

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

W.J.C.C.,

Petitioner–Plaintiff,

v.

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

Respondents–Defendants.

Case No: 3:25-cv-00153-SLH

PETITIONER-PLAINTIFF’S MEMORANDUM OF LAW
IN SUPPORT OF PRELIMINARY INJUNCTION

INTRODUCTION

The Court should convert the existing temporary restraining order into a preliminary injunction. As this Court recently concluded, Petitioner is likely to succeed on his due process claim, he faces irreparable harm without an injunction, and the equities favor Petitioner. *See* ECF No. 20; *see also A.S.R. v Trump*, No. 25-cv-113, 2025 WL 1378784, *7-11, *19-23 (W.D. Pa. May 13, 2025); *J.G.G. v. Trump*, 145 S. Ct. 1003, 1006 (2025) (per curiam); *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367-68 (2025) (per curiam). The government’s unwillingness to stipulate to providing Petitioner with 21-day notice despite this Court’s order in *A.S.R.* underscores why an injunction is necessary.

LEGAL AND FACTUAL BACKGROUND

I. The Alien Enemies Act.


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

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

This Act has been used only three times in the country’s history, each time in a period of war—the War of 1812, World War I, and World War II.

II. The AEA Proclamation and Unlawful Removals.

In a Proclamation signed on March 14, 2025, and published the next day, the President invoked a war power, the Alien Enemies Act of 1798, to summarily remove noncitizens from the

U.S. and bypass the immigration laws Congress has enacted. *See* Invocation of the Alien Enemies Act (Mar. 15, 2025) (“Proclamation”).¹ The AEA permits the President to invoke the AEA only where the United States is in a “declared war” with a “foreign government or nation,” or where a “foreign government or nation” is threatening to, or has engaged in, an “invasion or predatory incursion” against the “territory of the United States.” The Proclamation targets Venezuelan noncitizens accused of being part of  a criminal gang, and claims that the gang is engaged in an “invasion and predatory incursion” within the meaning of the AEA. Since that time, Respondents-Defendants (“Respondents”) have used the AEA to summarily remove well over 100 people—many with pending removal proceedings—to El Salvador, where they potentially face lifetime incommunicado sentences in one of the most notorious prisons in the world.

The Supreme Court has made clear that individuals “must receive notice” “that they are subject to removal under the Act,” and such “notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs.” *J.G.G.*, 145 S. Ct. at 1006. Following the Supreme Court’s ruling, courts across the country have enjoined removals and transfers of people who are detained in their districts and designated or at risk of imminent designation as alien enemies pursuant to the Proclamation. *See, e.g., J.A.V. v. Trump*, No. 1:25-CV-072, --- F. Supp. 3d ----, 2025 WL 1257450, at *20 (S.D. Tex. May 1, 2025); *D.B.U. v. Trump*, No. 1:25-CV-01163-CNS, --- F. Supp. 3d ----, 2025 WL 1304288, at *10 (D. Colo. May 6, 2025); *G.F.F. v. Trump*, No. 25 CIV. 2886 (AKH), --- F. Supp. 3d ----, 2025 WL 1301052, at *11 (S.D.N.Y. May 6, 2025); *Sanchez Puentes v. Garite*, --- F. Supp. 3d ---, 2025 WL 1203179, *17 (W.D. Tex. Apr. 25, 2025); *M.A.P.S. v. Garite*, No. 25-CV-00171-DB,


¹ <https://perma.cc/ZS8M-ZQHJ>.

2025 WL 1379220, at *1 (W.D. Tex. May 13, 2025); *A.S.R.*, 2025 WL 1208275, at *20.

Despite the Supreme Court's clear instructions, the government has adopted an inadequate protocol to provide notice to those designated under the AEA. It has maintained under sworn declarations that detainees must express an intent to file a habeas petition challenging their designation within the first 12 hours, or they can be removed. If a detainee expresses an intent to file a habeas petition, they are purportedly given 24 hours to actually file that petition. Detainees are given an English-only form that does not inform them that they can contest their designation, how to do so, or on what timeframe. *See* Cisneros Decl. ¶¶ 11, *A.S.R. v. Trump*, No. 25-cv-113 (W.D. Pa. Apr. 24, 2025), ECF No. 40-1.

The Supreme Court recognized the urgency caused by the government's deficient notice protocols when, shortly after the District Court of Northern Texas denied a TRO, the government started issuing AEA notices and telling people they would be deported as soon as the next day, leading to the Court's stay of removal, *A.A.R.P. v. Trump*, 145 S. Ct. 1034 (2025), and then an injunction pending appeal, *A.A.R.P.*, 145 S. Ct. at 1367. The Supreme Court also squarely held that detainees "are entitled to more notice" than Respondents are giving. *Id.* at 1368. The government has not submitted any sworn declarations here establishing a notice procedure that satisfies the Supreme Court's directive.

III. Petitioner

Petitioner W.J.C.C. is a 26-year-old Venezuelan national who entered the United States via the Mexican border in May 2023, and has been in the United States continuously since that time. *See* ECF No. 1-2 (Waxman Decl.) ¶ 2. He strongly denies that he has any connection to, or affiliation with,  *Id.* ¶ 10.

W.J.C.C. was originally detained in Caroline Detention Facility on May 20, 2024; an

Immigration Judge granted W.J.C.C.'s motion for custody redetermination on August 27, 2024, and he was released on bond. *Id.* ¶ 5. DHS did not allege that W.J.C.C. was a member of [REDACTED] during these proceedings. *Id.*

Despite having no material change in circumstances, W.J.C.C. was re-detained on February 9, 2025 and sent to Moshannon Valley Processing Center. *Id.* ¶ 6. On April 21, 2025, DHS alleged for the first time that W.J.C.C. is a member of [REDACTED] *Id.* ¶ 7. In response to a motion for custody redetermination filed before Judge Adam Panopoulos of the Elizabeth Immigration Court, DHS filed an inaccurate I-213 form including a statement that Petitioner "is suspected to be an associate/member of the [REDACTED] due to his associates and having gang symbols on his vehicle, property and clothing." *Id.* ¶ 8.

In this instance, the government has already alleged that W.J.C.C. is ineligible for bond based on the [REDACTED] allegation. W.J.C.C. is fearful that he will be classified as an alien enemy and summarily deported under the Proclamation without due process. *Id.* ¶¶ 18-19. At the hearing on Petitioner's request for a temporary restraining order, Respondents could not say whether Petitioner would or would not be designated under the Proclamation in the future, and they refused to stipulate to providing 21-day notice of his designation ahead of any removal pursuant to the AEA. *See* ECF No. 17.

Petitioner faces serious harm if removed. He is seeking asylum, withholding of removal, and protection under the Convention Against Torture. Waxman Decl. ¶ 4. If removed to Venezuela without an opportunity to adjudicate those claims, he could face persecution or torture. Even worse, he may be sent to a foreign prison, such as CECOT prison in El Salvador, where others have been sent under the AEA and may never be returned according to the government. The conditions at CECOT are horrific. *See* Bishop Decl., Goebertus Decl., *A.S.R. v. Trump*, No. 25-cv-


113 (W.D. Pa. Apr. 29, 2025), ECF Nos. 57-5, 57-6. And Respondents will argue, as they already have, that once an individual is at CECOT, this Court no longer has jurisdiction to remedy their unlawful use of the AEA. *See A.A.R.P.*, 2025 WL 1417281, at *2 (“The Government has represented elsewhere that it is unable to provide for the return of an individual deported in error to a prison in El Salvador.”).

LEGAL STANDARD

To obtain a preliminary injunction to preserve the status quo, as Petitioner seeks, the moving party must establish that “(1) he is likely to succeed on the merits, (2) he will suffer irreparable harm without preliminary relief, (3) the balance of equities favors an injunction, and (4) an injunction is in the public interest.” *Veterans Guardian VA Claim Consulting LLC v. Platkin*, 133 F.4th 213, 218 (3d Cir. 2025) (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)). The court “should also consider whether the injunction is needed to keep the case alive until the court can award final relief.” *Id.* at 219 (citing *Del. State Sportsmen’s Ass’n, Inc. v. Del. Dep’t of Safety & Homeland Sec.*, 108 F.4th 194, 200-03 (3d Cir. 2024)).

ARGUMENT

I. Petitioner Has Standing.

As this Court has correctly recognized, Petitioner has standing to challenge his imminent removal under the AEA and the Proclamation. ECF No. 20 at 4-5. First, in Petitioner’s I-213 form filed after the Proclamation, ICE alleges (falsely) that he is associated with  *See Waxman Decl.* ¶ 8. Second, there were indications that ICE was preparing to transfer Petitioner to a different detention center in May. *Id.* ¶¶ 12–13. This “strongly suggests that [Petitioner] has shown an imminent threat of removal under the AEA and the Proclamation.” ECF No. 20 at 4; *see also Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 158 (2014); *Clemens v. ExecuPharm Inc.*, 48 F.4th

146, 152 (3d Cir. 2022) (“a plaintiff need not wait until he or she has actually sustained the feared harm in order to seek judicial redress”). And consistent with this Court’s holding, every other court to consider the questions has likewise found standing in similar circumstances. *Y.A.P.A. v. Trump*, No. 25-cv-144, 2025 WL 1454014, at *2 (M.D. Ga. May 21, 2025) (finding standing because “[l]ike the Petitioners in *A.A.R.P.*, Petitioner here is a Venezuelan national who is detained in a U.S. detention center [and h]e believes he is at risk of being classified as an alien enemy in part because ICE represented to an immigration court that Petitioner is a known associate of [REDACTED]”); *W.M.M. v. Trump*, No. 25-cv-059, 2025 WL 1358476, at *8 (N.D. Tex. May 9, 2025) (“the Court concludes that A.R.P. and W.M.M. have met their burden to show that they are at imminent risk of being given notice of removal under the AEA”); *D.B.U.*, 2025 WL 1304288, at *2-3 (finding standing where petitioners had been accused of [REDACTED] membership in I-213 forms).

Moreover, the government has declined to foreclose the possibility of designating Petitioner in the future. *See* ECF No. 17 at 1; ECF No. 19 at 1. As this Court has recognized, “[t]his unwillingness by Respondents to conclusively say that [Petitioner] is not subject to the AEA and the Proclamation, especially in light of the fact that ICE has apparently reached all (or many) of the conclusions necessary to find that [Petitioner] is subject to the Proclamation” shows that Petitioner is at imminent risk of removal. ECF No 20 at 4-5; *see also Driehaus*, 573 U.S. at 165 (finding standing for pre-enforcement review where government “[h]as not disavowed enforcement”); *Doe v. Schorn*, 711 F. Supp. 3d 375, 394 (E.D. Pa. 2024) (finding credible threat when defendant had “not disavowed an intent to prosecute Plaintiff”); *A.S.R.*, 2025 WL 1378784, at *10 (“[e]ven if Respondents have voluntarily chosen to now make [the petitioner] subject to the INA rather than the AEA, there is nothing preventing them from . . . subjecting him to the Proclamation.”); *D.B.U.*, 2025 WL 1163530, at *5–6 (finding standing for TRO where government

“explicitly declined to foreclose” the possibility of future AEA designation); *Y.A.P.A.*, 2025 WL 1454014, at *2 (same).

The existing risk of AEA designation, near immediate and potentially irrevocable removal, and indefinite incarceration in a foreign prison is sufficient to establish standing.

II. Petitioner Is Likely to Succeed on the Merits of His Due Process Claim.

The Supreme Court has already twice made clear that AEA designees are entitled to “due process” and “notice and opportunity to be heard,” which includes notice “afforded within a reasonable time and in such a manner as will allow them to *actually* seek habeas relief.” *J.G.G.*, 145 S. Ct. at 1006 (emphasis added); *see also A.A.R.P.*, 145 S. Ct. at 1368 (“In order to ‘actually seek habeas relief,’ a detainee must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief.”). The Supreme Court also made clear that the government’s notice protocols do not comply with due process. *See A.A.R.P.*, 145 S. Ct. at 1368 (“notice roughly 24 hours before removal, devoid of information about how to exercise due process rights to contest that removal, surely does not pass muster”). And this Court has clearly held what process is due to individuals:

Respondents must provide to individual detainees who are subject to the AEA and the Proclamation the following notice before removing them pursuant to those provisions of law: (1) twenty-one (21) days’ notice and an ‘opportunity to be heard,’ (2) notice that clearly articulates the fact that the individual detainee is subject to removal under the Proclamation and the AEA, and (3) notice in English and Spanish, the language of those sought to be expelled, and if needed, Spanish-to-English interpreters shall be provided for any necessary hearings.

ECF No. 20 at 6; *see also A.S.R.*, 2025 WL 1378784, at *20 (same).

Since the Supreme Court’s decisions, the government has not submitted any sworn declarations establishing a notice procedure that satisfies due process. Indeed, as this Court cautioned, Respondents have “declined to enter into a *stipulation* with [Petitioner] firmly agreeing

to provide [Petitioner] with such notice and opportunity to be heard.” EFC No. 20 at 7 & n.4; *see also A.S.R.*, 2025 WL 1378784, at *19 (“the Court is concerned that, if it does not address this issue via this Opinion and Order of Court, Respondents could designate [the petitioner] as subject to the Proclamation and the AEA tomorrow.”). That risk remains. Respondents have made no such showing here, even when invited to stipulate to providing 21-days’ notice in line with the rule this Court announced. *See* ECF No. 17.

III. Petitioner Faces Imminent Irreparable Harm.

The Supreme Court and this Court have both recognized that individuals will likely suffer irreparable harm in the absence of injunctive relief. *See A.A.R.P.*, 2025 WL 1417281, at *2 (“The detainees’ interests at stake are accordingly particularly weighty” where “[t]he Government has represented elsewhere that it is unable to provide for the return of an individual deported in error to a prison in El Salvador” and “detainees face indefinite detention”); ECF No. 20 at 7-8 (“in the absence of [injunctive relief] from this Court, [Petitioner] face a substantial risk of removal to another country . . . without the possibility of return to this country in the vent such removal is eventually found to be unlawful.”); *A.S.R.*, 2025 WL 1378784, at *22.

IV. The Balance of Equities and Public Interest Weigh Decidedly in Favor of a Preliminary Injunction.

The balance of equities and public interest merge in cases against the government. *See Nken v. Holder*, 556 U.S. 418, 436 (2019). Here, the balance overwhelmingly favors Petitioner. The public has a critical interest in preventing wrongful removals, especially where it could mean a lifetime sentence in a notorious foreign prison. *See* ECF No. 20 at 8 (“there is a significant risk that [Petitioner] would be deprived of the rights due him under Supreme Court precedent.”); *A.A.R.P.*, 145 S. Ct. at 1367 (granting stay pending appeal); *A.S.R.*, 2025 WL 1378784, at *22-23. That is especially so given the government’s position that it will not obtain the release of

individuals mistakenly sent to the notorious Salvadoran prison. *See A.S.R.*, 2025 WL 1378784, at *22.

Respondents cannot show how the government's interests overcome irreparable injury to Petitioner. *See D.B.U. v. Trump*, 2025 WL 1233583, at *1 (10th Cir. Apr. 29, 2025) (no irreparable harm from order restraining AEA removals). Indeed, the government retains the ability to prosecute crimes, detain noncitizens, and remove noncitizens under existing immigration laws. ECF No. 20 at 8 (“because [Petitioner] is currently, detained, he is not posing a risk to public safety at this time”); *A.S.R.*, 2025 WL 1378784, at *23 (same); *J.G.G. v. Trump*, No. 25-5067, 2025 WL 914682, at *11 (D.C. Cir. Mar. 26, 2025) (Henderson, J., concurring) (explaining speculative nature of government's purported foreign policy harms).

CONCLUSION

The Court should convert the temporary restraining order into a preliminary injunction based on the nominal bond already paid. ECF No. 11.

Dated: June 9, 2025

Respectfully submitted,

/s/ Ian Austin Rose

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CERTIFICATE OF SERVICE

I, undersigned counsel, hereby certify that on this date, I filed this Memorandum of Law In Support of Motion for Preliminary Injunction and all attachments using the CM/ECF system, which will electronically serve the filing on counsel for Respondents, the U.S. Attorney's Office for the Western District of Pennsylvania.

Dated: June 9, 2025

Respectfully submitted,

s/ Ian Austin Rose

Pro Bono Counsel for Petitioner