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 REPLY IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

INTRODUCTION

Petitioner asks this Court to issue a preliminary injunction. Nothing in Respondents' response, ECF No. 28 ("Opp."), calls into question this Court's prior conclusions that Petitioner is likely to succeed on his due process claim, he faces irreparable harm absent relief, and the equities weigh in his favor. *W.J.C.C. v. Trump*, No. 25-cv-153, 2025 WL 1572856, *2-5 (W.D. Pa. June 4, 2025); *see also A.S.R. v Trump*, No. 25-cv-113, 2025 WL 1378784, *7-11, *19-20 (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). Indeed, the Respondents' about-face on notice procedures—and their ongoing refusal to agree to the minimal protections this Court required for Petitioner—only reinforce the need for a preliminary injunction.

ARGUMENT

I. THE COURT CAN REVIEW PETITIONER'S DUE PROCESS CLAIM AND ENJOIN TRANSFERS.

Respondents continue to maintain that Petitioner lacks standing because he has not yet been formally designated under the Proclamation, and any future designation is speculative. Opp. 17-21. But this Court has already rejected those precise arguments—and Respondents fail to address or even acknowledge the Court's ruling on standing. *See W.J.C.C.*, 2025 WL 1572856, *2-3. As the Court correctly found, the predicate for designation under the Proclamation applies here: Petitioner's I-213 form alleges (falsely) that he is associated with [redacted] and the government prepared to transfer Petitioner to Louisiana. *See id.*; ECF No. 1-2 (Waxman Decl.) ¶¶ 8, 12–13. These uncontested facts, taken together, "strongly suggests that [Petitioner] has shown an imminent threat of removal under the AEA and the Proclamation." *W.J.C.C.*, 2025 WL 1572856, at *2; *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"). Contrary to Respondents' argument, Opp. 19, this case is precisely like *A.S.R.*, where this Court found that an allegation of [redacted]affiliation—combined with continued detention and the looming threat of designation—was sufficient to establish standing. 2025 WL 1378784, at *8-10 (finding standing based in part on imminent removal following [redacted]related allegations).

And once again, Respondents fail to grapple with the fact that every other court to consider this issue has rejected their position. *See* ECF No. 23 ("Mot") 6 (collecting cases).

Notably, Respondents now concede that they have already "determined [Petitioner's] membership in [redacted]" they simply have not yet "processed [him] under the AEA." Opp. 13. That alone establishes a substantial risk of removal sufficient for standing. And yet again, none of the five sworn declarations submitted in Respondents' opposition disavow the possibility that officials will process Petitioner under the AEA in the near future. As this Court has correctly concluded, "[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" show that Petitioner is at imminent risk of removal. *W.J.C.C.*, 2025 WL 1572856, at *3; *see also* Mot. 6-7 (citing cases). Respondents also wrongly suggest Petitioner's conduct does not fall within the scope of the AEA, Opp. 20, but the conduct that triggers AEA removal is precisely what the government admits already has occurred: it has "determined his membership in [redacted]" Opp. 13. Respondents have already taken every predicate determination necessary for removal under the AEA; only the ministerial act of processing remains.

Respondents' remaining threshold arguments disclaiming this Court's jurisdiction to prevent transfers fare no better. Opp. 29-30. First, as this Court correctly recognized, Petitioner

does not seek to supervise the President's performance of constitutional duties or to enjoin the President himself. *See W.J.C.C.*, 2025 WL 1572856, at *5 n.6 ("The Court's Order does not operate as against President Trump."). Second, Respondents cannot have it both ways: they insist that Petitioner is not subject to the AEA, Opp. 17-21, yet simultaneously claim authority to transfer him under that very statute, *id.* at 29-30. And third, courts have uniformly rejected Respondents' sweeping contentions that the President's authority under the AEA is categorically unreviewable and that transfers under the AEA cannot be enjoined. *See, e.g., A.S.R.*, 2025 WL 1378784, at *11 (confirming that courts may review executive action under the AEA); *see also M.A.P.S. v. Garite*, No. 25-cv-171, 2025 WL 1622260, at *10-11, *22-23 (W.D. Tex. June 9, 2025) (finding that courts may review executive action under the AEA and enjoining transfers); *J.A.V. v. Trump*, No. 25-cv-072, 2025 WL 1257450, at *7-11, *20 (S.D. Tex. May 1, 2025) (same); *G.F.F. v. Trump*, No. 25-cv-2886, 2025 WL 1301052, at *5, *12 (S.D.N.Y. May 6, 2025) (same); *D.B.U. v. Trump*, No. 25-cv-1163, 2025 WL 1304288, at *3, *5 (D. Colo. May 6, 2025) (same); *A.S.R.*, 2025 WL 1122485, at *1 (W.D. Pa. Apr. 15, 2025) (enjoining "transferring Petitioner or any members of the putative class from the Western District of Pennsylvania"); *A.S.R.*, 2025 WL 1208275, at *4 (W.D. Pa. Apr. 25, 2025) (enjoining transferring petitioner "from the Northern District of Texas").

In any event, the All Writs Act permits a court to "enjoin almost any conduct 'which, left unchecked, would have . . . the practical effect of diminishing the court's power to bring the litigation to a natural conclusion.'" *Klay v. United Healthgroup, Inc.*, 376 F.3d 1092, 1102 (11th Cir. 2004); *see also ITT Cmty. Dev. Corp. v. Barton*, 569 F.2d 1351, 1359-60 (5th Cir. 1978). As a practical matter, if Respondents were permitted to transfer Petitioner outside the District to a distant detention center (where they could then swiftly designate him), counsel would face obstacles in gathering evidence and presenting facts relevant to the claims in this case, including

whether he is properly designated under the Proclamation. *See A.A.R.P.*, 145 S. Ct. at 1369 ("We had the power to issue injunctive relief to prevent irreparable harm" (citing 28 U.S.C. § 1651(a))); *G.F.F.*, 2025 WL 1301052, at *12 (enjoining transfers pursuant to All Writs Act); *Ozturk v. Trump*, No. 25-cv-374, 2025 WL 1145250, at *23 (D. Vt. Apr. 18, 2025) ("The Court also has the inherent authority and responsibility to protect the integrity of its proceedings which were undoubtedly impacted when Ms. Ozturk was transferred to Louisiana.").

II. PETITIONER IS LIKELY TO SUCCEED ON THE MERITS OF HIS DUE PROCESS CLAIM.

Respondents (at 22-29) once again fall short of satisfying the minimum due process required by the Supreme Court and by this Court. *J.G.G.*, 145 S. Ct. at 1006; *A.A.R.P.*, 145 S. Ct. at 1368; *W.J.C.C.*, 2025 WL 1572856, at *3; *A.S.R.*, 2025 WL 1378784, at *19-20. Notably, the government's reversal on the notice it previously claimed it would provide Petitioner underscores precisely why injunctive relief is necessary. Respondents previously represented that they would follow the procedures outlined in *A.S.R.*, assuring this Court that "21-day process ordered by this Court in *A.S.R.*, 2025 WL 1378784, at *20, will ensure adequate notice prior to removal." *See* ECF No. 13 at 5, 19. But this Court correctly declined to "rest on assurances in a brief that such notice will be provided before removal." *W.J.C.C.*, 2025 WL 1572856, at *4 n.4. Now, Respondents not only abandon those assurances, but they also further reduce the procedural protections that they state they will provide, offering instead an unauthenticated and legally inadequate notice form. *See* ECF No. 28-6. Absent an injunction, there is nothing to stop Respondents from retreating from even these minimal procedures. *See W.J.C.C.*, 2025 WL 1572856, at *4 n.4; *see also A.S.R.*, 2025 WL 1378784, at *19 ("Respondents could designate [petitioner] as subject to the Proclamation and the AEA tomorrow"). That continuing pattern of shifting positions only reinforces the need for judicial intervention to ensure basic constitutional safeguards are observed.

Regardless, Respondents' notice procedures remain constitutionally inadequate. The Court was clear in *A.S.R.* in establishing minimum standards of due process required under the Constitution applicable to all noncitizens detained and subject to removal under the Proclamation—regardless of individual circumstances. *A.S.R.*, 2025 WL 1378784, at *19-20 ("(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."). Only after establishing that constitutional floor did the Court address petitioner's individual circumstances, concluding that "[i]n the case of A.S.R., if Respondents again designate him as subject to the AEA and the Proclamation, they must provide all of the foregoing notice to his counsel at that time." *Id.* at *20. The Court then reaffirmed those same due process requirements, stating in this case that it "firmly believes in the conclusions of *A.S.R.* and is likely to apply the conclusions therein in the same fashion in future cases involving the same legal issues." *W.J.C.C.*, 2025 WL 1572856, at *4 n.4.

Respondents now seek to relitigate (at 22-29) this Court's minimum constitutional protections without identifying any legal error in this Court's reasoning or any relevant distinction between A.S.R. and Petitioner here—who likewise is detained, represented by counsel, and faces substantial risk that the AEA will be used against him based on [redacted] allegations. Instead, Respondents now propose providing even less notice of seven days. ECF No. 28-6. Moreover, their new AEA notice is also insufficient. Whether an individual will want to contest removal may depend significantly on whether they are designated for removal to Venezuela or to the foreign CECOT prison in El Salvador (or Libya or South Sudan, where the government has recently tried

to send other detainees). Yet the form nowhere reveals that information. *Id.* And counsel must receive notice too. The factual basis for the [redacted] allegations must also be provided, even at a broad level (*e.g.*, designation based on the presence of alleged gang tattoos). Notably, the Department of Defense requires, for anyone anywhere in the world, that "[d]etainees shall be informed promptly of the reasons for their detention" and that "[w]hen feasible, more specific information should be provided." Law of War Manual, 535-36 (July 2023);[1] *Hamdi v. Rumsfeld*, 542 U.S 507, 533 (2004) (plurality op.) (requiring "notice of the factual basis for . . . classification" as enemy combatant *before* opportunity to be heard). The lack of this crucial information underscores why, at minimum, this Court's requirement of twenty-one-days' notice is necessary.

Respondents' remaining arguments are equally unpersuasive. Opp. 24-29. First, Respondents point to two cases where petitioners managed to file habeas petitions in fewer than seven days, Opp. 25 (citing *D.B.U.*, 2025 WL 1304288 and *G.F.F.*, 2025 WL 1301052), but that only underscores how most have been unable to do so. And notably, the courts in those cases concluded that due process required more than seven days' notice ahead of removal, and only did not institute a notice protocol because they held the Proclamation unlawful under the AEA. *D.B.U.*, 2025 WL 1304288, at *9; *G.F.F.*, 2025 WL 1301052, at *10.

Second, the government provided an even more generous 30-day period during World War II despite a global conflict, the presence of German saboteurs, and the invasion of Hawaii. *See Citizens Protective League v. Clark*, 155 F.2d 290, 295 (D.C. Cir. 1946); *see also M.A.P.S.*, 2025 WL 1622260, at *16 ("At the height of this global conflict, President Truman declared that alien enemies ordered removed under the AEA were allowed a 30-day notice . . . ."). Respondents' claim that the internet now obviates that need, Opp. 25, ignores reality: detained immigrants lack any

[1] https://perma.cc/PYA9-XTL6.

internet access to search for attorneys, and the basic communication technology available today—telephones—also existed during World War II. *See A.S.R.*, No. 25-cv-113 (W.D. Pa. Apr. 29, 2025), ECF Nos. 57-10, 57-11 (detailing the significant obstacles to obtaining counsel and the practical difficulties of preparing and filing a habeas petition from Moshannon, even with pro se assistance); *W.M.M. v. Trump*, No. 25-cv-59 (N.D. Tex. May 13, 2024), ECF No. 68-3, Sarabia Roman Decl. ¶ 4 ("The detainees we spoke with stated that they do not have access to computers. They can use a tablet to message their families or make video calls to loved ones. The individuals we spoke with were not aware of any other applications on the tablets.").

Third, Respondents previously tried to analogize the use of this wartime authority to expedited removal procedures in immigration law, Opp 23-26; ECF No. 13 at 19-20; *A.S.R.*, No. 25-cv-113 (W.D. Pa. May 1, 2025), ECF No. 59 at 23-25; and this Court nevertheless concluded that due process requires at least twenty-one days' notice. *See A.S.R.*, 2025 WL 1378784, at *19-20; *W.J.C.C.*, 2025 WL 1572856, at *3. Expedited removal is an administrative proceeding where immigration officers generally make simple and frequently uncontested determinations—for example, whether a noncitizen is seeking admission without valid documents. *See* 8 U.S.C. §§ 1225(b)(1)(A)(i), 1182(a)(7). Respondents suggest that determining [redacted] membership is similarly straightforward. But any finding of membership—subjecting someone to potentially indefinite imprisonment—would obviously be highly contested. Treating that determination as perfunctory has already produced serious errors that the Constitution is meant to prevent. "Significant evidence has come to light indicating that many of those currently entombed in CECOT have no connection to the gang and thus languish in a foreign prison on flimsy, even frivolous, accusations." *J.G.G. v. Trump*, No. 25-cv-766, 2025 WL 1577811, *2 (D.D.C. June 4, 2025). Respondents' reliance on vague or superficial indicators—tattoos, clothing, hand gestures, or a single text message—only

underscores the need for meaningful factual development before consigning anyone to indefinite detention in a prison internationally condemned for torture and abuse. *See M.A.P.S.*, 2025 WL 1622260, at *24 ("Respondents have removed hundreds of individuals, some based on allegedly flimsy to nonexistent evidence such as tattoos and social media postings to El Salvador's Center for Terrorism Confinement ("CECOT")") (cleaned up).

Indeed, for membership in groups like the Taliban and al-Qaeda, courts have recognized that "determination[s] must be made on a case-by-case basis by using a functional . . . approach . . . focusing on the actions of the individual in relation to the organization" and "consider[ing] the totality of the evidence." *Khan v. Obama*, 741 F. Supp. 2d 1, 5 (D.D.C. 2010) (cleaned up). This detailed factual analysis requires evaluating questions like "whether the individual functions or participates within or under the command structure of the organization." *Hamlily v. Obama*, 616 F. Supp. 2d 63, 70, 75 (D.D.C. 2009) (analysis excludes people "who unwittingly become part of the . . . apparatus," like a family member who interacts with members). Due process requires higher procedural safeguards than for the more straightforward determinations that expedited removal was designed for, such as whether documents are valid.[2]

Finally, the Supreme Court has squarely foreclosed Respondents' argument that due process here "requires no more process than what the political branches provide." Opp. 27-29. The Court has twice held that the government has not provided adequate notice. *A.A.R.P.*, 145 S. Ct. at

[2] Respondents' analogy to the asylum "credible fear" process, Opp. 23, likewise fails. That process begins with a "nonadversarial" interview with an asylum officer, 8 C.F.R. § 208.9(b), subject to a statutorily mandated "low screening standard," *Grace v. Barr*, 965 F.3d 883, 902 (D.C. Cir. 2020). Asylum officers are required to "elicit all relevant and useful information," and then independently apply the low threshold standard, with no need for *legal* argument by the noncitizen. 8 C.F.R. §§ 208.30(b), (d)(1). And the final review of that non-adversarial determination occurs before immigration judges who do not require formal legal briefing, much less initiating a case in federal court as a detained immigrant. 8 C.F.R. § 1208.30(g)(2).

1368 (governmental notice "surely does not pass muster"); *J.G.G.*, 145 S. Ct. at 1006. The only question before this Court is the scope of adequate notice. And this Court has already considered the government's interests and determined that the Constitution compels 21-days' notice in English and Spanish, among other protections. *A.S.R.*, 2025 WL 1278784, at *19-20; *W.J.C.C.*, 2025 WL 1572856, at *3-4. Respondents' citation to regular immigration entry cases for the proposition that due process may not require notice to AEA detainees like Petitioner is simply an attempt to relitigate *J.G.G.* and *A.A.R.P.*

Because Respondents are sending AEA detainees like Petitioner to the notorious CECOT prison and claim that they cannot remedy mistaken removals, *Abrego Garcia v. Noem*, 2025 WL 1135112, *2 (4th Cir. Apr. 17, 2025), due process simply cannot tolerate the glaring weaknesses in the government's anemic new process.

III. EQUITABLE FACTORS WEIGH HEAVILY IN PETITIONER'S FAVOR.

Respondents' claims that Petitioner's harm is too speculative to warrant relief are unpersuasive. Opp. 30-31. This Court has already found that Petitioner "faces a substantial significant risk of removal to another country under the AEA and the Proclamation without sufficient notice and an opportunity to be heard before such removal, and without the possibility of return to this country in the event such removal is eventually found to be unlawful." *W.J.C.C.*, 2025 WL 1572856, at *4. Nor do Respondents' assertions that they avoid removals to countries where torture is likely carry any weight. Opp 31. That assertion is belied by evidence showing that more than 100 individuals have already been removed under the AEA to CECOT, a Salvadoran prison notorious for torture, including waterboarding and electric shocks. *A.S.R.*, No. 25-113 (W.D. Pa. Apr. 29, 2025), ECF No. 57-5 (Bishop Decl.) ¶¶ 14, 21, ECF No. 57-6 (Goebertus Decl.) ¶ 4.