevalo Decl.*
27 Furthermore, even if Petitioner is removed, this issue is still not moot, because it
28 capable of repetition yet evading review as to Petitioner and his class, because the

1 challenged action appears to be in its duration too short to be fully litigated here and
2 because it is possible that this threat of removal could be stalled for unforeseen
3 reasons including Venezuela's potential decision not to accept deportees or for some
4 other reason, which could reset this process even now. *Kingdomware Techs., Inc. v.*
5 *United States*, 579 U.S. 162, 170 (2016); *cf.* Kayla Epstein, *Venezuela to Resume*
6 *Repatriation of Migrants After Deal With US*, BBC (Mar. 22, 2025),
7 <https://www.bbc.com/news/articles/c17q170zwjeo>. Also, Petitioner's class remains a
8 basis for review as he is class representative and he retains a personal stake in class
9 certification. *NEI Contr. & Eng'g, Inc. v. Hanson Aggregates Pac. Sw., Inc.*, 926 F.3d
10 528, 533 (9th Cir. 2019).

11 CONCLUSION

12 The Court should grant our emergency request for a permanent injunction for
13 Petitioner and his putative class blocking them from: (a) being removed to CECOT in
14 El Salvador, Guantanamo Bay, or other similar military black site inside or outside of
15 the United States, (b) pursuant to the Alien Enemies Act, (c) without due process, and
16 deny Respondents' motion for a stay.

17
18 Respectfully Submitted on October 2, 2025

19 /s/ Joshua J. Schroeder

20 Joshua J. Schroeder

21 SchroederLaw

22 Attorney for Darwin Antonio

23 Arevalo Millan
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CERTIFICATE OF COMPLIANCE

The undersigned, counsel of record for Darwin Antonio Arevalo Millan, certifies that this brief contains 4,401 words, and complies with the word limit of L.R. 11-6.1.

DATED: October 1, 2025

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