

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

W.J.C.C.,

Petitioner,


v.

DONALD J. TRUMP, *et al.*,


Respondents.

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

**RESPONDENTS' OPPOSITION TO PETITIONER'S
MOTION FOR A PRELIMINARY INJUNCTION**

Petitioner's motion for a preliminary injunction and request that the Court convert the existing temporary restraining order into a preliminary injunction is meritless and must be denied in its entirety. Petitioner lacks standing and cannot demonstrate a likelihood of success on the merits. The President's determinations regarding —including its hostile activities, ties to the Maduro regime, and territorial influence—are well within the scope of the AEA and are supported by the administrative record, as this Court has already found. Petitioner is not subject to the President's Proclamation, and thus has suffered no cognizable injury that would entitle him to injunctive relief. Any challenge Petitioner could mount to the current Alien Enemies Act removal procedures would fail because the revised notice procedures satisfy due process.

INTRODUCTION


The President has determined that thousands of members of a foreign terrorist organization——have illegally “infiltrated” this Nation at the behest of

a hostile foreign power, Venezuela. [REDACTED]

[REDACTED] members are working to “destabiliz[e] ... the United States” by “undertaking hostile actions and conducting irregular warfare” at the direction of the Maduro Regime in Venezuela. *Id.* Like many Presidents faced with hostile foreign incursions into the United States, President Trump has decided to address that threat by exercising his powers under the Alien Enemies Act (AEA), 50 U.S.C. § 21 *et seq.*, which authorizes the summary removal of certain enemy aliens where a foreign nation or government is engaged in “invasions or predatory incursions” of U.S. territory.

The Supreme Court recently held that aliens subject to removal under the AEA “must have sufficient time and information to reasonably be able to contact counsel, file a petition, and pursue appropriate relief” before removal. *A.A.R.P. v. Trump*, 145 S. Ct. 1364, 1367, 1370 (2025).¹ In response, the Executive Branch has revised its procedures for facilitating the expedient but responsible removal of enemy aliens. Before any such alien is removed, he will be given notice in a language he understands, information about how to challenge his removal, the option to request a list of available attorneys, and seven days to file a habeas petition. That process—and the Proclamation it implements—are plainly lawful.

¹ The Court did not specify what process is due, but deemed insufficient “notice roughly 24 hours before removal” that did not contain information on the way to contest removal. *A.A.R.P.*, 145 S. Ct. at 1368. The Supreme Court remanded the case to the Court of Appeals for the Fifth Circuit to “address (1) all the normal preliminary injunction factors, including likelihood of success on the merits, as to the named plaintiffs’ underlying habeas claims that the AEA does not authorize their removal . . . and (2) the issue of what notice is due, as to the putative class’s due process claims against summary removal.” *Id.* at 1368, 1370. Following briefing, the Fifth Circuit will hear argument on June 30, 2025.

This Court has so held in *A.S.R. v. Trump*: the Proclamation supports the finding that  is committing a “predatory incursion” as that term is defined in the AEA. ---F.Supp.3d.---, 2025 WL 1378784, at *18 (W.D.Pa. May 13, 2025). The AEA grants the President a near “unlimited” authority to identify and, as this Court agrees, to countermand foreign invasions or predatory incursions. *See also Ludecke v. Watkins*, 335 U.S. 335 160, 170 (1948) (explaining that the AEA gives courts an exceedingly limited role, consistent with their institutional “competence” and constitutional “responsibility”).

Any challenge Petitioner could mount to the current AEA removal procedures would fail.² Enemy aliens now receive notice of their designation, information about how to challenge any such removal, and ample time to do so. That is more than sufficient for any enemy alien to “actually seek habeas relief in the proper venue before such removal occurs.” *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025). Petitioner believes that the Constitution compels that enemy aliens receive 21-days to even file a habeas petition. That arbitrary figure lacks any legal mooring and would outpace what aliens receive in analogous immigration contexts like expedited removal. Petitioner also demands that all enemy aliens receive the factual basis for their detention before they decide whether to pursue habeas. But that is neither necessary nor prudent. Once an alien is detained under the AEA, and so informed, he knows

² Respondents recognize that in its previous ruling, ECF 21, this Court incorporated its ruling in *A.S.R.*, in which the Court ordered Respondents to provide “twenty-one (21) days’ notice and an opportunity to be heard to allow Petitioner to seek habeas relief in the proper venue before [any] removal under the AEA and the Proclamation occurs.” 2025 WL 1378784, at *20. The Court directed provision of individual notice that the detainee is subject to removal as an alien enemy; that the Notice be read and explained to each alien in a language that alien understands; and because Petitioner has counsel, that foregoing notice be provided to counsel as well. *Id.* Now, upon consideration of the merits of a preliminary injunction, Respondents respectfully advocate that the Court adopt the notice requirements explained herein.

everything he needs to file a habeas petition contesting his detention—i.e., saying he is not in fact a [REDACTED] member. Further, to the extent it is appropriate for Respondents to disclose their evidence at any point, it should be during habeas proceedings, where Respondents can adequately protect any national-security sensitivities.

The equities and public interest similarly cut against a preliminary injunction. Petitioners ask this Court to pretermite a national-security decision issued by the President of the United States, pursuant to his statutory authority and unique constitutional perspective. On the other side of the ledger, Petitioners offer nothing more than generic concerns about improper removal. But the procedures here exceed what is offered in analogous contexts like expedited removal, and give enemy aliens more than ample opportunity to demonstrate they are not members of [REDACTED]. In short, nothing in the AEA, Constitution, or public interest supports Petitioner’s arguments.

STATEMENT OF THE CASE

I. The President’s Proclamation And The Alien Enemies Act

A. The Alien Enemies Act

Enacted in 1798, the AEA grants the Executive broad power to designate, detain, and remove enemy aliens from the United States not only during a “declared war,” but also in response to a “threatened” “invasion or predatory incursion.” Indeed, the Act was enacted at the start of the Quasi-War, when French privateers (privately-owned ships licensed by the government) were seizing American ships but there was no declared war with France. *See J.G.G. v. Trump*, 2025 WL 914682, at *9 (D.C. Cir. Mar. 26, 2025) (Henderson, J. concurring).

The first sentence of Section 21—the Act’s most significant source of authority—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.

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

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

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

Presidents have repeatedly relied on the AEA to detain and remove alien enemies. During the War of 1812, President Madison "require[d] the subjects of the enemy" to report to the local marshal, be removed from residing "within forty miles of tide water," or else be "taken into custody by the marshal." *Lockington*, 15 F. Cas. at 759. Upon entering World War I,

President Wilson issued several proclamations regarding enemy aliens, including that citizens of Austria-Hungary “who may be at large to the danger of the public peace or safety” “will be subject to summary arrest by the United States marshal.” *Ex parte Graber*, 247 F. 882, 883, 887 (N.D. Ala. 1918). In World War II, President Roosevelt issued proclamations for citizens of each Axis power, heavily restricting their movements and providing that those “deemed dangerous to the public peace or safety of the United States by the Attorney General or the Secretary of War, as the case may be, are subject to summary apprehension.” 6 Fed. Reg. 6321. Those proclamations, and the resulting regulations, were “less, rather than greater, in scope than the Act.” *Citizens Protective League v. Clark*, 155 F.2d 290, 295 (D.C. Cir. 1946).

B. [REDACTED]

[REDACTED] is a transnational criminal organization that is supported and directed by members of the Maduro regime in its endeavors. [REDACTED]

[REDACTED]

Exhibit K (Ex.K) at 1-4; Charles Decl., Exhibit L (Ex.L) ¶7.³ The group originated in Venezuelan prisons, growing rapidly by extorting inmates and ultimately seizing control of the prison in Tocoron where it began. Charles Decl., Ex. L ¶7. [REDACTED] has since expanded—first to neighboring countries, and, by leveraging Venezuelan nationals’ migration flow, into North America. Smith Decl., Exhibit M (Ex.M) ¶¶9, 12, 15-16. [REDACTED] has “conducted kidnappings, extorted businesses, bribed public officials, authorized its members to attack and kill U.S. law

³ Exhibits identified alphabetically, specifically A through J, were submitted as attachments to the Response to Motion for Temporary Restraining Order at ECF 13. Exhibits L through P are attached hereto. Exhibit 1 (Ex.1) refers to the Waxman Declaration submitted by Petitioner at ECF 1 Document 1-2 and at ECF 3 Document 3-1.

enforcement, and assassinated a Venezuelan opposition figure.” Office of the Spokesperson, Dep’t of State, Designation of International Cartels (Feb. 20, 2025).

Now, [REDACTED] has infiltrated the United States. Over the past three years, [REDACTED] had established a strong presence in “at least 40 states” and Canada. *Id.* Further, [REDACTED] proliferation in the United States has fostered crime and endangered communities, as [REDACTED] members have committed murder, robbery, human smuggling, human trafficking, sex trafficking, hostage taking, kidnapping, narcotics trafficking, and firearms violations. Smith Decl., Ex.M ¶¶6, 16, 23-25. [REDACTED] has been involved in complex robbery, extortion, and sex trafficking rings from New York to Nashville to Denver. *Id.* ¶¶17-18, 20. [REDACTED] has even taken over territory—including several apartment complexes across the country, including one in Aurora, Colorado where [REDACTED] members kidnapped and abused Venezuelan migrants. *Id.* ¶¶6, 19.

Behind [REDACTED] stands Venezuela, which has used groups like [REDACTED] to intimidate, kidnap, and kill dissidents abroad. FBI Assessment, Ex.K at 4. The FBI has assessed it is “likely” that Venezuela will similarly “leverage [REDACTED] members in the United States as proxy actors to threaten, abduct, and kill members of the US-based Venezuelan diaspora who are vocal Maduro critics,” *id.*, as part of Venezuela’s long-term strategy to “destabilize” democratic countries, including the United States, by releasing [REDACTED] members from prison and directing and financing them to create “political, social, and security issues” for the United States. FBI Assessment, Ex.K at 2. The FBI has determined that Maduro himself oversees decisions to use [REDACTED] strategically. *Id.*

Shortly after President Trump took office, the Secretary of State designated [REDACTED] as a “foreign terrorist organization.” [REDACTED] That designation reflects the Secretary’s

finding that [REDACTED] engages in “terrorist activity” or “terrorism” or “retains the capability and intent” to do so, and thereby “threatens the security of United States nationals or the national security of the United States.” 8 U.S.C. §§1189(a)(1), (d)(4).

On March 14, 2025, the President signed a proclamation invoking his authorities under the Alien Enemies Act, 50 U.S.C. § 21 *et seq.*, against [REDACTED] members, citing [REDACTED] entwinement with Venezuela and its hostile designs on the United States. [REDACTED]

[REDACTED] That Proclamation outlines the President’s findings that [REDACTED] members meet the AEA’s statutory criteria for removal. The President found that [REDACTED] is entwined with Venezuela so as to effectively function as a “hybrid criminal state.” *Id.* [REDACTED] is “closely aligned with” Maduro’s regime in Venezuela, and has “infiltrated” the regime’s “military and law enforcement apparatus.” *Id.* Further, through [REDACTED] Venezuela is “conducting irregular warfare and undertaking hostile actions against the United States,” *id.*, and “is perpetrating an invasion of and predatory incursion into the United States,” posing “a substantial danger” to the Nation. *Id.*

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

The Proclamation also deemed all such [REDACTED] members “subject to immediate apprehension, detention, and removal.” *Id.* The President directed the “issu[ance of] any guidance necessary to effectuate the prompt apprehension, detention, and removal of all Alien

Enemies described” above. *Id.* Aliens apprehended under the Proclamation may be detained until their removal, then may be removed to “any such location as may be directed” by enforcing officers. *Id.*

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

Since January 20, 2025, Immigration Customs Enforcement (ICE), Homeland Security Investigations has “conducted 1,238 arrests involving TdA members or affiliates,” 384 of which were criminal. Smith Suppl. Decl., Exhibit N (Ex.N) ¶6. ICE has been identifying members of TdA based on “investigative techniques and information such as previous criminal convictions for TdA-related activities, surveillance, law enforcement encounters, interviews, computer indices checks, association with other known gang members, and self-identification,” along with other sensitive law enforcement criteria. *Id.* ¶7.

█ members have proven difficult and dangerous to keep in detention. For example, there are at least 176 █ class members currently detained in the Dallas area, many of whom have been there since April. Johnson Decl., Exhibit O (Ex.O) ¶¶7, 9. Because █ members pose a danger to the public they must detained, which also limits ICE’s ability to detain other criminal aliens by straining bedspace and other resources. Charles Decl., Ex.L ¶9. And because █ was founded and grew in prisons, █ members are adept at recruiting and organizing within prisons through extortion. Johnson Decl., Ex.O ¶12; Smith Suppl. Decl., Ex.N ¶10. Keeping so many █ members in detention thus “poses a grave risk to ICE

personnel; other, nonviolent detainees; and the United States as a whole.” *Id.* For example, on April 26, 23 putative class members “barricaded their housing unit,” covered the surveillance cameras and blocked the housing unit windows, “threatened to take hostages and injure facility contract staff and ICE officers,” “attempted to flood the housing unit by clogging toilets,” and refused to comply with orders for several hours. Johnson Decl., Ex.O ¶9. Due to the danger those detainees pose, they had to be moved to another facility. *Id.* ¶11.

C. *A.S.R. v. Trump*

In *A.S.R.*, following a thorough analysis of the parties’ positions, the Court undertook its own in-depth analysis of the AEA and the Proclamation to conclude that [REDACTED] had in fact “enter[ed] the United States for purposes such as destabilizing the country, committing rampant crime, and then funneling profits from that crime back to South America, . . . [and TdA is] the very definition of a cohesive group entering territory with a common and significant destructive purpose, the modern equivalent of the “enemies, pirates, and robbers,” committing “incursions” around the enactment of the AEA[.]” 2025 WL 1378784, at *15. This conclusion followed from the Supreme Court’s “indicat[ion] that courts should consider a statute’s meaning as fixed, but its application as subject to change in light of modern developments[.]” *Id.* (citing *Wis. Ctr. Ltd. v. United States*, 585 U.S. 274, 284 (2018)). The Court accordingly ruled that the Proclamation complied with the AEA because [REDACTED] “is committing a predatory incursion” into the United States. *Id.* at *17; *see also id.* at *17-19.

The Court further found that A.S.R. had standing to challenge the sufficiency of notice. *Id.* at *19. Finding insufficient Respondents’ provision of 12 hours’ notice within which a detainee may indicate a desire to seek habeas relief and then 24 hours to so file for that relief, the Court ordered Respondents to provide “twenty-one (21) days’ notice and an opportunity to

be heard to allow Petitioner to seek habeas relief in the proper venue before [any] removal under the AEA and the Proclamation occurs.” *Id.* at *20. The Court directed provision of individual notice that the detainee is subject to removal as an alien enemy; that the Notice be read and explained to each alien in a language that alien understands; and because Petitioner had counsel, that foregoing notice be provided to counsel as well. *Id.*

II. Procedural Background of *W.J.C.C. v. Trump*

Petitioner is a native and citizen of Venezuela who is currently detained in the custody of ICE. Ex.1 at 1 (Form I-213). As will be described in more detail below, Petitioner was previously released from ICE custody but was subsequently re-detained and is now subject to mandatory detention on security-related grounds. Ex.I at 1 (5/14/25 order) (citing 8 C.F.R. § 1003.19(h)(1)(i)(C)).

On a date and at a location unknown, and not through a designated port of entry, Petitioner entered the United States without inspection or parole by an immigration officer in violation of the 8 U.S.C. § 1182(a)(6)(A)(i). Ex.1 at 3.

On [REDACTED] 2024, a state court convicted Petitioner of [REDACTED] [REDACTED] in violation of [REDACTED], a misdemeanor. *Id.* He was sentenced to probation. *Id.*

On May 20, 2024, ICE arrested Petitioner. *Id.* The next day, ICE commenced removal proceedings under 8 U.S.C. § 1229a by issuing Petitioner a Notice to Appear (NTA) charging him with inadmissibility pursuant to 8 U.S.C. § 1182(a)(6)(A)(i) for being present in the United States without having been admitted or paroled. Ex.A at 1-2 (NTA); Ex.1 at 3.

On August 27, 2024, following Petitioner's request for a custody redetermination pursuant to 8 C.F.R. § 1236, an immigration judge granted Petitioner's release on \$10,000 bond. Ex.B (8/27/24 order). On September 6, 2024, Petitioner paid bond of \$10,000 and was released. Ex.C (9/23/24 Form I-830E).

On [REDACTED] 2025, a state court convicted Petitioner of [REDACTED] [REDACTED] in violation of [REDACTED] Ex.1 at 3. Four days later, on [REDACTED] 2025, that same court convicted Petitioner of [REDACTED] [REDACTED] because he was previously convicted [REDACTED] [REDACTED] 2024. *Id.* As a result, he was sentenced to two days of incarceration. *Id.*


On February 7, 2025, ICE encountered Petitioner at a county detention center during jail screenings, and lodged a detainer against him. *Id.* at 2. On February 9, 2025, the detention center released Petitioner into ICE custody. *Id.* at 2-3. During his initial interview with ICE, Petitioner claimed no fear of returning to Venezuela. *Id.* at 4. Petitioner was suspected of membership in [REDACTED] to his associates and having gang symbols on his vehicle, property, and clothing. *Id.*

Petitioner is detained in ICE custody at Moshannon Valley Processing Center (MVPC) pending completion of his removal proceedings pursuant to 8 U.S.C. § 1229a. Ex.D (2/10/25 Form I-830). On February 18, 2025 and at the request of ICE, venue for Petitioner's immigration proceedings was transferred to Elizabeth Immigration Court. Ex.E (DHS motion); Ex.F (2/18/25 order).

Petitioner filed for relief from removal on February 14, 2025. On March 6, 2025, the Executive Office for Immigration Review issued a notice of hearing, scheduling Petitioner for

an individual hearing on the merits of his applications for relief on June 30, 2025. Ex.G (notice).

While awaiting his individual hearing, Petitioner requested another custody redetermination hearing pursuant to 8 C.F.R. § 1236, but later withdrew the request on April 22, 2025. Ex.H (4/22/25 order). Petitioner again requested a custody redetermination pursuant to 8 C.F.R. § 1236, but it was denied on May 14, 2025 because Petitioner is subject to mandatory detention on security-related grounds. Ex.I.

After review of the facts of Petitioner's case, ICE/Enforcement Removal Operations (ERO) determined his membership in  Doc.1 at 4; Ex.A at 1 (noting removability based on § 212(a)(6)(A)(i) of INA). Petitioner has not been processed under the AEA. *See* Doc.1 at 4; Ex.A at 1.

On May 22, 2025, Petitioner filed in this Court a petition for a writ of habeas corpus and a complaint for declaratory and injunctive relief seeking to enjoin Respondents from exercising authority under the AEA. ECF 1 at 1-4; ECF 2, 3. Petitioner alleged that: the AEA is ultra vires, implementation of the AEA violates the Foreign Affairs Reform and Restructuring Act of 1998; application of the AEA to Petitioner violates the Fifth Amendment; and removal of Petitioner under the AEA violates 28 U.S.C. § 2241. ECF 1 at 8-9. As relief, Petitioner sought temporary and permanent enjoinder of his removal pursuant to the AEA; temporary and permanent enjoinder of his transfer from the Western District of Pennsylvania; a declaration that the Proclamation is unlawful; grant of a writ of *habeas corpus*; a declaration that removals pursuant to the Proclamation violate Petitioner's due process rights; enjoinder of his removal based on the Proclamation without providing to Petitioner and his counsel at least 21-day notice of and a meaningful opportunity to respond to any designation as an alien enemy

under the Proclamation prior to the removal date; and any other relief as deemed proper. ECF 1 at 9-10; *see also* ECF 3.

The next day, the Court granted Petitioner a TRO, ECF 4, and directed briefing on the propriety of extension of that order. *See* ECF 7, 13, 16. Following a hearing, ECF 17, and on June 4, 2025, the Court granted in part and denied in part Petitioner's request to extend the TRO. *W.J.C.C. v. Trump*, No. 25-153, 2025 WL 1572856 (W.D. Pa. June 4, 2025). ECF 20, 21.

In so ruling, the Court construed Petitioner's submission as seeking a TRO only on two grounds of relief: (1) barring his removal under the Proclamation and the AEA absent 21 days' notice and an opportunity to be heard consistent with this Court's opinion in *A.S.R.*, 2025 WL 1378784; and (2) requiring Respondents to provide his counsel with at least 72 hours' notice in the event that they intend to transfer him outside of the Western District of Pennsylvania." The Court so construed Petitioner's request based on his other submissions to the Court. *See* ECF 2, 17, 18. To the extent Petitioner sought any other relief, including declarations regarding the legality of the Proclamation and its implementation, the Court denied those requests based on its decision in *A.S.R.* *W.J.C.C.*, 2025 WL 1572856, at *1 n.1.

The Court ruled that Petitioner had standing to challenge his removal under the Proclamation; that he met the standard for a TRO; and 1) ordered Respondents to comply with the notice requirements articulated in *A.S.R.* relative to Petitioner; 2) barred Respondents from transferring Petitioner out of the Western District of Pennsylvania under provisions of law other than the INA; and (3) encouraged Respondents to provide Petitioner's counsel with 72-hours' notice in the event that Respondents intend to transfer Petitioner outside of this District under the INA. *Id.* at *1-5.

The Court then allowed Petitioner to seek a preliminary injunction. ECF 21. Petitioner did so, asking the Court to convert its TRO to a preliminary injunction. ECF 22, 23. His brief argues that he has standing, ECF 23 at 5-6; that he is likely to succeed on the merits of his Due Process claim; *id.* at 7-8, that he faces imminent irreparable harm; *id.* at 8, and that the equities and the public interest weigh in favor of a preliminary injunction. *Id.* at 8-9.

III. The Revised Notice Procedures


In light of *A.A.R.P.*, Respondents have revised its notice policy for aliens designated for removal under the AEA. *Notice and Warrant of Apprehension and Removal Under the Alien Enemies Act*, Exhibit P (Ex.P). The new notice form tells aliens, in a language they can understand, that they can contest their removal under the AEA by filing a habeas petition in the district where they are detained. *Id.* The notice further informs aliens that they may retain counsel, make calls for that purpose, and will be given a list of potential counsel upon request. *Id.*


Aliens will be given seven days from receipt of that notice to file habeas petitions, during which time the aliens will not be removed under the AEA. *Id.* Aliens who petition for habeas will not be removed until that petition is resolved. *Id.* Even under the previous notice policy, numerous aliens have been able to file habeas petitions, including Petitioner.⁴

⁴ See, e.g., *G.F.F. & J.G.O. v. Trump*, No. 25-cv-2886 (S.D.N.Y. Apr. 8, 2025); *J.A.V. v. Trump*, No. 25-cv-72 (S.D. Tex. Apr. 8, 2025); *D.B.U. v. Trump*, No. 25-cv-1163 (D. Colo. Apr. 12, 2025); *A.S.R. v. Trump*, No. 25-cv-133 (W.D. Pa. Apr. 15, 2025); *A.A.R.P. v. Trump*, No. 25-cv-59 (N.D. Tex. Apr. 16, 2025); *Gutierrez-Contreras v. Trump*, No. 25-cv-911 (C.D. Cal. Apr. 14, 2025); *Arevalo Millan v. Trump*, --- F. Supp. 3d ---, 2025 WL 15554183, at *9 (C.D. Cal. June 2, 2025).

SUMMARY OF ARGUMENT

Petitioner asks this Court to continue to enjoin sensitive policy judgments made by the President and the Executive Branch. Petitioner cannot make any of the showings necessary to secure the extraordinary injunction that he requests. He fails to establish standing. None of his arguments is likely to succeed on the merits. And the balance of equities cuts strongly against him

Petitioner cannot show a due-process violation under the revised notice policy. Under the revised policy, AEA detainees are now given notice of their detention in a language they understand, information about how to challenge it including how to contact counsel, and seven days in which to file a habeas petition before being removed. Notice, Ex. P. Those procedures readily afford aliens a “sufficient” opportunity to “actually seek habeas relief,” particularly in light of the Respondents’ countervailing interests in removing dangerous  members swiftly. *See A.A.R.P.*, 145 S. Ct. at 1368.

Petitioner cannot satisfy the remaining preliminary-injunction factors. Although Petitioner contends that he may be removed to a prison in El Salvador with supposedly harsh conditions, he does not explain why enjoining the Proclamation or Respondents’ notice procedures would prevent those harms, given that he is removable under the INA in any event, including possibly to El Salvador. And on the other side of the balance of harms, the Supreme Court has already “recognize[d] the significance of the Government’s national security interests” in this case. *Id.* The President has determined that  and its members pose significant danger to the national security of the United States. And the record establishes that their imminent removal is necessary in light of the dangers they have posed and continue to pose while in detention.

STANDARD OF REVIEW

Emergency injunctive relief is “an extraordinary remedy that may only be awarded upon a clear showing that the [petitioner] is entitled to such relief.” *Winter v. Nat. Res. Def. Council*, 555 U.S. 7, 22 (2008). The danger of a mistaken ruling on an incomplete record is heightened when, as here, the “requested immediate injunctive relief deeply intrudes into the core concerns of the executive branch.” *Adams v. Vance*, 570 F.2d 950, 954 (D.C. Cir. 1978); *Sampson v. Murray*, 415 U.S. 61, 83–84 (1974) (A court is “quite wrong in routinely applying . . . the traditional standards governing more orthodox ‘stays’” in an area to which “the Government has traditionally been granted the widest latitude.”); *see also Hope v. Warden York Cnty. Prison*, 956 F.3d 156, 161 (3d Cir. 2020) (recognizing that holding of *Adams* and citing *Sampson*).

Petitioner must establish that (1) “he is likely to succeed on the merits,” (2) “he is likely to suffer irreparable harm in the absence of preliminary relief,” (3) “the balance of equities tips in his favor,” and (4) “an injunction is in the public interest.” *Winter*, 555 U.S. at 20. The latter two factors “merge when the Government is the opposing party.” *Nken v. Holder*, 556 U.S. 418, 435 (2009).

ARGUMENT

I. Because he has not demonstrated an imminent threat of injury, Petitioner lacks standing and therefore the Court lacks jurisdiction over his claims

Petitioner has not, as he must, “b[orne] the burden of establishing standing” necessary for injunctive relief. *Murthy v. Missouri*, 603 U.S. 43, 58 (2024) (quoting *Carney v. Adams*, 592 U.S. 53, 59 (2020)). Because he “must support each element of standing ‘with the manner and degree of evidence required at the successive stages of the litigation,’” *id.* (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992)), “[a]t the preliminary injunction stage, then, [Petitioner] must

make a ‘clear showing’ that [he] is ‘likely’ to establish each element of standing.” *Id.* (quoting *Winter*, 555 U.S. at 22). To constitute sufficient injury in fact, a plaintiff must demonstrate that a threat of future harm is “certainly impending[.]” *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1997); *see also New Jersey Physicians, Inc. v. President of the United States*, 653 F.3d 234, 238 (3d Cir. 2011) (plaintiffs must “demonstrate a realistic danger of sustaining a direct injury[.]”) (quoting *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289, 298 (1979)); *Reilly v. Ceridian Corp.*, 664 F.3d 38, 42 (3d Cir. 2011) (“indefinite risk of future harms” does not confer standing). A “conjectural or hypothetical” injury is not justiciable. *Lujan*, 504 U.S. at 560.

Preliminarily, Petitioner fails to establish that he is considered subject to the President’s Proclamation. In fact, ICE has concluded that he is not subject to the President’s Proclamation. Doc.1 at 4; Ex.A at 1. This means he has not, and indeed, cannot show that he is under an “actual and imminent” threat of suffering a “concrete and particularized” injury-in-fact as it relates to enforcement of the President’s Proclamation. *See Summers v. Earth Island Inst.*, 555 U.S. 488, 493 (2009).

His claim of injury caused by the AEA notice policy is further undermined by the fact that Petitioner has already filed a habeas claim and any notice policy therefore cannot cause him harm. *See J.G.G.*, 145 S. Ct. at 1005-06 (notice needed that “will allow them to actually seek habeas relief in the proper venue before such removal occurs”). While the relevant question is Petitioner’s standing, not that of other possible class members, it bears highlighting the many other TROs have been filed throughout the country and within this District. These demonstrate that detainees putatively at risk of removal pursuant to the Proclamation have had ample notice and opportunity to file their own individual habeas petition and legal actions. *See e.g., J.A.V. v. Trump*, No. 1:25-cv-072 (S.D. Tex., TRO issued April 25, 2025); *A.S.R. v. Trump*, No. 3:25-cv-00113 (W.D. Pa,

TRO issued Apr. 15, 2025); *J.G.G.*, 1:25-cv-00766 (main district court case challenging removal of Venezuelan natives under AEA, TRO issued March 15, 2025).

To the extent Petitioner alleges or subjectively believes ICE/ERO could reverse course and designate him under the AEA, this mere hypothetical is insufficient to establish standing, particularly on the chain of events Petitioner presents. *See Whitmore*, 495 U.S. at 158. The Supreme Court has “repeatedly reiterated that threatened injury must be certainly impending to constitute injury in fact, and that allegations of possible future injury are not sufficient.” *Clapper v. Amnesty Intern. USA*, 568 U.S. 398, 409 (2013) (internal quotations, alterations, and citations omitted). In fact, this conclusion is the only sensical one given that Petitioner is scheduled for a merits hearing on June 30, 2025. Ex.G.


More to the point, Petitioner has not shown that he is under an “actual and imminent” threat of suffering a “concrete and particularized” injury-in-fact. *See Summers*, 555 U.S. at 493. In sharp contrast to petitioner in *A.S.R.*, Petitioner here relies on a series of perceptions, not facts. He begins with his closed commissary account—an event common to every member of MVPC, Ex.J ¶1 (Blair Dec.), hops to unattributed statements that closure of his commissary account unequivocally equates to a transfer to a facility in Louisiana, followed by the leap that at some point he will be designated and removed under the Proclamation without adequate notice. Petitioner in *A.S.R.* relied on nothing so speculative or attenuated: that petitioner was actually transferred from MVPC and here, the opposite is true: closure of the commissary account was a common occurrence and there is no indication that Petitioner was scheduled for transfer from MVPC in the immediate future. Ex.J ¶2 (Blair Dec.). Petitioner’s suspicions must give way to fact.

The necessarily conclusion is that Petitioner’s theory of standing is so impaired that he cannot show threatened injury that “must be certainly impending.” *Clapper*, 568 U.S. at 410 (citation omitted). At best, his purported injury is nothing but a “possible future injury,” which is patently insufficient to satisfy the requirements of Article III. *Whitmore*, 495 U.S. at 158 (citations omitted).

At most, Petitioner could attempt to liken his potential future designation under the AEA to pre-enforcement challenges to criminal statutes. In those cases, the Supreme Court has looked to two factors in evaluating standing: (1) whether the plaintiff has “an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute,” and (2) whether “there exists a credible threat of prosecution[.]” *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014); *see also Dream Defs. v. Gov. of the State of Fla.*, 57 F.4th 879, 887 (11th Cir. 2023). Here, Petitioner cannot and has not satisfied either factor. Indeed, Petitioner’s averments of future injury are infirm on their face: he asks the Court to engage in a highly speculative chain of inferences based on the trigger of closure of his commissary account, shown by Respondents to instead to be a facility-wide shut down, not one directed to Petitioner. Ex.J. Accordingly, at present, Petitioner cannot establish that his conduct falls within the scope of the challenged statute nor establish a credible threat of prosecution because ICE/ERO—as the responsible entity—has concluded the exact opposite. This finding plainly separates Petitioner’s circumstances from those where courts have found that plaintiff established standing under this test. *See, e.g., Driehaus*, 573 U.S. at 164 (finding standing for pre-enforcement challenge where prosecuting agency found probable cause that plaintiff had violated statute).

For these reasons, Petitioner is not like the petitioner in *A.S.R.*. Consequently, Petitioner has failed to establish standing, a fatal flaw to his request for a preliminary injunction.

II. Because the Proclamation is a lawful exercise of the President’s broad powers under the AEA, Petitioner cannot show he is likely to succeed on the merits of any challenge to the Proclamation

In *A.S.R.*, the Court held because  had entered the country with the destructive purpose of “destabilizing the country, committing rampant crime, and then funneling profits from that crime back to South America,” that foreign terrorist organization was committing an predatory incursion into the United States and therefore the Proclamation complied with the AEA. 2025 WL 1378784, at *15, *17-19.⁵ Here, Petitioner makes no argument to the contrary. This necessarily weighs against a grant of relief for Petitioner because he is not likely to succeed on the merits.

III. The revised AEA notice procedures satisfy due process

Petitioner also cannot prevail on his due-process challenge to Respondent’s procedures for notice of removal under the AEA. Respondents’ revised procedures exceed whatever procedural protections are required. Petitioner relies on this Court’s conclusion that Respondents must provide 21 days’ notice and an opportunity to be heard before removal pursuant to the Proclamation. *A.S.R.*, 2025 WL 1378784, at *20. But, this is more than the

⁵ For purposes of preservation, Respondents maintain, given the exceedingly limited scope of judicial review under the AEA and the significant deference courts extend to the President’s determinations, that the Proclamation comports with the AEA’s statutory requirements also because the statute authorizes the President to direct the removal of alien enemies if (1) there is an “invasion” that is “perpetrated, attempted, or threatened” “against the territory of the United States,” 50 U.S.C. § 21, and (2) such action is taken by a “foreign nation” or “government,” *id.*

Constitution requires and would perversely afford enemy aliens far greater process than many ordinary illegal entrants—such as those subject to expedited removal—receive.

A. The AEA notice procedures provide sufficient opportunity to seek habeas relief

In *J.G.G.*, the Supreme Court held that the AEA and the habeas corpus statute require that detainees “receive notice ... that they are subject to removal under the Act,” and that 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.” 145 S. Ct. at 1006. In *A.A.R.P.*, the Court further clarified that “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.” 145 S. Ct. at 1368.

Respondents’ new procedures readily satisfy, and indeed exceed, what the Supreme Court has held is required: AEA detainees receive notice of their detention in a language they understand, information about how to challenge it, and the time to do so. Notice, Ex.P. Nothing more is required.

To start, the procedures now provide an alien with notice that tells him that he can challenge his AEA designation by filing a habeas petition in his district of confinement. Notice, Ex.F. That notice adds that a list of available attorneys will be provided upon request (and aliens can call those attorneys, or call family members or others who can assist). *Id.* Respondents will ensure that all of this information is conveyed to the alien in a language he understands. *Id.* Thereafter, the alien then has at least seven days to choose to file a habeas petition. *Id.* If the alien does so, he will not be removed under the AEA until that petition is adjudicated. *Id.*

Those procedures readily afford aliens a “sufficient” opportunity to “actually seek habeas relief.” *See A.A.R.P.*, 145 S. Ct. at 1368. The new notice tells an alien exactly “how to ... contest [his] removal.” *Id.* And the new procedures afford more than adequate time to do so. Indeed, seven days to merely *file* a habeas petition is far greater process than what the federal immigration laws offer in analogous contexts. Most relevant, the expedited-removal process under 8 U.S.C. § 1225(b) subjects certain illegal aliens to immediate removal “without further hearing or review,” 8 U.S.C. § 1225(b)(1)(A)(i), subject to only a limited window to establish a “credible fear of persecution.” *DHS v. Thuraissigiam*, 591 U.S. 103, 109 (2020). Within that window, credible fear determinations are often made within a matter of hours, and any review of an adverse determination must be completed within a week—and “to the maximum extent practicable within 24 hours.” 8 U.S.C. § 1225(B)(iii)(III).

The Supreme Court has held that these procedures satisfy due process. *Thuraissigiam*, 591 U.S. at 140. Rightly so. “[I]n general,” the English common law only required “several days” between the “time of summons and a hearing.” *See, e.g., 2 Chitty’s General Practice* 176 (1834); *see also Lindsey v. Normet*, 405 U.S. 56, 63 (1972) (eviction statute required trial 6 days after notice). The procedures here—which afford seven days plus additional protections—readily pass muster, not least because due process is “flexible and calls for such procedural protections as the particular situation demands.” *Morrissey v. Brewer*, 408 U.S. 471, 481 (1972); *see also Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). And where the Government has a strong interest in “prompt, vigorous” action—especially in matters of national security—due process does not forbid the Government from requiring illegal aliens to move with “appropriate” expedition. *The Japanese Immigrant Case*, 189 U.S. 86, 101 (1903).

That is this case. Respondents have a tremendous interest in swiftly removing alien enemies from the United States—especially where the class of aliens is defined by membership in a terrorist organization (versus simply being a national of a hostile foreign power). Here, the President, operating from his unique constitutional perch as Commander-in-Chief, has determined that the presence of [REDACTED] members in this country endangers the nation and requires immediate action. [REDACTED] And as Respondents have explained, that threat is not alleviated by the fact some [REDACTED] members happen to be presently detained.

This April, for instance, [REDACTED] aliens barricaded themselves within their housing unit, and “threatened to take hostages and injure facility contract staff and ICE officers.” Johnson Decl. Ex.O at 50a. More generally, [REDACTED] has long been able to “grow its numbers” from others in detention, creating the risk that current AEA aliens will be able to “recruit new [REDACTED] members” while being held here. *Id.* at 51a. So long as Respondents are forced to keep [REDACTED] members in this country, they present a “grave risk to ICE personnel; other, nonviolent detainees; and the United States as a whole.” *Id.* Those risks compel an efficient process. Nothing in the AEA or anything else requires this country to endure those risks beyond what is necessary for those aliens to raise a claim.

B. A 21-Day long notice regime is not legally required

Any argument by Petitioner that the Constitution requires that Respondents give enemy aliens 21 days to merely file a habeas petition in the proper venue before any removal under the AEA and the Proclamation occurs, 2025 WL 1378784, at *20, is misplaced. Respondents’ new notice procedures ensure that aliens receive all relevant information in a language they understand—including a list of available counsel. There is no reason why an alien needs weeks to avail himself of those options, especially where the Constitution does not give an illegal alien a right to counsel in this context in the first place.

Moreover, any practical concerns Petitioner might raise would flounder on the facts. Petitioner himself was able to seek relief here within hours of learning of closure of his commissary account and his inference that transfer and then removal inextricably followed. And petitioners across the country have filed petitions in fewer than seven days, with the help of counsel. *See, e.g., D.B.U.*, 2025 WL 116350; *G.F.F.*, 2025 WL 1301052, at *6. Nothing suggests that aliens facing removal under the AEA could not file habeas petitions within a week, least of all when the inquiry at issue—whether the alien is in fact a member of a designated foreign terrorist organization—is rather straightforward.

That the Government chose to afford enemy aliens 30 days in World War II does not change this conclusion. Instead, that choice reflects a policy decision, not a constitutional floor that is somehow required for all time, across all modes of enemies. Indeed, the 1940s proclamation reflected a policy of “restraint” by the Attorney General, not some constitutional dictate. *Citizens Protective League*, 155 F.2d at 295. To that end, those procedures were never binding and have since been repealed. 10 Fed. Reg. 12189; 27 Fed. Reg. 12617, 12619.

World War II also proves a poor analog, because the context of detention today is very different from the 1940s. Before the internet and modern communications, more time was needed to provide notice, reach counsel, file claims, and hold hearings. Nowadays, technology and greater access to legal services make filings much quicker and easier. What was required to effectuate a level of process during the 1940s is far greater than what is needed today.

And Petitioner could not explain why enemy aliens are somehow entitled to more process than other aliens removed via summary proceedings like expedited removal. All of the same “practical” considerations that Petitioner could allege are equally present there: Aliens stopped at the border—or unable to adequately show that they have been continuously

present in the United States for two years—often do not speak English, will not have immediate access to counsel, and need time to develop a case. Even so, certain expedited-removal proceedings must conclude statutorily in the same time that enemy aliens are now given to merely *start* theirs via habeas. See *Thuraissigiam*, 591 U.S. at 109-13 (describing scheme and citing relevant provisions).

Nor does the Constitution require, as Petitioner might argue, Respondents to provide the factual basis for an alien’s designation as an alien enemy within his original detention notice—and before any habeas proceedings even begin. This is because when the President issues a proclamation under the AEA, he establishes a class of aliens who are subject to summary removal. And when the Executive Branch detains an alien pursuant to that proclamation, it necessarily determines that the alien is a member of that class. That conclusion—*i.e.*, the individual is an alien of a certain age, nationality, and affiliation—is sufficient to justify the alien’s detention, and is everything that an alien needs to “actually seek habeas relief in the proper venue before such removal occurs”—*i.e.*, to assert he is not one of those things. *J.G.G.*, 145 S. Ct. at 1006.

Nor could Petitioner, even if he tried, analogize his situation to that of a criminal defendant facing indictment. It is well-settled that what is required in *criminal* proceedings is different in kind from what is needed in *civil* immigration enforcement. See, e.g., *Ramirez-Osorio v. INS*, 745 F.2d 937, 944 (5th Cir. 1984). And that distinction is particularly applicable here. Given the nature of the AEA—the exigencies involved, and the presidential responsibilities it bestows—courts have held that it “must be presumed that the President has acted lawfully” in detaining an enemy alien. *Ex parte Risse*, 257 F. 102, 104 (S.D.N.Y. 1919). In turn, the “burden” is on the alien to show he is “not” part of that “hostile” invasion or

incursion. *Id.* It is “not upon the United States to show that he is.” *Ex parte Gilroy*, 257 F. 110, 114 (S.D.N.Y. 1919); *see also United States ex rel. Schlueter v. Watkins*, 67 F. Supp. 556, 565 (S.D.N.Y. 1946) (describing procedures during World War II).

A requirement of a factual basis would improperly invert this burden: It would require that Respondents disclose to an enemy alien the basis for its conclusion before that alien even decides whether to contest his removal—without any concrete basis for doing so. Moreover, to the extent Respondents must justify its classification before an alien’s removal, the proper time is during habeas proceedings, not as a precursor. Indeed, the evidence showing membership in an enemy class—particularly when that class is a foreign terrorist organization—is often highly sensitive and may require a seal or otherwise be protected. That could be possible during habeas proceedings, but not if Respondent’s case must be affirmatively disclosed with the original notice.

Petitioner’s due-process claims are especially misguided because the Due Process Clause requires no more process than what the political branches provide. The Supreme Court has long held that “the due process rights of an alien seeking initial entry” are no greater than “[w]hatever procedure[s] [are] authorized by Congress.” *Thuraissigiam*, 591 U.S. at 139. For aliens who have never been lawfully admitted—a group which undoubtedly includes Petitioner here—“the decisions of executive or administrative officers, acting within powers expressly conferred by Congress, are due process of law.” *Nishimura Ekiu v. United States*, 142 U.S. 651, 660 (1892) (emphasis added); *accord Thuraissigiam*, 591 U.S. at 138-40.

On that score, the Supreme Court’s cases have long indicated that illegal aliens who evade detection in crossing the border should be treated no differently than those who are stopped at the border. *Thuraissigiam*, 591 U.S. at 138-40. Aliens who have been admitted

may claim due-process protections beyond what Congress has provided, even where their legal status changes (*e.g.*, an alien who overstays a visa, or is later determined to have been wrongly admitted). *See Wong Yang Sung v. McGrath*, 339 U.S. 33, 49-50 (1950). But the Supreme Court has never held that aliens who have “entered the country clandestinely” are entitled to such additional rights. *Japanese Immigrant*, 189 U.S. at 100.

That is fatal to much of Petitioner’s due process stance. To be sure, the Supreme Court has interpreted the AEA and habeas corpus statute to provide for tailored review of AEA decisions. *See Ludecke*, 335 U.S. at 163-64, 171 n.17. But Congress, not the Constitution, chose that process. The Due Process Clause does not license federal courts to augment those procedures. While the AEA guarantees enemy aliens “a reasonable time . . . to actually *seek* habeas relief,” *J.G.G.*, 145 S. Ct. at 1006 (emphasis added)—the Due Process Clause does not layer yet more process on top. What matters, in sum, is what the AEA requires—and in conducting that inquiry, the federal courts should be loath to displace what the Executive Branch has decided. The “full responsibility for the just exercise of this great power may validly be left where the Congress has constitutionally placed it—on the President of the United States.” *Ludecke*, 335 U.S. at 173.

In short, the current process for AEA removals comports with the AEA and due process alike. The lack of uniformity resulting from each district court forging its own path—each establishing their own procedures, with their own criteria, yielding their own estimation of what should be required, *see, e.g., A.S.R.*, 2025 WL 1378784 (21 days); *D.B.U.*, 2025 WL 116350 (same); *G.F.F.*, 2025 WL 1301052, at *6 (indicating 10 days); *Gutierrez-Contreras v. Warden*, 2025 WL 1202547, at *3 (C.D. Cal. Apr. 25, 2025) (14 days), underscores that courts

should remain wary of engaging in judicial policymaking in an area laden with deference to the Executive Branch's judgments about how to combat hostile actions by foreign powers.

IV. The Court lacks authority to bar Respondents' movement of Petitioner out of the Western District

While the Court properly has not restrained Respondents from moving Petitioner out of the Western District under provisions of the INA, there is no firm legal basis to bar Respondents from moving him out of the District pursuant to any other provision, including the AEA.⁶ In fact, the Court lacks jurisdiction to enjoin the President's exercise of authority under Article II and the AEA, and as delegated to members of the Executive Branch. The Supreme Court has long recognized that courts cannot issue an injunction purporting to supervise the President's performance of his duties. *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475, 501 (1867) (courts have "no jurisdiction . . . to enjoin the President in the performance of his official duties"); *Trump v. United States*, 603 U.S. 593, 607 (2024) (recounting that the President "has important foreign relations responsibilities: [including] . . . recognizing foreign governments . . . overseeing international diplomacy and intelligence gathering, and managing matters related to terrorism . . . and immigration"); *see also Newdow v. Roberts*, 603 F.3d 1002, 1013 (D.C. Cir. 2010) ("With regard to the President, courts do not have jurisdiction to enjoin him.").

Consistent with that general rule, courts have held for over a century that the President's authority and discretion under the AEA is not a proper subject for judicial scrutiny: "The authority of the President to promulgate by proclamation or public act 'the manner and degree

⁶ The Court also "encouraged Respondents to provide" Petitioner's counsel "with 72-hours' notice in the event that Respondents intend to transfer" Petitioner outside of the Western District under the INA." 2025 WL 1572856, at *1. But, due to operational and security concerns, Respondents are not in a position to act upon this recommendation.

of the restraint to which they (alien enemies) shall be subject, and in what cases, is, of course, plenary and not reviewable.” *Ex parte Gilroy*, 257 F. at 112; *see also id.* (“Once the person is an alien enemy, obviously the course to be pursued is essentially an executive function, to be exercised in the discretion of the President.”); *see also, e.g., Ludecke*, 335 U.S. at 163–64 (reasoning, on appeal from “[d]enial of a writ of habeas corpus,” that “some statutes ‘preclude judicial review’” and “the Alien Enemy Act of 1798 is such a statute,” as demonstrated by the clear text and “controlling contemporary construction”); *id.* at 164–65 (noting that “every judge before whom the question has since come has held that the statute barred judicial review”); *United States ex rel. Schlueter v. Watkins*, 67 F. Supp. 556, 565 (S.D.N.Y. 1946) (reviewing habeas petition challenging detention as an alien enemy and explaining “courts are without power to review the action of the executive in ordering removal of an alien enemy . . . except with respect to . . . whether the relator is an enemy alien”), *aff’d*, 158 F.2d 853 (2d Cir. 1946); *United States ex rel. Schwarzkopf v. Uhl*, 137 F.2d 898, 900 (2d Cir. 1943) (similar).

Ultimately, “[t]he very nature of the President’s power to order the removal of all enemy aliens rejects the notion that courts may pass judgment upon the exercise of his discretion.” *Ludecke*, 335 U.S. at 164. For that reason, it has long been established that “[u]nreviewable power in the President . . . is the essence of the” AEA. *Citizens Protective League*, 155 F.2d at 296. For this reason, Petitioner cannot prevail on his request to preliminarily enjoin Respondents from transferring him out of the Western District pursuant to authority other than the INA.

V. Petitioner fails to establish the remaining preliminary injunction factors

A. Petitioner has not established irreparable harm

Petitioner fails to establish that a preliminary injunction is necessary to prevent irreparable harm. If it is true—and it is—that “the burden of removal alone cannot constitute



the requisite irreparable injury[.]” *Nken*, 556 U.S. at 435, Petitioner plainly cannot show any irreparable harm arising from his highly speculative allegations that culminate only with his possible removal.

As established, Petitioner is currently in removal proceedings under 8 U.S.C. § 1229 and is not subject to the Proclamation. On these facts, therefore, he cannot show irreparable harm.

He persists, though, to offer a series of speculative and unsubstantiated possibilities—all triggered by closure of his commissary account that was common to all detainees at MVPC. From that undeniably benign event, he hops from possible event to possible event to culminate with a “possibility” that he could be removed pursuant to the AEA, perhaps to El Salvador, where he alleges he may face harsh and life-threatening conditions. But, such conjecture necessarily fails. Not only does he lack foundational support for his averments, Petitioner fails to contend with the fact that he has not even been designated under the AEA or that every detainee at MVPC faced a closed commissary account. Nor does he address Government’s stated position that it does not remove aliens to countries where it believes they may be tortured. *See Munaf v. Green*, 553 U.S. 674, 702 (2008). And, as Respondents have shown, Petitioner is wholly unlike the petitioner in A.S.R and thus that decision does not aid him. *See* ECF 23 at 8 (relying on A.S.R. to establish imminent irreparable harm).

Regardless, a preliminary injunction would not prevent that asserted harm. Petitioner would still be removable under the INA as a designated member of a foreign terrorist organization and could still be sent to El Salvador under the INA’s procedures for third-country removal. *See* 8 U.S.C. §§ 1227(a)(4)(B), 1231(b)(2). For these reasons, then, Petitioner fails to show that he will suffer irreparable harm absent a preliminary injunction from this Court.

B. The balance of equities and the public interest favor Respondents

The balance of harms and the equities strongly favor Respondents, as an injunction irreparably harms the President's conduct of foreign affairs. The Supreme Court has already "recognize[d] the significance of the Government's national security interests" in this case. *A.A.R.P.*, 145 S. Ct. at 1368. Rightly so. The President has determined that  "campaigns of violence and terror . . . present an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." 90 Fed. Reg. at 8439. And the Secretary of State has designated  as a foreign terrorist organization. The Government always has a strong interest in the "prompt" execution of removal, *Nken*, 556 U.S. at 436; that interest is "heightened" when "the alien is particularly dangerous," *id.*; and it reaches its apex when aliens belong to a foreign terrorist organization.

An injunction effectively usurps the President's statutory and constitutional authority to address a terrorist gang that is engaging in an invasion. Such an injunction "deeply intrudes into the core concerns of the executive branch," *Adams*, 570 F.2d at 954, and frustrates the "public interest in effective measures to prevent the entry of illegal aliens," *United States v. Cortez*, 449 U.S. 411, 421 n.4 (1981). The Executive Branch's protection of these interests, including "sensitive and weighty interests of national security and foreign affairs" inherent to combating terrorist groups, warrants the utmost deference. *Holder v. Humanitarian Law Project*, 561 U.S. 1, 33–35 (2010); *see also Barr v. U.S. Dept. of Justice*, 819 F.2d 25, 26 (2d Cir. 1987) ("[B]ecause the injunction Barr sought would interfere with the executive branch's conduct of foreign affairs, the application must be considered under particularly stringent standards[.]").

The Supreme Court has warned of “the danger of unwarranted judicial interference in the conduct of foreign policy.” *Kiobel v. Royal Dutch Petroleum Co.*, 569 U.S. 108, 116 (2013). An injunction does just that, impeding the Executive’s ability to swiftly remove aliens with no right to remain in the United States who are identified as alien enemies due to their gang activity. *See, e.g., Nken*, 556 U.S. at 436 (noting there “is always a public interest in prompt execution of removal orders” even where an alien asserts a risk of harm, and that interest “may be heightened” where “the alien is particularly dangerous”).

Granting an injunction could also undermine the United States’ ability to negotiate on critical foreign affairs and national security matters in the future, as foreign governments might reconsider their willingness to accept enemy aliens or attempt to use any resulting delays as bargaining leverage. In contrast to the harm to Respondents and the public, nothing prevents Petitioner or others from seeking individualized relief if they receive notice that they are subject to the AEA.

The record here reinforces these points. As noted, Respondents have had serious difficulties detaining [REDACTED] members. In one recent episode, members of a putative class “threatened to take hostages and injure facility contract staff and ICE officers,” and refused to comply with orders for several hours. Johnson Decl., Ex.O ¶9. Moreover, the Government has determined that prolonged detention of [REDACTED] members is particularly dangerous given [REDACTED] track record of recruiting members from prison. An injunction would stymie the President’s ability to respond to the threat imposed by [REDACTED]. Such an injunction “intrudes into the core concerns of the executive branch,” *Adams*, 570 F.2d at 954, and undermines the public interest.

Petitioner's arguments to the contrary are unavailing. He relies on wrongful removals, but he cannot establish anything wrongful regarding his own situation. His view also discounts the important public interests discussed above—public safety, the proper role of the executive, and national security.

Because he has not shown the balance of the equities and public interest lie in his favor, Petitioner has not made this essential showing for injunctive relief. His motion necessarily fails.

* * *

Because Petitioner fails to satisfy standing or the preliminary-injunction prerequisites, he is not entitled to the grant of a preliminary injunction. Respondents respectfully requests that this Court expeditiously deny Petitioner's request for injunctive relief.

CONCLUSION

For the foregoing reasons, the Court should deny the Motion for Preliminary Injunction.

Respectfully submitted,

TROY RIVETTI
Acting U.S. Attorney

BY: s/Laura S. Irwin
LAURA S. IRWIN
Assistant United States Attorney
PA Bar No. 64112
United States Attorney's Office
Western District of Pennsylvania
700 Grant Street, Suite 4000
Pittsburgh, PA 15219
Phone (412) 894-7374
Laura.Irwin@usdoj.gov

Dated: June 12, 2025

Counsel for Respondents

CERTIFICATE OF SERVICE

I hereby certify that on June 12, 2025, I electronically filed the foregoing document with the Clerk of the Court for the United States District Court for the Western District of Pennsylvania by using the Electronic Case Filing (ECF) System. I certify that all participants in the case are registered ECF users and that service will be accomplished by ECF.

s/ Laura S. Irwin
LAURA S. IRWIN
Assistant U.S. Attorney