IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*,

Plaintiffs–Petitioners,

v.

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

Defendants–Respondents.

Case No: 1:25-cv-00766-JEB

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO VACATE TEMPORARY RESTRAINING ORDER

INTRODUCTION

The government's motion to dissolve the temporary restraining orders should be denied: the government is wrong that Plaintiffs' claims are unreviewable under the political question doctrine. Both the Supreme Court and the D.C. Circuit have made clear in recent decisions that the doctrine should be used sparingly, and that reviewability should be assessed on a claim-by-claim basis. Here, Plaintiffs contend that the specific statutory predicates for invoking the Alien Enemies Act ("AEA") have not been satisfied. No case law, under the AEA or otherwise, suggests that these claims are wholly unreviewable under the narrow political question doctrine.

Indeed, the World War II case on which the government relies heavily, *Ludecke v. Watkins*, 335 U.S. 160 (1948), makes clear that these types of threshold statutory claims are reviewable. The claim *Ludecke* declined to review was whether, where Congress and the President agreed that World War II was not yet over, the Court should declare otherwise. Here, by contrast, the President is trying to write the limits that Congress set out of the Act. The government is likewise incorrect that this case must be brought in habeas in the district of confinement. Under settled law, this is not a "core" habeas action, and consequently, the "immediate custodian" rule on which Defendants rely is inapplicable.

On the merits, the invocation of the Act against a criminal gang cannot be squared with the explicit terms of the statute requiring a declared war or invasion by a foreign government or nation. And given these explicit statutory predicates, the Act has unsurprisingly been invoked only three times in our country's history, all during declared wars.

As to irreparable harm, the government claims that national security will be compromised by pausing summary removals under the AEA. Yet the relevant temporary restraining order makes clear it does not prevent the arrest and detention of any individual, mandate the release of any

individual, or preclude removal under the immigration laws. And the government has not claimed that U.S. facilities are ill-equipped to detain these individuals (even assuming they are affiliated with the gang, a fact that is unknown given that none were afforded any opportunity to show that they do not fall under the Proclamation).

The implications of the government's position are staggering. If the President can label any group as enemy aliens under the Act, and that designation is unreviewable, then there is no limit on who can be sent to a Salvadoran prison, or any limit on how long they will remain there. At present, the Salvadoran President is saying these men will be there at least a year and that this imprisonment is "renewable."[1]

STATEMENT OF FACTS

The AEA is a wartime authority that grants the President specific powers with respect to the regulation, detention, and removal of enemy aliens. Passed in 1798 in anticipation of a war with France, the AEA, as codified today, 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.

This Act has only ever been used three times in the country's history and each time in a period of war—the War of 1812, World War I, and World War II. The Act provides that, generally, individuals designated as enemy aliens will have time to "settle affairs" before removal and the

[1] Nayib Bukele, X.com post, (Mar. 16, 2025, 5:13AM ET), *available at:* https://perma.cc/52PT-DWMR.

option to voluntarily "depart."[2] *See*, *e.g.*, *United States ex rel. Dorfler v. Watkins*, 171 F.2d 431, 432 (2d Cir. 1948) ("An alien must be afforded the privilege of voluntary departure before the Attorney General can lawfully remove him against his will.").

On March 14, the President signed the AEA Proclamation at issue here. It provides that "all Venezuelan citizens 14 years of age or older who are members of TdA [Tren de Aragua], 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." *See* Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua (Mar. 15, 2025).[3] Although the AEA calls for a "public proclamation," 50 U.S.C. § 21, the administration did not make the invocation public until around 3:53 p.m. EDT on March 15, despite making extensive preparations to remove class members under the Act. ECF No. 28-1, Second Cerna Decl. ¶ 5; *see generally* ECF No. 1, Complaint.

And the Proclamation does not provide *any* process for individuals to contest that they are members of the TdA and do not therefore fall within the terms of the Proclamation. Nor does it provide individuals with the statutory grace period in which they can both seek judicial review or arrange their affairs and leave voluntarily. Instead, the Proclamation invokes the statutory exception to the "reasonable notice" requirement by claiming that the individuals subject to the Proclamation are "chargeable with actual hostility," and pose "a public safety risk"—despite the fact that there is no evidence of the sort of "hostility" that the Act requires, *e.g.*, skirmishes with

[2] 50 U.S.C. § 21 (providing for removal of only those "alien enemies" who "refuse or neglect to depart" from the United States); *id.* § 22 (providing for "departure, the full time which is or shall be stipulated by any treaty then in force between the United States and the hostile nation or government of which he is a native citizen, denizen, or subject; and where no such treaty exists, or is in force, the President may ascertain and declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality").

[3] *Available at*: https://perma.cc/ZS8M-ZQHJ.

U.S. forces, nor any public safety risk because the men can be securely confined. *See infra*; 50 U.S.C. § 22. The Proclamation also claims to supplant the removal process under the congressionally enacted immigration laws, which, among other things, provide a right to seek protection from persecution and torture. *See, e.g.*, 8 U.S.C. §§ 1158, 1231(b)(3); 1231 note.

To implement the Proclamation, approximately ten days ago, people with upcoming immigration proceedings started being moved overnight from ICE detention facilities around the country and not allowed to appear at their proceedings, where many were seeking asylum. *See* Kim Decl. ¶¶ 2, 4–5, 11–13; Caro-Cruz Decl. ¶¶ 2–6, 13; J.G.G. Decl. ¶¶ 2–5; J.A.V. Decl. ¶¶ 6–7; Thierry Decl. ¶¶ 5–6; Gonzalez Decl. ¶ 4. After searching for answers in online detainee locators, calling detention centers, and e-mailing officials within the detention system, lawyers for these men began to hear from their clients that they had been taken to detention centers in Texas. *See, e.g.*, Carney Decl. ¶ 12; Shealy Decl. ¶ 5; Kim Decl. ¶¶ 10–14; Caro-Cruz Decl. ¶ 18; Thierry Decl. ¶ 5; Quintero Decl. ¶¶ 2-3.

Detention officials began to tell the men they were to be immediately removed from the country. Those warnings began on March 14. Kim ¶ 19; Thierry Decl. ¶ 8. On March 15, by the time the secret Proclamation was made public, these men, five of whom are the named Plaintiffs here, had been shackled and driven to an airport and told they would get on a plane, despite having no order permitting ICE to remove them and facing grave danger even if they were removed to their home country of Venezuela. Shealy Decl. ¶ 8; Quintero Decl. ¶ 3; Carney Decl. ¶¶ 11-12; Smyth Decl. ¶ 14. For several Plaintiffs, their asylum claims were based in part on having been targeted by TdA itself. *See* J.G.O Decl. ¶ 8, ECF No. 3-5; Lauterback Decl. ¶ 8, ECF No. 3-7; J.A.V. Decl. ¶ 3, ECF No. 3-8; *see also* Carney Decl. ¶ 3; Smyth Decl. ¶ 5.

After being transferred from the El Valle Detention Facility to the airport on March 15,

named Plaintiffs spent hours while waiting for the planes to take off. Shealy Decl. ¶¶ 11-13; Quintero Decl. ¶¶ 3-5; Carney Decl. ¶¶ 12-14; Smyth Decl. ¶ 14. Media crews were present, taking pictures and recording video. Shealy Decl. ¶ 9. There was "chaos" on the planes, as people were crying and frightened about where they were being sent. Carney Decl. ¶ 13. When Plaintiffs were pulled off the plane, an officer verbally taunted them and laughed, saying that the group had just hit the lottery because they were not being deported that day. Shealey Decl. ¶ 11; Quintero Decl. ¶ 4; Carney Decl. ¶ 13; Smyth Decl. ¶ 14. They sat on the tarmac in the heat without being provided any water, to the point that one man's nose began to bleed, and officers told him to stop being dramatic. Shealey Decl. ¶¶ 12-13; Quintero Decl. ¶ 5; Carney Decl. ¶ 14. The five Plaintiffs were eventually driven back to the detention facility where they were finally fed for the first time since the early morning. Shealey Decl. ¶ 14; Quintero Decl. ¶ 6; Carney Decl. ¶ 15. Plaintiffs are traumatized by this experience. Shealey Decl. ¶ 15; Carney Decl. ¶¶ 17-18. One has been told by officers that he would be deported in 14 days. Carney Decl. ¶ 17.

What followed for the rest of the group was worse: dozens of Venezuelans were summarily removed the evening of March 15 pursuant to the Proclamation. *See* Exh. G ¶ 8; Exh. H ¶ 3; Exh. I ¶ 13; Exh J ¶ 14, Exh. K ¶ 14. The Court's request to the government for the exact number remains pending, *see* Minute Order (March 18, 2025), but various reports *suggest* that well over one hundred were removed. *See* Oscar Sarabia Roman Decl. Exh. 7 (putting number at 137); *see also* Statement from the White House Press Secretary (Mar. 18, 2025)[4] (describing Proclamation and stating that "nearly 300" people were removed). These removals occurred despite the Court's March 15 Orders granting temporary restraining orders and ordering that the planes be returned. Response to Defendants' Notice, ECF No. 21.

[4] *Available at*: https://perma.cc/5UMH-JDVA.

Because these individuals were removed in secret without any process, Plaintiffs do not have names or information about most of them. But all five of the named Plaintiffs dispute that they are members of the TdA. J.G.G. Decl. ¶ 3, ECF No. 3-3; Exh. J ¶ 3; Exh, H ¶ 4; Lauterback Decl. ¶ 8, ECF No. 3-7; J.A.V. Decl. ¶ 5, ECF No. 3-8.

For example, Plaintiff G.F.F. was accused of gang membership apparently as a result of attending a party with a friend, where he knew no one else, based on the government's claim that TdA members had been present. *See* G.F.F. Decl. ¶¶ 5–6, ECF No. 3-4. Plaintiff J.G.G., a tattoo artist, was questioned about his tattoos as the apparent basis for TdA membership: those tattoos are from a Google image search that turned up an eyeball design that he thought "looked cool." *See* J.G.G. Decl. ¶ 4, ECF No. 3-3. He also has other common tattoo designs. *See id.* (rose and a skull to cover up a monkey tattoo he no longer liked); Exh. K ¶ 9. Reports from counsel for other individuals are the same. One person is reportedly a soccer player with a calf tattoo of a soccer ball and a crown, chosen to resemble the logo of his favorite team, Real Madrid. Tobin Decl. ¶ 7.

In addition, increasing reports by the media suggest that many of the individuals were not members of the gang. *See, e.g.*, Exh. 2 ("families of three men who appear to have been deported and imprisoned in El Salvador told the Miami Herald that their relatives have no gang affiliation"); Exh. 3 ("The families strongly deny that their relatives are connected to the Venezuelan gang known as Tren de Aragua."); Exh. 4 ("A growing chorus of families, elected officials and immigration lawyers have begun coming forward in the news media to reject or cast doubt on the allegations.") Exh. 5 ("several relatives of men believed to be in the group say their loved ones do not have gang ties"); Exh. 6 (family member denied that loved one's tattoo, which ICE officers said linked him to TdA, was gang related); Exh. 8 ("in many cases, they insist the deportation involved a hasty and unjust assumptions that a tattoo identified a terrorist"). Multiple attorneys

have come forward with stories of their clients who were suddenly and without notice transferred to Texas, and removed to El Salvador despite upcoming asylum hearings and strong claims to that relief. *See generally* Tobin Decl.; Thierry Decl.; Caro-Cruz Decl.; Kim Decl.

These reports are consistent with a pattern that has played out over the past six weeks, with the administration overstating information about detainees. For instance, in early February, the administration sent approximately 177 Venezuelans to Guantanamo, calling them the "worst of the worst." Sarabia Roman Decl., Ex. 1. Yet it soon became clear that many of the men had only low-level or no criminal history or had committed only immigration offenses, and were far from the notorious individuals claimed by the administration. *Id*. Indeed, the government ultimately was forced to concede as much in court filings. For example, the government stated in sworn declarations that 51 of 178 of those transferred were classified as "low threat." *See* Ex. M, Jennifer Venghaus Decl. ¶¶ 11–13, (submitted at ECF No. 14-3, *Las Americas Immigrant Advocacy Center v. Noem*, No. 25-cv-418 (D.D.C. Feb. 20, 2025)) (acknowledging 51 out of 178 detainees detained at Guantanamo were classified as "LTIAs," referring to "low threat illegal aliens"); Sarabia Roman Decl., Ex. 1 (reporting that Administration officials confirmed people sent to Guantanamo with no criminal record nor any assessment as high risk).

Notably, even in this case the government has already had to acknowledge that "many of the TdA members removed under the AEA do not have criminal records in the United States" but sought to explain that away by the fact the men have supposedly "only been in the United States for a short period of time." ECF No. 26-1, First Cerna Decl. ¶ 9. Yet the five named Plaintiffs have no criminal history in *Venezuela* either. Remarkably, the government's declaration states that, "the lack of specific information about each individual actually highlights the risk they pose" because that "demonstrates that they are terrorists with regard to whom we lack a complete

profile." *Id.*

Of the removed group, the government's declaration lists "contact" with law enforcement anywhere in the world for 28 people, assuming that the same person is not described multiple times (*e.g.*, as having a foreign arrest and also having a domestic arrest). That includes descriptions of arrests in the U.S. for eight individuals, with no indication of any conviction, and only one individual who was convicted of a crime. *See id.* ¶ 10. It states that "numerous" people labeled as TdA have arrests or investigative notices abroad, identifying nine such people. *Id.* ¶ 11; *see also id.* (no mention of convictions). It further lists ten people as having come into ICE detention after arrests during some form of law enforcement investigation. *See id.* ¶ 12.

Despite acknowledging that it has no information about any crimes committed by many class members, the government asserts that it would be "irresponsible" for the government to keep them in detention, even if only long enough to give them a reasonable chance to contest the government's unilateral accusations. *See id.* In a sworn declaration submitted with this brief, however, Deborah Fleischaker, former Acting ICE Chief of Staff, states that "ICE detention facilities" are "prepared to detain any noncitizen regardless of their security level." Ex. A, Fleischaker Decl. ¶ 7. ICE's custody classification system permits the agency to separate detainees with no criminal history from those with a history of violence. *Id.* ¶ 9. And ICE has "numerous policies in place to ensure a safe and secure environment for both detainees and staff" and "specific tools to address gang recruitment concerns." *Id.* ¶¶ 13, 16. None of the individuals described in Mr. Cerna's declaration struck Ms. Fleischaker as "different than what ICE normally handles." *Id.* ¶ 20.

The members of the provisional class removed to El Salvador face prison conditions that have been deemed "harsh and life threatening," due to "systemic abuse in the prison system."

Bishop Decl. ¶ 21; *see also* Goebertus Decl. ¶ 4. Prison officials use electric shocks, and "beat, waterboard, and use implements of torture on detainees' fingers to try to force confessions of gang affiliation." Bishop Decl. ¶¶ 21, 33, 37, 39, 41; Goebertus Decl. ¶¶ 8, 10, 17 (describing how guards broke a detainee's rib, ruptured another's pancreas and spleen, and forced another into ice water for two hours). These abusive conditions are life threatening. Hundreds of people have died in Salvadorean prisons. Goebertus Decl. ¶ 5; Bishop Decl. ¶¶ 43–50. Inmates have reported that guards sometimes beat prisoners until they are dead, "then bring the body back into the [shared] cell and leave it there until the body started stinking." Bishop Decl. ¶ 39. The physical conditions are equally shocking. Some people at CECOT, the specific facility detaining class members, are held in solitary confinement cells, which are completely dark. Goebertus Decl. ¶ 3. The Salvadorean government announced plans to detain individuals from different gangs together at CECOT which is "certain to result in violence between the gangs." Bishop Decl. ¶ 59. Moreover, if CECOT reaches its full capacity, each prisoner would have just under two feet of space in shared cells. Bishop Decl. ¶¶ 30-31 (describing Salvadorean prisons with as many as 80 prisoners held in cells designed for 12 people). These horrific conditions are "created intentionally" to threaten and intimidate people. Bishop Decl. ¶ 22.

Worse, class members detained at CECOT face indefinite detention. *See* Goebertus Decl. ¶ 3 (quoting the Salvadorean government that people held in CECOT "will never leave"); *id.* ("Human Rights Watch is not aware of any detainees who have been released from that prison."); *see also* Nayib Bukele, X.com post, *supra* n.1 (detainees "were immediately transferred to CECOT . . . for a period of one year (renewable)").

Finally, the government states in its filings that 86 people it has identified as targeted by the Proclamation are in some form of detention and either in removal proceedings or soon to have

proceedings initiated. ECF No. 28-1, Second Cerna Decl. ¶ 6. Another 172 people currently in asylum proceedings and not detained, have also been deemed alien enemies. *Id*. There is no indication that these 172 people are aware that they have been deemed alien enemies. *Id*.

PROCEDURAL HISTORY

Early on March 15, Plaintiffs filed a class action complaint alleging that the invocation of the AEA and Plaintiffs' summary removal from the United States violated the express terms of the statute, illegally bypassed the immigration processes laid out in the Immigration and Nationality Act ("INA"), violated the APA, and did not satisfy the requirements of due process. Later that morning, this Court entered a temporary restraining order prohibiting Defendants from removing the named Plaintiffs pending a hearing. Defendants appealed the temporary restraining order within hours. ECF No. 12.

Late in the afternoon and early evening of March 15, this Court held a hearing and provisionally certified a class consisting of "All noncitizens in U.S. custody who are subject to the March 15, 2025 Presidential Proclamation entitled 'Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua' and its implementation." Third Minute Order (Mar. 15, 2025). The Court then issued a temporary restraining order prohibiting Defendants for 14 days from removing members of the class (who were not otherwise subject to removal) pursuant to the Proclamation. *Id.* The Court set the hearing on Defendant's motion to vacate the TROs for Friday, March 21. *Id.* Just over an hour later, Defendants appealed the second temporary restraining order. Notice of Appeal (ECF No. 17). On Sunday, March 16, Defendants filed emergency motions to stay both TROs pending appeal with the court of appeals.[5]

[5] On March 16, Defendants also filed a notice informing the district court that some individuals "subject to removal under the Proclamation had already been removed from United States territory under the Proclamation before issuance of this Court's second order." ECF No. 19. According to publicly available date and media reports (not disputed by Defendants), no plane

ARGUMENT

I. The Court Can Reach the Merits of Plaintiffs' Claims.

The government advances three threshold arguments. First, it invokes the political question doctrine to contend that this Court cannot reach the merits of Plaintiffs' claims. Second, it contends that illegal conduct by the President is unreviewable. Third, it suggests that this Court is limited to reviewing Plaintiffs' detention—which it conflates with the issue of challenging alien enemy status—and further argues that those claims must be brought in habeas in the district of confinement. All three arguments fail.

A. The AEA Cases Confirm the Justiciability of Plaintiffs' Claims.

Defendants argue that the AEA "is not a proper subject for judicial scrutiny." Mot. 7.[6] But the Supreme Court has made clear that claims like Plaintiffs' are justiciable. In *Ludecke v. Watkins*, the Court emphasized that "resort to the courts" *was* available "to challenge the construction and validity of the statute," explicitly noting that the AEA does not preclude judicial review of "questions of interpretation and constitutionality." 335 U.S. at 163, 171. Those questions—the "construction" and "interpretation" of the AEA—are precisely what are at issue here.

Plaintiffs raise three key statutory arguments, each of which is justiciable under *Ludecke*: (1) the AEA's use of "invasion" and "predatory incursion" refer only to military action in the

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containing such individuals had yet landed and the government continued to have custody and control of class members, both when the district court issued its oral order requiring Defendants to "immediately" return anyone still in the air to the United States, and when it issued its written order memorializing the temporary restraining order. March 15, 5 p.m. Hearing Tr. at 43:6-43:19 (ECF No. 20). And the government has never claimed that the Defendants themselves, who were enjoined and commanded not to remove any class members, were somehow not under the Court's jurisdiction. Proceedings to determine whether Defendants violated the court's orders are ongoing.

[6] Mot. refers to the government's brief in support of its motion to vacate the TRO at ECF No. 26.

context of an actual or imminent war; (2) a criminal gang is not a "foreign nation or government"; (3) even if the AEA applies, it still requires (a) an opportunity to contest whether one falls within the Proclamation, (b) compliance with the INA and other later-enacted, more specific statutory protections for noncitizens, and (c) an opportunity to voluntarily depart the United States prior to any removal. Just as *Ludecke* addressed, on the merits, whether the AEA had been lawfully invoked, the Court here has jurisdiction to address whether the statute's predicates have been satisfied. *See* 335 U.S. at 171 (recognizing "the existence of [a] 'declared war'" as reviewable).

Ludecke recognized the courts' competence to determine the meaning of the AEA's statutory terms, and whether they had been satisfied. The "political judgment[]" that *Ludecke* declined to revisit, *see* Mot. 3 (quoting *Ludecke*, 335 U.S. at 170), was the question of when a *declared* war would be considered "over" for the purposes of the statute. The petitioner there asserted that World War II had ended—even though Congress had formally declared war and neither Congress nor the President had declared the war over. *Ludecke*, 335 U.S. at 170 & n.15. The Court declined to unilaterally hold that the war had ended, emphasizing that Congress's declaration of war remained in effect. *Id.* at 168. As *Ludecke* itself made clear, that narrow holding in no way precludes judicial review of the claims here: namely, that the President is exceeding the authority granted by, and violating the limits set by, Congress. *See also U.S. ex rel. Jaegeler v. Carusi*, 342 U.S. 347, 348 (1952) ("The statutory power of the Attorney General to remove petitioner as an enemy alien ended when Congress terminated the war."); *U.S. ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 653 (2d Cir. 1947) (stating that executive orders exceeded the AEA's authority by failing to provide individual with the opportunity to voluntarily depart the United States).

Rather than fully grapple with *Ludecke*, Defendants point to *Citizens Protective League v.*

Clark, 155 F.2d 290, 294 (D.C. Cir. 1946). *See* Mot. 3, 7–8. There, the D.C. Circuit merely observed that "[u]nreviewable power in the President to restrain, and to provide for the removal of, alien enemies *in time of war* is the essence of the Act." *Citizens Protective League,* 155 F.2d at 294 (emphasis added). In other words, where the AEA's statutory prerequisites have been satisfied, the President has "the power to remove alien enemies." *Id.* If anything, this statement only underscores that the AEA's activation is limited to times of war and imminent war. *See infra.* And the court's dicta that the President has power to remove alien enemies "without resort or recourse to the courts," Mot. 8 (quoting *Citizens Protective League,* 155 F.2d at 294), is overread by the government, given that court's own acknowledgment that individuals may challenge their classification as alien enemies, and its merits holding that "[t]he constitutional question raised by appellants was not substantial." *Citizens Protective League,* 155 F.2d at 294. In any event, to the extent *Citizens Protective League* might be read to suggest any broader justiciability rule, *Ludecke*'s subsequent holding that courts may review "questions of interpretation and constitutionality"—including the question of whether a "declared war" exists—controls. *Ludecke*, 335 U.S. at 163, 171.

B. The Political Question Doctrine Does Not Apply.

In light of *Ludecke*, there is no question that Plaintiffs' claims are justiciable, and no basis for Defendants' resort to the "political question" doctrine. But even setting *Ludecke* aside, Defendants' political question arguments are baseless. Mot. 11-13. The political question doctrine is a "narrow exception" to courts' presumptive exercise of jurisdiction. *Zivotofsky ex rel. Zivotofsky v. Clinton*, 566 U.S. 189, 195 (2012). It does not preclude this Court from deciding Plaintiffs' claims about the construction and interpretation of a federal statute, the applicability of the nation's immigration laws, or the limits Congress has placed on the President's authority—all

questions squarely within the judicial function in our system of separated powers.

Indeed, as then-Judge Kavanaugh observed, "[t]he Supreme Court has never applied the political question doctrine in cases involving statutory claims" that "the Executive Branch violated congressionally enacted statutes that purportedly constrain the Executive." *El-Shifa Pharm. Indus. Co. v. United States*, 607 F.3d 836, 855 (D.C. Cir. 2010) (en banc) (Kavanaugh, J., concurring).

These are precisely the kinds of legal questions that courts can and must decide. The political question doctrine "is primarily a function of the separation of powers," *Baker v. Carr*, 369 U.S. 186, 210 (1962), and so the judiciary *must* act when the questions at issue fall within its own competence. *See, e.g.*, *U.S. Dep't of Com. v. Montana*, 503 U.S. 442, 458 (1992) ("As our previous rejection of the political question doctrine in this context should make clear, the interpretation of the apportionment provisions of the Constitution is well within the competence of the Judiciary."); *Al-Tamimi v. Adelson*, 916 F.3d 1, 11 (D.C. Cir. 2019) ("Policy choices are to be made by the political branches and purely legal issues are to be decided by the courts."); *Baker*, 369 U.S. at 216 (courts "will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power"); *see generally Loper Bright Enters. v. Raimondo*, 403 U.S. 369, 385 (2024) (emphasizing that "the final 'interpretation of the laws' [is] 'the proper and peculiar province of the courts'") (quoting Federalist No. 78 (A. Hamilton)).

Nevertheless, Defendants argue that what Congress meant by "invasion" or "predatory incursion" is a nonjusticiable political question. Mot. 12–13. Defendants are wrong.[7]

To start, the question of whether the AEA's "invasion" or "predatory incursion" prongs

[7] Notably, the government does not argue—and has waived or forfeited any argument—that the statutory interpretation of "foreign nation or government" is a political question. *See* Mot. 11–13; *see also Keepseagle v. Perdue*, 856 F.3d 1039, 1053 (D.C. Cir. 2017) (discussing waiver and forfeiture).

have been satisfied is not "textually committed" to the executive branch by the Constitution. Mot. 12 (quoting *Baker*, 369 U.S. at 217). Rather, the statutory question of whether the AEA's prerequisites have been satisfied is quintessentially one for the courts. As part of this analysis, the Court must consider whether the issues require the Court to "supplant" policy decisions reserved to the executive branch. *Zivotofsky*, 566 U.S. at 195 (question of whether statute validly allowed individual to obtain the word "Israel" on his passport was distinct from the nonjusticiable question of U.S. policy regarding Israel's sovereignty over Jerusalem).

The fact that the President has certain constitutional powers over foreign affairs, for example, Mot. 12, is not enough to establish a political question. In *Japan Whaling Association v. American Cetacean Society*, the Supreme Court rejected the idea that a "purely legal question of statutory interpretation" should be held nonjusticiable merely because it "involve[d] foreign relations," explaining that "interpreting congressional legislation is a recurring and accepted task for the federal courts" and the case "call[ed] for applying no more than the traditional rules of statutory construction, and then applying this analysis to the particular set of facts presented below." 478 U.S. 221, 230 (1986); *see also INS v. Chadha*, 462 U.S. 919, 940–41 (1983) (rejecting argument that Congress's plenary power over immigration renders all immigration-related arguments political questions); *County of Oneida v. Oneida Indian Nation of N.Y.*, 470 U.S. 226, 249 (1985) (similar for Congress's power over Indian affairs). As the D.C. Circuit has held, although "[t]he Executive has broad discretion over the admission and exclusion of aliens, [] that discretion is not boundless. It extends only as far as the statutory authority conferred by Congress and may not transgress constitutional limitations. It is the duty of the courts, in cases properly before them, to say where those statutory and constitutional boundaries lie." *Abourezk v. Reagan*, 785 F.2d 1043, 1061 (D.C. Cir. 1986), *aff'd*, 484 U.S. 1 (1987). Judicial review of Plaintiffs'

challenge *preserves* the separation of powers by ensuring that the President does not exceed the specific authority Congress delegated in the AEA. *See Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637–38 (1952) (Jackson, J., concurring).

Defendants are also wrong to argue that there are no "manageable standards" to review Plaintiffs' claims. Mot. 13. The questions of whether migration and alleged criminal activity are military activities that constitute an "invasion" or "predatory incursion" within the meaning of the AEA are statutory questions, plainly susceptible to judicial determination. They require the Court to engage in statutory analysis, based on the text and history of the AEA and canons of construction. This type of statutory interpretation is a classic judicial exercise. For example, in *Zivotofsky*, the Court held that where the parties' arguments "sound in familiar principles of constitutional interpretation," including reliance on "the textual, structural, and historical evidence"—the exact kind of interpretive tools required to resolve the AEA's metes and bounds—that is "enough to establish that this case does not 'turn on standards that defy judicial application.'" 566 U.S. at 201; *see also Kaplan v. Cent. Bank of the Islamic Republic of Iran*, 896 F.3d 501, 514 (D.C. Cir. 2018) ("[A] court must determine whether the circumstances involve an act of war within the meaning of the statutory exception. That interpretive exercise, unlike with a non-justiciable political question, 'is what courts do.'"); *Al-Tamimi*, 916 F.3d at 12 n.6 (D.C. Cir. 2019) ("statutory interpretation is generally committed to the judicial branch").

Defendants cite out-of-circuit precedent addressing the Constitution's Invasion Clause. Mot. 11, 13 (citing *California v. United States*, 104 F.3d 1086, 1091 (9th Cir. 1997)). As an initial matter, that court's broad-brush approach to the political question doctrine cannot be squared with the subsequent guidance from the Supreme Court on the narrow application of the doctrine. In any event, that case involved the interpretation of a constitutional provision, not a statutory provision

delegating power to the executive branch, as in this case. *See Ludecke*, 335 U.S. at 163.

The political question doctrine serves to reinforce the separation of powers. It is particularly critical for the judiciary to enforce the separation of powers when inter-branch disputes arise—where, as here, the executive violates or exceeds a statute. *See El-Shifa Pharm. Indus. Co.*, 607 F.3d at 855 (Kavanaugh, J., concurring); *Al-Tamimi*, 916 F.3d at 12 n.6 ("a statutory claim is less likely to present a political question").

As the Supreme Court has explained, "[t]he Judicial Branch appropriately exercises" review "where the question is whether Congress or the Executive is 'aggrandizing its power at the expense of another branch.'" *Zivotofsky*, 566 U.S. at 197; *cf. Youngstown*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring). That is precisely what this case is about.

C. Defendants' Action Is Subject to Judicial Review Under the APA and in Equity.

Defendants' remaining jurisdictional arguments are unavailing. Even assuming that President Trump himself cannot be enjoined, Mot. 7, there is no question that the Court can enjoin the remaining Defendants and their implementation of the Proclamation, *see, e.g.*, *Chamber of Com. of U.S. v. Reich*, 74 F.3d 1322, 1327 (D.C. Cir. 1996). More generally, there is no question that this Court may review the lawfulness of presidential action like the Proclamation and its implementation. *See, e.g.*, *Trump v. Hawaii*, 585 U.S. 667, 675–76 (2018) (reviewing President's authority under the INA to issue proclamation); *Dames & Moore v. Regan*, 453 U.S. 654 (1981) (reviewing President Carter's executive order ending the Iranian hostage crisis); *Youngstown*, 343 U.S. 579 (reviewing constitutionality of President Truman's executive orders); *Panama Refining Co. v. Ryan*, 293 U.S. 388 (1935) (reviewing validity of an executive order issued by President Franklin Roosevelt under the National Industrial Recovery Act in action against officials of the Department of the Interior); *see also Armstrong v. Exceptional Child Ctr., Inc.*, 575 U.S. 320, 327

(2015) ("The ability to sue to enjoin unconstitutional actions by state and federal officers is the creation of courts of equity, and reflects a long history of judicial review of illegal executive action, tracing back to England.").[8]

Defendants' argument that APA review does not extend to agency action carrying out the directives of the President, Mot. 10, is flatly incorrect. *See, e.g.*, *Reich*, 74 F.3d at 1327 ("that the Secretary's regulations are based on the President's Executive Order hardly seems to insulate them from judicial review under the APA, even if the validity of the Order were thereby drawn into question"). Defendants' only support for this proposition is a single district court case, *Tulare County v. Bush*, 185 F. Supp. 2d 18, 28–29 (D.D.C. 2001), that was wrongly decided with respect to the scope of APA review and affirmed on entirely separate grounds, *see* 306 F.3d 1138, 1143 (D.C. Cir. 2002) (implying that the plaintiffs' claims could have proceeded under the APA if pled with greater specificity); *cf. State v. Su*, 121 F.4th 1, 15–16 (9th Cir. 2024) ("*Tulare* . . . misapprehended the APA."). Regardless, Defendants' APA argument would not defeat jurisdiction because Plaintiffs' claims are also based in equity. *See* Compl.[9]

D. Plaintiffs' Claims Need Not Be Brought in Habeas.

Defendants concede that courts have jurisdiction to review whether each person subject to the order "has been properly included in the category of alien enemies." Mot. 9 n.1. That jurisdiction is unquestionable even in the case of a declared war against a foreign nation (where

[8] Moreover, President Trump remains a proper defendant because, at a minimum, Plaintiffs may obtain declaratory relief against him. *See, e.g.*, *Nat'l Treasury Emps. Union v. Nixon*, 492 F.2d 587, 616 (D.C. Cir. 1974) (concluding that court had jurisdiction to issue writ of mandamus against the President but "opt[ing] instead" to issue declaration).

[9] Defendants concede that the All Writs Act "permits a court to protect [its] jurisdiction," Mot. 11; *see also United States v. N.Y. Tel. Co.*, 434 U.S. 159, 173 (1977) (court can avail itself of auxiliary writs "when the use of such historic aids is calculated in its sound judgment to achieve the ends of justice entrusted to it"), and it can do so here.

nationality is easily proved), and it is even more so here—where alleged criminal gang associations are a highly contestable predicate for invocation of the AEA. *Ludecke*, 335 U.S. at 171. Instead, Defendants argue that the District of Columbia is an improper venue to raise that question because it "sound[s] in habeas." Mot. 3. But there is no bar to Plaintiffs bringing claims outside habeas for the harms they allege.

Habeas is required where a claim (1) "goes directly to the constitutionality of [the] physical confinement itself" and (2) "seeks either immediate release from that confinement or the shortening of its duration." *Preiser v. Rodriguez*, 411 U.S. 475, 489 (1973). The government claims that Plaintiffs are "challenging the legality of detention." Mot. 8. That is patently false. Neither TRO contemplates—much less requires—release of any individual. *See* Minute Order (Mar. 15, 2025); Minute Order (Mar. 15, 2025) (covering "noncitizens in U.S. custody"). Indeed, Plaintiffs do not seek release from custody. Mar. 15, 2025 Hearing, Tr. 19 ("[Plaintiffs] are not trying to get out of detention in this lawsuit . . . This lawsuit will not allow them to be released."). Nor are they challenging the validity of their confinement or seeking to shorten its duration. Rather, they challenge their removal without ordinary immigration processes, which is properly considered outside of habeas. *See* Br. for the United States, *DHS v. Thuraissigiam*, 591 U.S. 103 (2020), 2019 WL 6727092, at *33 ("a challenge to an alien's deportation remains outside the 'historical core' of habeas"); *Huisha-Huisha v. Mayorkas*, 560 F. Supp. 3d 146, 159 (D.D.C. 2021) (considering challenge to use of Title 42 to bypass ordinary immigration procedures by class primarily detained in Texas), *aff'd in part, rev'd in part and remanded*, 27 F.4th 718 (D.C. Cir. 2022).

Defendants nonetheless assert that Plaintiffs' claims must be brought in habeas. Mot. 8.

But no court has required that challenges to the AEA be brought in habeas.[10] In fact, the only D.C. Circuit case reviewing threats of removal under the AEA did not involve claims brought in habeas. *See Citizens Protective League v. Clark*, 155 F.2d 290, 291 (D.C. Cir. 1946) (addressing three separate "civil actions" on behalf of 159 German nationals); *see also Citizens Protective League v. Byrnes*, 64 F. Supp. 233, 233 (D.D.C. 1946). The court decided those claims on the merits—not on jurisdictional grounds. *See* Mot. at 8 (conceding that *Clark* involved non-habeas cases and that the court dismissed for failure to state a claim). And, of course, no examples of challenges to AEA removals under the INA or the APA exist because those statutes were not yet in place when any of the prior AEA proclamations or regulations were last issued during World War II.

Indeed, courts within this Circuit regularly review constitutional, statutory, and APA challenges brought by people incarcerated or detained outside of Washington D.C. *See, e.g.*, *J.D. v. Azar*, 925 F.3d 1291, 1300 (D.C. Cir. 2019) (affirming in part injunction against the government's policy on behalf of a class of unaccompanied noncitizen minors in custody nationwide); *Huisha-Huisha*, 560 F. Supp. 3d at 159; *Bailey v. Fulwood*, 793 F.3d 127, 135–36 (D.C. Cir. 2015) (evaluating merits of ex post facto claim brought by prisoner incarcerated outside of D.C.); *see also Damus v. Nielsen*, 313 F. Supp. 3d 317, 323 (D.D.C. 2018) (granting injunction to class of detained plaintiffs challenging parole practices at five ICE field offices across the country); *Ramirez v. U.S. Immigr. & Customs Enf't*, 471 F. Supp. 3d 88, 94 (D.D.C. 2020), *judgment entered,* 568 F. Supp. 3d 10 (D.D.C. 2021) (considering APA challenge by class of detained noncitizens located across the country); *P.J.E.S. ex rel. Escobar Francisco v. Wolf*, 502

[10] While *Ludecke* happened to involve a challenge brought in habeas, nothing in the decision requires AEA challenges to lie in habeas. Moreover, that case preceded Supreme Court cases that distinguish between core and non-core habeas petitions, and it did not address venue or the immediate custodian rule.

F. Supp. 3d 492, 531 (D.D.C. 2020) (certifying class of all unaccompanied noncitizen children who are or will be detained in US government custody in the country and who would be subject to Title 42 expulsions); *S. Poverty L. Ctr. v. U.S. Dep't of Homeland Sec.*, No. 18-cv-760, 2019 WL 2077120, at *3 (D.D.C. May 10, 2019) (declining to transfer constitutional and APA challenges by immigration detainees in Georgia and Louisiana from D.C.).

Moreover, this rule applies even when the claim *could* also have been brought in habeas. *See, e.g.*, *Aracely R. v. Nielsen*, 319 F. Supp. 3d 110, 126–27 (D.D.C. 2018) ("Although . . . many of the relevant cases challenging the government's treatment of asylum seekers lie in habeas, those cases do not stand for the proposition that they *could only* have been brought as habeas petitions."); *R.I.L.-R. v. Johnson*, 80 F. Supp. 3d 164, 185 (D.D.C. 2015) ("Insofar as the Government alternatively argues that Plaintiffs are required to proceed in habeas rather than under the APA, they have not provided a compelling reason why this is so. APA and habeas review may coexist.").[11] *See, e.g.*, *Davis v. U.S. Sent'g Comm'n*, 716 F.3d 660, 666 (D.C. Cir. 2013) (person in federal custody "need bring his claim in habeas only if success on the merits will 'necessarily imply the invalidity of confinement or shorten its duration'") (quoting *Wilkinson v. Dotson*, 544 U.S. 74, 82 (2005). Defendants' other cases are inapposite—all involved detained individuals who sought release or to shorten their sentence—in other words, core habeas relief. *See Kaminer v. Clark*, 177 F.2d 51, 52 (D.C. Cir. 1949) (plaintiff challenged his detention without a hearing and sought "release on bond"); *Clark v. Memelo*, 174 F.2d 978, 980 (D.C. Cir. 1949) (challenging

[11] To the extent *LoBue v. Christopher*, 82 F.3d 1081 (D.C. Cir. 1996), suggests otherwise, the intervening voluminous precedent from both the D.C. Circuit and the Supreme Court clearly control. The court in *LoBue* also noted that Plaintiffs already had pending habeas petitions in other districts. 82 F.3d at 1082. In that way, the case looks more like *Vetcher v. Sessions*, where Plaintiff was challenging his length of confinement—a core aspect of habeas—and "already had a habeas suit" in another jurisdiction. 316 F. Supp. 3d 70, 78 (D.D.C. 2018).

length of criminal sentence); *Monk v. Sec'y of Navy*, 793 F.2d 364, 366 (D.C. Cir. 1986) ("this determination . . . might result in Monk's release from prison and, therefore, must be made in an action for habeas corpus"); *Fletcher v. Reilly*, 433 F.3d 867, 879 (D.C. Cir. 2006) (challenging retroactive application of regulation that "created a significant risk that [petitioner] will be subjected to a lengthier incarceration").

And even assuming habeas were the required vehicle—and it is not—venue in D.C. is still proper. When a petition does not challenge the detention itself as unlawful, and seeks relief other than simple release, the immediate custodian rule does not apply. *Wilkinson v. Dotson*, 544 U.S. 74, 92 (2005). Instead, "because 'the writ of habeas corpus does not act upon the prisoner who seeks relief, but upon the person who holds him in what is alleged to be unlawful custody,'" a district court acts 'within [its] respective jurisdiction' within the meaning of § 2241 as long as 'the custodian can be reached by service of process.'" *Rasul v. Bush*, 542 U.S. 466, 467 (2004) (quoting *Braden v. 30th Jud. Cir. Ct. of Ky.*, 410 U.S. 484, 494–95 (2004)). The entities responsible for this restraint reside in their official capacity in the District of D.C. In contrast, all of the cases cited by the government in support of application of the immediate custodian rule involved core habeas cases seeking release. *See* Mot. 10.

Not only are Defendants' habeas arguments wrong, but the alternative review and relief they purport to offer is illusory. Mot. 8; Def. Appeal Reply 14 (filed Mar. 19, 2025) (claiming that "individuals identified as alien enemies under the President's Proclamation may challenge that status in a habeas petition"). As the events of March 15 show, Defendants are not providing the individuals that it alleges are subject to the Proclamation with any meaningful notice that they have been identified as "enemy aliens" or that they are about to be immediately removed to El Salvador or another unknown country—and so they will have no genuine opportunity to seek relief, habeas

or otherwise, in the absence of the district court's TRO. *See, e.g.*, Compl. ¶¶ 9–13. Through the President's secret signing of the Proclamation, the government's failure to provide notice or an opportunity to voluntarily depart, and its actions to immediately remove class members to a foreign prison, Defendants have sought to thwart the very court review they now claim is available. Should the Court's TRO be terminated prior to further judicial review, Defendants have evidenced every intention of resuming their summary expulsions and removing the Plaintiff class members before they can have any resort to the courts. *See, e.g.*, Def. Appeal Reply 14 (objecting to even a "short delay" in carrying out removals of class members).

II. Plaintiffs Are Likely to Succeed on the Merits.

A. The AEA Does Not Authorize the President to Summarily Remove Plaintiffs from the United States.

The AEA, as noted, has been invoked only three times, all during declared wars. Defendants now seek to invoke this limited wartime authority to execute summary removals wholly untethered to any actual war or to the specific conditions Congress placed on this extraordinary authority. When the government asserts "an unheralded power" in a "long-extant statute," courts "greet its announcement with a measure of skepticism." *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 324 (2014). That skepticism is well warranted here.

i. There is no "invasion" or "predatory incursion" upon the United States.

There is no "invasion" or "predatory incursion" upon the United States within the meaning of the AEA. Defendants' attempt to redefine these terms—by citing modern dictionaries, contemporary usage, and expansive readings of definitions, Mot. 14–15—is entirely disconnected from the AEA's text and historical context. Both the text and history make clear that the AEA's terms refer to military actions by foreign governments that imminently lead to, or constitute, acts of war. *See, e.g.*, Office of Legislative Affairs, Proposed Amendment to AEA, at 2 n.1 (Aug. 27,

1980) ("The Act contemplates use of its provisions by the President in situations where war is imminent."); *Ludecke*, 335 U.S. at 169 n.13 (explaining that "the life of [the AEA] is defined by the existence of a war"). At the time of the AEA's enactment, the operative understanding of "invasion" was a large-scale military action by an army intent on territorial conquest. *See* Webster's Dictionary, Invasion (1828) ("invasion" is "*particularly*, the entrance of a hostile army into a country for purpose of conquest or plunder") (emphasis added); Draft of an Address of the Convention of the Representatives of the State of New York to Their Constituents (Dec. 23, 1776) (describing the goal of British invasion as "the conquest of America");[12] Letter from Timothy Pickering, Sec'y of State, to Alexander Hamilton, Inspector Gen. of the Army (June 9, 1798) (noting that French "invasion" of English could require France to keep troops in Europe "until the conquest was complete");[13] James Madison, The Report of 1800 (Jan. 7, 1800) ("Invasion is an operation of war.").[14]

And the operative understanding of "predatory incursion" referred to smaller-scale military raids aimed to destroy military structures or supplies, or to otherwise sabotage the enemy, often as a precursor to invasion and war. *See* Webster's Dictionary, *Predatory* (1828) ("predatory" underscores that the purpose of a military party's "incursion" was "plundering" or "pillaging"); *id.*, *Incursion* (1828) ("incursion . . . applies to the expeditions of small parties or detachments of an enemy's army, entering a territory for attack, plunder, or destruction of a post or magazine"); Samuel Johnson's Dictionary, Incursion (1773) ("incursion" is "invasion without conquest"); Letter from George Washington, Commd'r in Chief of Army, to Thomas Jefferson, Gov. of Va.

[12] *Available at* https://perma.cc/AX3D-EV53.

[13] *Available at* https://perma.cc/Y3GX-R9PM.

[14] *Available at* https://perma.cc/36LL-TFMZ.

(Feb. 6, 1781) (describing a British raid that destroyed military supplies and infrastructure in Richmond as a "predatory incursion"); Letter from George Washington, Commd'r in Chief of Army, to Nathanael Greene, Commd'r in Chief of Southern Dep't of Army (Jan. 29, 1783) ("predatory incursions" by the British could be managed with limited cavalry troops). "Mass illegal migration" or criminal activities are categorically not an "invasion" or "predatory incursion" threatening war. *See United States v. Texas*, 719 F. Supp. 3d 640, 681 (W.D. Tex. 2024) (rejecting argument that cartel's criminal activity and immigration constitute an "invasion").

Defendants cite three cases as examples of a broad understanding of "predatory incursion." Mot. 14 (citing *Amaya v. Stanolind Oil & Gas Co.*, 62 F. Supp. 181, 189–90 (S.D. Tex. 1945); *Davrod Corp. v. Coates*, 971 F.2d 778, 785 (1st Cir. 1992); *Bas v. Tingy*, 4 U.S. 37 (1800)). None of these cases are applicable. *Amaya* used "predatory incursion" in the context of *military* forces or actions—not a criminal gang like TdA. 62 F. Supp. at 184, 189–90. *Dayrod* mentioned "predatory incursion" in passing, while analyzing the Magnuson Fishery Conservation and Management Act—a statute whose text and known legislative history make no reference to the term. *See* 971 F.2d at 785; 16 U.S.C. § 1801 *et seq.*; 128 Cong. Rec. 31695 (97th Cong. 2d Sess., Dec. 16, 1982). And *Bas* never used the term "predatory incursion" at all. *See* 4 U.S. 37. Moreover, *Amaya* and *Dayrod* both long post-date the AEA's enactment, so none of these cases shed light on the AEA's original meaning of "predatory incursion."

ii. The purported invasion is not by a "foreign nation or government."

Defendants scarcely attempt to defend their actions as consistent with the text of the AEA's second—and equally mandatory—requirement: that any "invasion" or "incursion" be perpetuated by a "nation" or "government." They gesture at the President's "findings" and the political branches' historical use of broader "war powers" against certain nonstate actors. Mot. 16–18. Notably, Defendants do not—and cannot—point to any past invocation of the AEA in

those instances. Rather, they assert that TdA acts as a "*de facto* government" in certain areas "where it operates." *Id.* at 16.

At the time of the AEA's enactment, the terms "nation" and "government" were defined by their possession of territory and legal authority. *See* Samuel Johnson's Dictionary, *Nation* (1773) ("A people distinguished from another people; generally by their language, original, or government."); Samuel Johnson's Dictionary, *Government* (1773) ("An established state of legal authority."). As a criminal gang, however, TdA possesses neither a defined territory nor a common government.

Moreover, when a "nation or government" is designated under the AEA, the statute unlocks power over that nation or government's "natives, citizens, denizens, or subjects." 50 U.S.C. § 21. *Countries* have "natives, citizens, denizens, or subjects." Criminal organizations, in the government's own view, have "members." Proclamation § 1 ("members of TdA"). The Proclamation singles out Venezuelan nationals—but does not claim that Venezuela is invading the United States. And it designates TdA "members" as subject to AEA enforcement—but "members" are not "natives, citizens, denizens, or subjects." Similarly, the AEA's presumes that a designated nation possesses treaty-making powers. *See* 50 U.S.C. § 22 ("stipulated by any treaty . . . between the United States and the hostile nation or government"). Nations—not criminal organizations—are the entities that enter into treaties. *See, e.g.*, *Medellin v. Texas*, 552 U.S. 491, 505, 508 (2008) (treaty is "a compact between independent nations" and "agreement among sovereign powers") (internal quotation marks omitted); *Holmes v. Jennison*, 39 U.S. 540, 570-72 (1840) (similar).

The glaring mismatch underscores that Defendants are attempting not only to use the AEA in an unprecedented way, but in a way that Congress never permitted—as a mechanism to address,

in the government's own words, a *non*-state actor. While Defendants attempt to paper over these problems by claiming that TdA and Venezuela are "indistinguishable," Mot. 16, that is plainly wrong, as Defendants themselves distinguish between the two—*Venezuela* has citizens, but TdA (not Venezuela) is designated under the proclamation. Similarly, Defendants' half-hearted effort to suggest TdA is now a country because it exerts control in certain regions of Venezuela falls flat. *Id.* at 16. Again, even Defendants do not suggest that people in those regions are "natives, citizens, denizens, or subjects" *of TdA*. No amount of wordplay can avoid the obvious fact that *Venezuela* is the relevant country here—and TdA is a non-state criminal organization.

In effect, the Government asks this Court to read the nation/government requirement out of the statute entirely, and accept that the AEA reaches the fullest extent of the political branches' more expansive "war powers." Mot. 15 (analogizing invocation to political branches' use of "war powers against formally nonstate actors"). But the Alien Enemies Act does not encompass the full scope of the political branches' "war powers." It operates as a specific delegation of authority from Congress to the President, a delegation Congress specifically limited to instances where action is taken by "foreign nation[s]" or "governments." *Cf. Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 635–38 (1952) (Jackson, J., concurring).

If Congress had intended to vest the President with broader authority, it could have said so. After all—as explained in a source that the government itself cites—Congress has long been aware of the distinction between executive branch authority to use "military force against non-traditional actors" and "more traditional conflicts" waged against formally-recognized states—as a source the Government itself cites explains. Curtis A. Bradley & Jack L. Goldsmith, *Congressional Authorization and the War on Terrorism*, 118 Harv. L. Rev. 2047, 2066 (2005); *see also* Mot. 16 (citing same). Congress knows how to delegate authority over such actors to the Executive Branch

when it wants to. *See* 22 U.S.C. § 6442a ("review and identify any non-state actors operating in any such reviewed country"); 18 U.S.C. § 2339A (criminalizing providing material support to non-state actors). But Congress did not make this choice with the AEA. It intentionally limited its scope to actions taken by "foreign nation[s]" and "government[s]." 50 U.S.C. § 21. And it has never amended the statute to broaden that scope.

While the United States has, at times, asserted war-based authority to use force against non-state actors, Mot. 16, these actions were justified under separate legal frameworks, not under the AEA. And the AEA's historical record confirms that it was intended to address conflicts with foreign sovereigns, not a criminal gang like TdA. *See* 5 Annals of Cong. 1453 (Apr. 1798) ("[W]e may very shortly be involved in war . . ."); John Lord O'Brian, Special Ass't to the Att'y Gen. for War Work, N.Y. State Bar Ass'n Annual Meeting: Civil Liberty in War Time, at 8 (Jan. 17, 1919) ("The [AEA] was passed by Congress . . . at a time when it was supposed that war with France was imminent."); Cong. Rsch. Serv., Declarations of War and Authorizations for the Use of Military Force 1 (2014) (Congress has never issued a declaration of war against a nonstate actor). If Defendants were allowed to designate any group with ties to officials as a foreign government, and courts were powerless to review that designation, any group could be deemed a government, leading to an untenable and overbroad application of the AEA.

Finally, Defendants' broad argument that the Proclamation is supported by the President's Article II authority, and that his power is at its "maximum" under *Youngstown*, Mot. 17, is plainly wrong because the President is acting in a manner that is not authorized the by the AEA, and his Proclamation also violates Congress's other delegations of statutory authority concerning immigration. *See infra.* Accordingly, under Justice Jackson's *Youngstown* framework, the President's power is at its "lowest ebb": "Courts can sustain exclusive Presidential control in such

a case only by disabling the Congress from acting upon the subject." 343 U.S. at 637–38. There is no basis for doing so here. Under Article I, Congress holds plenary power over immigration, *INS v. Chadha*, 462 U.S. 919, 940 (1983), and has a broad, distinct set of war powers, *Hamdan v. Rumsfeld*, 548 U.S. 557, 591 (2006). Through the INA and a variety of statutory safeguards, Congress comprehensively regulated the removal of immigrants. *See infra*. And through the AEA, Congress granted a specific set of war powers to the President; he is not at liberty to exceed those statutory powers or to exercise them outside of the context of war or imminent war. There is simply no ground for disabling Congress's specific, bounded delegations of authority in the AEA and the INA, and ultimately Congress's constitutional power to legislate with respect to immigration, including in times of war.

Moreover, even when the executive asserts war powers, the Supreme Court has repeatedly refused to grant the President a blank check as Commander-in-Chief. *See, e.g.*, *Boumediene v. Bush*, 553 U.S. 723, 732 (2008) (rejecting executive's argument that noncitizens designated as "enemy combatants" outside the United States have no habeas privilege); *Hamdan*, 548 U.S. at 593 (interpreting statutes constraining the President's war powers; rejecting executive's arguments about the scope of the Uniform Code of Military Justice); *Hamdi v. Rumsfeld*, 542 U.S. 507, 530, 535–36 (2004) (plurality op.) (rejecting executive's arguments about the process due to alleged enemy combatants);[15] *Ex Parte Milligan*, 71 U.S. 2, 125 (1866) ("[The Founders] knew—the history of the world told them—the nation they were founding, be its existence short or long, would be involved in war . . . and that unlimited power, wherever lodged at such a time, was especially

[15] *See also Hamdi*, 542 U.S. at 530 ("[A]s critical as the Government's interest may be in detaining those who actually pose an immediate threat to the national security of the United States during ongoing international conflict, history and common sense teach us that an unchecked system of detention carries the potential to become a means for oppression and abuse of others who do not present that sort of threat.").

hazardous to freemen.").

iii. The Proclamation violates the INA.

Defendants' argument that the Proclamation does not conflict with the Immigration and Nationality Act, 8 U.S.C. § 1101 et seq., cannot be squared with the statute. The INA provides that, "[u]nless otherwise specified" in the INA, a removal proceeding before an immigration judge under 8 U.S.C. § 1229a is "the sole and exclusive procedure" by which the government may determine whether to remove an individual. 8 U.S.C. § 1229a(a)(3). The INA directs specific procedures and processes by which removals must take place. *Id.* § 1229a(e)(2). The Proclamation here entirely bypasses the INA's comprehensive process.

Defendants' reliance on *Huisha-Huisha* is misguided. While the government *argued* in that case that Title 42 public health authority and the INA provided "distinct mechanisms for effectuating the removal" of noncitizens, Mot. 18, the D.C. Circuit did not accept that view. Rather, the court noted that 8 U.S.C. § 1227(a)(1)(B)—part of the INA—provided the authority to expel. *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 729 (D.C. Cir. 2022). Far from supporting Defendants' claim, *Huisha-Huisha* bolsters Plaintiffs' argument that the AEA must be understood in the context of Congress's choice to channel *all* removal into the INA's specific procedures.

Immigration laws have changed substantially since the last invocation of the AEA more than eighty years ago. The enactment of the INA in 1952 "br[ought] together for the first time in our history all the laws regulating immigration and naturalization, into one extensive compilation." *In re Barnes*, 219 F.2d 137, 145 (2d Cir. 1955), *judgment rev'd by United States v. Minker*, 350 U.S. 179 (1956). This "established a comprehensive federal statutory scheme for regulations of immigration and naturalization." *Chamber of Comm. v. Whiting*, 563 U.S. 582 (2011) (internal quotation marks omitted).

Congress was aware that alien enemies were subject to removal in times of war or invasion

when it enacted the INA. *See Miles v. Apex Marine Corp*., 498 U.S. 19, 32 (1990) (courts presume Congress drafts statutes with full knowledge of the existing law). Indeed, the AEA had been invoked just a few years earlier; many Members of the Congress that enacted the INA had been Members at that time. With this awareness, Congress designated the INA to have the "sole and exclusive" procedures for deportation or removal. *See United States v. Tinoso*, 327 F.3d 864, 867 (9th Cir. 2003) ("Deportation and removal must be achieved through the procedures provided in the INA."). And Congress did not carve out AEA removals as an exception from standard immigration procedures. Rather, Congress provided that the INA sets forth "the sole and exclusive" procedures for determining removal. 8 U.S.C. § 1229a(a)(3).

To the degree there is conflict between the INA and the AEA, the INA must control. Statutory construction dictates that a later enacted statute generally supersedes an earlier one. *See Nat'l Ass'n of Home Builders v. Defs. of Wildlife*, 551 U.S. 644, 662-63 (2007). While Defendants argue that the AEA is more "specific," Mot. 19, the reality is the AEA says *nothing* about what procedures are to be used in determining whether someone who is allegedly removable should in fact be removed.

By contrast, the INA provides a comprehensive and carefully crafted scheme that Congress set forth for processing noncitizens prior to removal. As one example, the INA describes specific countries to which individuals can and cannot be removed. 8 U.S.C. § 1231. The INA's "sole and exclusive procedure" is thus not only later enacted but also more specific.

Defendants attempt to circumvent the statutory scheme. But where an agency's interpretation of one statute "tramples the work done" by another statute—as Defendants' sweeping view of the AEA tramples the immigration laws—the agency "bears the heavy burden of showing a clearly expressed congressional intention that such a result should follow." *Epic Sys.*

v. Lewis, 583 U.S. 497, 510, 515-16 (2018). Defendants can show no such "clear and manifest" intention. *Id.* at 510 (internal quotation marks omitted).

None of this is to say the AEA is superfluous after the enactment of the INA. For example, lawful permanent residents can only be removed in peacetime under certain conditions. 8 U.S.C. § 1227. But in wartime, the president can deem all noncitizen nationals of a foreign country removable. The AEA thus does important work—authorizing detention and potential removal of noncitizens otherwise secure against those actions. But when it comes to what procedural rights are available, and what defenses against deportation may be granted, the AEA is simply silent, while the INA provides an explicitly exclusive answer.

iv. The Proclamation violates the specific protections that Congress established for noncitizens seeking humanitarian protections.

The Proclamation also unlawfully overrides statutory protections for noncitizens seeking relief from persecution or torture, subjecting them to removal without considering their claims. Congress intentionally enacted statutory provisions for asylum, withholding, and the Convention Against Torture (CAT) to ensure that noncitizens can seek protection from persecution and torture. *See* 8 U.S.C. §§ 1158 (asylum), 1231(b)(3) (withholding of removal); 1231 note (CAT). The Proclamation cannot supersede these more specific, subsequently enacted statutes that expressly provide special protections for individuals seeking humanitarian relief.

Specifically, the asylum statute unequivocally provides that "[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum." 8 U.S.C. § 1158(a)(1). Similarly, the withholding of removal statute explicitly prohibits the removal of a noncitizen to a country where their "life or freedom" would be threatened based on a protected ground. *Id.* § 1231(b)(3)(A). Congress has narrowly defined circumstances under which individuals may be barred from asylum and withholding of

removal, none of which are applicable here. *See id.* §§ 1158(b)(2)(A), 1231(b)(3)(B). Additionally, CAT categorically prohibits returning a noncitizen to any country where it is more likely than not the person would face torture. *See Huisha-Huisha*, 27 F.4th at 725.

Defendants contend that the INA does not restrain actions taken under the AEA, suggesting that they may designate noncitizens as "alien enemies" who would then be barred from seeking any relief against persecution or torture. Mot. 19-20 (citing *Citizens Protective League*, 155 F.2d at 294). This is wrong. Congress specifically provided humanitarian protections that remain available regardless of a noncitizen's status or circumstances. While asylum, withholding, and CAT protections each are subject to statutory exceptions, being designated "alien enemies" are not among those exceptions. *See, e.g.*, 8 U.S.C. § 1158(b)(2)(A)(ii)-(iii) (noncitizens barred from asylum if convicted of particularly serious crime or if "serious reasons to believe" they "committed a serious nonpolitical crime" outside the U.S.); *id.* § 1231(b)(3)(B)(ii)-(iii) (same for withholding); *see also* 8 U.S.C. §§ 1226(c), 1231(a)(6).

Nor does *Citizens Protective League* say otherwise; indeed, that decision long predates these critical statutory enactments and thus did not consider the extensive statutory rights and procedural safeguards now available. *See* Refugee Act of 1980, Pub. L. 96-212, 94 Stat. 102 (asylum and withholding); Convention Against Torture art. 3, Dec. 10, 1984, S. Treaty Doc. No. 100-20, at 20 (1988); Pub. L. No. 105-277, Div. G. Title XXI, § 2242(a), 112 Stat. 2681 (1998) (implementing CAT). Thus, the AEA's general authority to remove noncitizens designated as alien enemies must yield to the explicit humanitarian protections provided by Congress in later and more targeted enactments. *See NLRB v. SW Gen., Inc.*, 580 U.S. 288, 305 (2017) ("[I]t is a commonplace of statutory construction that the specific governs the general.") (internal quotation marks omitted).

"In understanding this statutory text, 'a page of history is worth a volume of logic.'" *Jones v. Hendrix*, 599 U.S. 465, 472 (2023) (quoting *New York Trust Co. v. Eisner*, 256 U.S. 345, 349 (1921)). These humanitarian protections were enacted in the aftermath of World War II, when the United States joined other countries in committing to never again turn our backs on people fleeing persecution and torture. Sadako Ogata, U.N. High Comm'r for Refugees, Address at the Holocaust Memorial Museum, Washington, DC (Apr. 30, 1997).[16] Yet under Defendants' reading of the AEA, a President could simply sweep away these protections.

Finally, the Defendants' reliance on *Huisha-Huisha*, 27 F.4th 718, is again misplaced. Mot. 20. The D.C. Circuit in fact *rejected* the argument offered by the government here, that withholding and CAT protection had no application to Title 42 expulsions. *See Huisha-Huisha*, 27 F.4th at 731-33. And it affirmed the importance of humanitarian protections codified in the INA, emphasizing the prohibition against removing individuals to places where they face persecution or torture. *Id*. at 722. The government's position here is even more extreme: In *Huisha-Huisha* the government at least claimed to have a procedure for torture protection, albeit not for persecution. Here, the government argues that it may remove individuals under the Proclamation without even a torture screening. *See* Reply Br., *Huisha-Huisha*, 27 F.4th 718 (D.C. Cir. 2022), 2021 WL 5579941, at *19. And it does so even though *Congress* has said that every noncitizen is entitled to a torture screening with no exceptions.

In sum, the AEA cannot override the INA provisions that were deliberately enacted to provide vulnerable individuals with meaningful access to protections from prosecution and torture. The individuals sent to a horrific Salvadorean prison are now as vulnerable as it gets.

[16] https://perma.cc/X5YF-K6EU.

v. The absence of all due process violates the AEA and Due Process.

Due process and the AEA permit removal only where noncitizens alleged to be alien enemies have first been given the opportunity to contest their removals. *See, e.g.*, *Ralls Corp. v. Comm. on Foreign Inv. in U.S.*, 758 F.3d 296, 318 (D.C. Cir. 2014) ("Both the Supreme Court and this Court have recognized that the right to know the factual basis for [government] action and the opportunity to rebut the evidence supporting that action are essential components of due process."). The AEA also requires that individuals be allowed to depart voluntarily, and removed only if they have explicitly "refuse[d] or neglect[ed] to depart" from the United States voluntarily. 50 U.S.C. § 21.

Courts interpreting the AEA even during World War II recognized that noncitizens designated as "alien enemies" retained the right to voluntary departure. *See United States ex rel. Dorfler v. Watkins*, 171 F.2d at 432 ("An alien *must* be afforded the privilege of voluntary departure before the Attorney General can lawfully remove him against his will.") (emphasis added); *U.S. ex rel. Von Heymann v. Watkins*, 159 F.2d 650, 653 (2d Cir. 1947) ("His present restraint by the respondent is unlawful in so far as it interferes with his voluntary departure, since the enforced removal, of which his present restraint is a concomitant, is unlawful before he does 'Refuse or neglect' to depart" under Section 21).

The government incorrectly contends that the voluntary departure procedures do not apply here because the designated individuals are "chargeable with actual hostility, or other crime against public safety." Mot. 22 (citing 50 U.S.C. § 22). But that exception cannot be invoked categorically, without individualized assessments—each noncitizen must specifically be "chargeable" with actual hostility or a crime against public safety to lose eligibility for voluntary departure.

B. The Equitable Factors Weigh In Favor of Plaintiffs.

i. Plaintiffs will suffer irreparable harm if the TRO is dissolved.

Plaintiffs face an imminent risk that they will be summarily removed from the United States to El Salvador or to Venezuela without any meaningful opportunity to assert claims for relief. Contrary to Defendants' arguments, Mot. 22-23, Plaintiffs do not claim irreparable harm from the mere fact of removal. Instead, as Plaintiffs described in detail in the TRO motion and above, their removal constitutes grave and immediate irreparable harm because of what awaits them upon deportation. ECF No. 3-2, TRO Mot. 17-21; *see also supra*. Indeed, the video released by Salvadorean authorities (and approved of by Cabinet-level officials in the United States) leaves no doubt about what awaits individuals in El Salvador. Nayib Bukele, X.com, *supra* n.1.

If this Court dissolves the TRO, additional members of the provisional class will be sent to El Salvador, where they will be confined in detention centers to face torture and persecution for an indefinite amount of time. *See* TRO Mot. 17-19; *see generally* Bishop Decl.; Goebertus Decl. Prison conditions in El Salvador are "harsh and life threatening." Bishop Decl. ¶ 21; *see also* Goebertus Decl. ¶ 4. Prison officials engage in widespread physical abuse, including waterboarding, electric shocks, using implements of torture on detainees' fingers, forcing detainees into ice water for hours, and hitting or kicking detainees so severely that it causes broken bones or ruptured organs. Bishop Decl. ¶¶ 21, 33, 37, 39, 41; Goebertus Decl. ¶¶ 8, 10, 17. People in detention in El Salvador also face psychological harm, including solitary confinement in pitch dark cells or being forced to stay in a cell with the body of a fellow prisoner who was recently beaten to death. Goebertus Decl. ¶ 3; Bishop Decl. ¶ 39. In fact, El Salvador creates these horrific conditions intentionally to terrify people. Bishop Decl. ¶ 22. These inhumane conditions clearly amount to irreparable harm. *Huisha-Huisha*, 27 F.4th at 733 (irreparable harm exists where petitioners "expelled to places where they will be persecuted or tortured"); *Al-Joudi v. Bush*, 406

F. Supp. 2d 13, 20 (D.D.C. 2005) (harsh conditions at Guantanamo that forced detainees to go on hunger strikes amounted to irreparable harm). And there is no escaping the irreparable harm any time soon. *See* Nayib Bukele, X.com, *supra* n.1; *see also* Goebertus Decl. ¶ 3 (quoting the Salvadorean government that people held in CECOT "will never leave"); *id.* ("Human Rights Watch is not aware of any detainees who have been released from that prison.").

While "removal alone cannot constitute the requisite irreparable injury," *Nken v. Holder*, 556 U.S. 418, 435 (2009), these are hardly run-of-the-mill removals. Moreover, not only do Plaintiffs face grave harm, they do so without having received any due process. *See Huisha-Huisha*, 560 F. Supp. 3d at 172 (finding irreparable harm where plaintiffs "face the threat of removal prior to receiving any of the protections the immigration laws provide"); *P.J.E.S.*, 502 F. Supp. 3d at 517 (irreparable injury exists where class members were "threatened with deportation prior to receiving any of the protections the immigration laws provide"). Once deported, the harm to Plaintiffs cannot be undone; their deportation "pursuant to an unlawful policy likely cannot be remediated after the fact." *Huisha-Huisha*, 560 F. Supp. 3d at 172; *compare Nken*, 556 U.S. at 435 (noting that deportation is not an irreparable injury where noncitizens can "continue to pursue their petitions for review").

ii. The remaining equitable factors weigh decidedly in favor of continuing the TRO.

In arguing that the balance of harms and equities favor the government, Defendants summarily claim that Plaintiffs are dangerous gang members who are engaged in an invasion or predatory incursion into the United States, without having given Plaintiffs any opportunity to contest those allegations. Mot. 23. Notably, some Plaintiffs' asylum claims assert the real fear of harm upon returning even to Venezuela because they fled the very same violent gangs the Government has wrongfully accused them of belonging to. Pls. Mot. for TRO at 17-19; *see supra*.

Arguing that the President's assertion of unchecked power is somehow self-justifying, Defendants argue that the balance of equities favors the government because the Court's orders "deeply intrude[] into the core concerns of the executive branch." Mot. 23. But it is the government's very abuse of this power, unchecked authority that tips the balance of equities in favor of Plaintiffs.

Importantly, the TRO does not prevent the government from detaining and removing any individuals who have committed deportable conduct under existing law. And while Defendants cite the public interest in "prompt execution of removal orders," Mot. 24, that interest applies to noncitizens "lawfully deemed removable." *Nken*, 556 U.S. at 436 (emphasizing that "there is a public interest in preventing aliens from being *wrongfully removed*, particularly to countries where they are likely to face substantial harm" (emphasis added)). Plaintiffs here have not been "lawfully deemed removeable"; if they had been, then they could be removed in the usual course and the government would have no need to rely on the AEA. *See, e.g.*, *Hawaii v. Trump*, 878 F.3d 662, 700 (9th Cir. 2017) ("public interest is best served by curtailing unlawful executive action") (cleaned up), *rev'd and remanded on other grounds*, 585 U.S. 667 (2018).

The public interest of ensuring the rule of law also favors Plaintiffs. *League of Women Voters of U.S. v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("[T]here is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.") (citation and internal quotation marks omitted). "The public interest is, of course, best served when government agencies act lawffully," and "the inverse is also true": the public interest is harmed when the government acts unlawfully—and even more so when it does so in secret. *Minney v. U.S. Off. of Pers. Mgmt.*, 130 F. Supp. 3d 225, 236 (D.D.C. 2015). Moreover, "the public has a strong interest in 'preventing aliens from being wrongfully removed, particularly to countries where they are likely to face substantial harm.'" *Huisha-Huisha*, 27 F.4th at 734

(quoting *Nken*, 556 U.S. at 436). In this case, specifically, the public interest is best served by "curtailing unlawful executive action." *Texas v. United States*, 809 F.3d 134, 187 (5th Cir. 2015), *as revised* (Nov. 25, 2015).

III. The TRO Is Not Overbroad.

Defendants criticize the scope of the temporary restraining order. But this is not a "nationwide injunction." It is simply an injunction that applies to the members of a provisionally certified class. *See Trump v. CASA, Inc.*, No. 24A884 (U.S.), Gov't's App. for Partial Stay of Inj. 38 (Mar 13, 2025) (arguing that class certification and class-wide preliminary relief, "unlike the issuance of nationwide injunctions, complies with Article III and respects limits on courts' equitable authority"). Defendants' citation to *Department of State v. AIDS Vaccine Advocacy Coalition*, No. 24A831 (U.S. 2025), Mot. 24, is inapposite, as that case was not a class action. *See AIDS Vaccine Advoc. Coal. v. U.S. Dep't of State*, No. 25-cv-400, 2025 WL 485324, at *1 (D.D.C. Feb. 13, 2025).

CONCLUSION

Defendants' motion to vacate the temporary restraining orders should be denied.

Dated: March 19, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 19, 2025, I electronically filed the foregoing with the Clerk of the Court for the United States District Court for the District of Columbia by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

Dated: March 19, 2025

Respectfully Submitted,

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*,

Plaintiffs–Petitioners,

v.

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

Defendants–Respondents.

Case No: 1:25-cv-00766-JEB

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2. Syra Ortiz Blanes, Veronica Egui Brito & Claire Healy, *Trump Sent These Venezuelans to El Salvador Mega Prison. Their Families Deny Gang Ties*, Miami Herald (Mar. 18, 2025).

3. Didi Martinez, Daniella Silva & Carmen Sesin, *Families of Deported Venezuelans Are Distraught Their Loved Ones Were Sent to El Salvador*, NBC News (Mar. 19, 2025).

4. Jazmine Ulloa & Zolan Kanno-Youngs, *Trump Officials Say Deportees Were Gang Members. Few Details Were Disclosed*, N.Y. Times (Mar. 18, 2025).

5. Annie Correal, *Venezuelan Families Fear for Relatives as Trump Celebrates Deportations*, N.Y. Times (Mar. 16, 2025).

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7. Camilo Montoya-Galvez, *Trump Invokes 1798 Alien Enemies Act, orders deportation of suspected Venezuelan gang members*, CBS News (Mar. 16, 2025)

8. Tim Padgett, *Was a Venezuelan Deported as a Terrorist Because of a Tattoo Celebrating His Child*, WLRN (Mar. 19, 2025).

EXHIBIT A

DECLARATION OF DEBORAH FLEISCHAKER

I, Deborah Fleischaker, declare the following under 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I began working on immigration detention issues in 2011, when I was a career employee at the U.S. Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL). I was employed by CRCL from March 2011 until September 2021. One year of this (May 2019 - May 2020) was spent on a temporary detail to Senator Patrick J. Leahy's Judiciary Committee staff. An additional four months was spent on a temporary detail at the DHS Office of Policy and three months at U.S. Immigration and Customs Enforcement (ICE). I worked on immigration issues in all of these temporary assignments.
2. Between September 2021 and November 2023, I was employed as a political appointee by DHS's ICE. I was an Assistant Director at ICE and headed the Office of Regulatory Affairs and Policy from September 2021 to November 2022. From November 2022 until November 2023, I served as the Acting ICE Chief of Staff.
3. As the Assistant Director for the Office of Regulatory Affairs and Policy, I spearheaded policy and regulatory initiatives for the agency, with a significant focus on immigration enforcement, detention, and removal. In that position, I worked on a number of enforcement and detention policies, including Secretary Alejandro Mayorkas' enforcement priorities, the DHS sensitive locations and courthouse enforcement policies, and policies relating to the detention of pregnant people, crime victims, and parents.
4. I provide this declaration based on my personal knowledge and experience as well as my review of Robert L. Cerna's Declaration.

5. Mr. Cerna's declaration indicates that ICE is not prepared to detain members of Tren de Aragua ("TdA").
6. Based on my extensive experience with ICE detention policies and practices, that is wrong.
7. ICE detention facilities in the United States are prepared to detain any noncitizen, regardless of their security risk level. This includes people with violent criminal histories, as well as members of gangs and Foreign Terrorist Organizations.
8. Mr. Cerna testifies that gang members in ICE facilities pose a grave risk to nonviolent detainees. That is not true.
9. ICE has a clear custody classification system. Detainees are assessed a custody level and detained at that level. The custody classification system allows ICE facilities to separate detainees with no criminal histories from those with a history of violence. ICE facilities also have "Special Management Units" designed to securely house individuals who cannot be housed safely with the general detainee population. This could include the highest risk and most violent detainees.
10. All but a handful of ICE detention facilities are able to manage all levels of detainees in a safe and secure manner, and ICE is able to ensure that higher risk detainees are housed in appropriately secure facilities.
11. Mr. Cerna also testifies that gang members pose a grave risk to ICE personnel. This is also wrong.
12. As a threshold matter, ICE personnel typically do not serve as guards at detention facilities. Contracted guard services are usually responsible for the safety and security of all detainees and staff, including ICE personnel.

13. ICE has numerous policies in place to ensure a safe and secure environment for both detainees and staff. In all facilities, detainees are subject to line-of-sight monitoring, regular searches, and limitations on the amount and type of property they may have in their possession. ICE also maintains staff/detainee ratios that must be met at all detention facilities to ensure the safety and security of the facilities.
14. ICE devotes significant effort and preparation to safety and security, and the agency routinely manages complex populations with high levels of criminality and gang affiliation, all while keeping its personnel safe.
15. Mr. Cerna testifies that holding TdA members risks potential gang recruitment activities in ICE detention. Again, this is untrue and any risks can be appropriately mitigated.
16. ICE facilities have specific tools to address gang recruitment concerns. Detainees may be held in segregation or housed in pods that contain only detainees with the same gang affiliation. Individual cells are regularly searched, telephone calls are monitored, and there is not significant freedom of movement for high-risk detainees.
17. Finally, Mr. Cerna testifies that holding members of TdA without "an immediate mechanism to remove them" is "irresponsible." That is simply not true.
18. ICE routinely holds gang members through their immigration proceedings. ICE also had facilities designated to hold specific gang-affiliated individuals, often separated by gang. I am not aware of any evidence that TdA's presence in ICE units is any more difficult to manage than the presence of other criminal gangs.
19. Mr. Cerna's declaration describes the types of crimes alleged against individuals removed under the AEA. Assuming the allegations in paragraphs 10 and 11 of Mr. Cerna's

declaration are true, it would have been well within ICE's capacity to detain those individuals safely for the duration of their removal proceedings.

20. ICE has always safely and securely detained individuals who are gang members and/or who have been arrested, charged, or convicted, or who have INTERPOL red notices for violent crimes. There is nothing about the situation described by Mr. Cerna that is different than what ICE normally handles. Safe and secure detention of all individuals, regardless of their security risk, is essential to ICE's mission and a core agency function.

Executed on this 19th day of March, 2025 in Washington D.C.

DocuSigned by:
Deborah T. Fleischaker
8AA70A96D4E74C5...

Deborah T. Fleischaker

EXHIBIT B

DECLARATION OF JUANITA GOEBERTUS,
DIRECTOR, AMERICAS DIVISION, HUMAN RIGHTS WATCH

I, Juanita Goebertus, declare the following under 28 U.S.C. § 1746, and state that under penalty of perjury the following is true and correct to the best of my knowledge and belief:

1. I am the Director of the Americas Division of Human Rights Watch and have worked with the organization since 2022. I hold BAs in Law and Political Science from the Universidad de los Andes (Colombia) and an LLM from Harvard Law School. I oversee Human Rights Watch's work on El Salvador and have traveled to the country several times, most recently in 2024. I provide this declaration based on my personal knowledge and experience.
2. Individuals deported pursuant to the 1789 Alien Enemies Act have been sent to the Center for Terrorism Confinement, the Centro de Confinamiento del Terrorismo (CECOT) in Tecoluca, El Salvador. The prison was first announced for a capacity of 20,000 detainees. The Salvadoran government later doubled its reported capacity, to 40,000. As Human Rights Watch explained to the UN Human Rights Committee in July 2024, the population size raises concerns that prison authorities will not be able to provide individualized treatment to detainees, thereby contravening the UN Standard Minimum Rules for the Treatment of Prisoners.
3. People held in CECOT, as well as in other prisons in El Salvador, are denied communication with their relatives and lawyers, and only appear before courts in online hearings, often in groups of several hundred detainees at the same time. The Salvadoran government has described people held in CECOT as "terrorists," and has said that they "will never leave." Human Rights Watch is not aware of any detainees who have been released from that prison. The government of El Salvador denies human rights groups

access to its prisons and has only allowed journalists and social media influencers to visit CECOT under highly controlled circumstances. In videos produced during these visits, Salvadoran authorities are seen saying that prisoners only "leave the cell for 30 minutes a day" and that some are held in solitary confinement cells, which are completely dark.

4. While CECOT is likely to have more modern technology and infrastructure than other prisons in El Salvador, I understand the mistreatment of detainees there to be in large part similar to what Human Rights Watch has documented in other prisons in El Salvador, including Izalco, La Esperanza (Mariona) and Santa Ana prisons. This includes cases of torture, ill-treatment, incommunicado detention, severe violations of due process and inhumane conditions, such as lack of access to adequate healthcare and food.

5. Prison conditions in El Salvador should be understood within the context of the country's three-year-long state of emergency, which has suspended constitutional due process rights. Since the state of emergency was instituted in March 2022, security forces report detaining 85,000 people (the equivalent of 1.4% of the country's population). Although the government has denied Human Rights Watch information on the number of detainees it holds and its prison capacity, Human Rights Watch estimates based on official data that there are 109,000 people held in prisons with an official capacity for 70,000. Since the state of emergency was instituted, over 350 people have died in El Salvador's prisons according to Salvadoran human rights groups, including the organization Cristosal, which jointly authored our December 7, 2022 report on El Salvador's prisons titled, "We Can Arrest Anyone We Want" (hereinafter "We Can Arrest Anyone").[1]

[1] Human Rights Watch, *"We Can Arrest Anyone We Want": Widespread Human Rights Violations Under El Salvador's "State of Emergency"*, WWW.HRW.ORG, Dec. 7, 2022, https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el#3683 (last visited Mar. 19, 2025).

6. In July 2024, Human Rights Watch published a report on abuses committed against children during the state of emergency, titled "Your Child Does Not Exist Here." Over 3,300 children have been detained, many without any ties to gang activity or criminal organizations. Human Rights Watch documented 66 cases of children subjected to torture, ill-treatment and appalling conditions, including at times extreme overcrowding, unhygienic conditions, and inadequate access to food and medical care while in custody. In February, the Legislative Assembly approved a law ordering the transfer of children detained for organized crime offenses to the country's adult prison system, exposing them to a heightened risk of abuse and violating international juvenile justice standards.
7. For "We Can Arrest Anyone," and in "Your Child Does Not Exist Here," Human Rights Watch has interviewed more than 30 people released from El Salvador's prisons, including children, and dozens of people who have relatives in jail.[2] These interviews were conducted in person in several states in El Salvador or by telephone and corroborated by additional research and media reports.
8. One of the people we spoke with was an 18-year-old construction worker who said that police beat prison newcomers with batons for an hour. He said that when he denied being a gang member, they sent him to a dark basement cell with 320 detainees, where prison guards and other detainees beat him every day. On one occasion, one guard beat him so severely that it broke a rib.

[2] Human Rights Watch, "*Your Child Does Not Exist Here": Human Rights Abuses Against Children Under El Salvador's "State of Emergency"* , WWW.HRW.ORG, Jul. 16, 2024, https://www.hrw.org/report/2024/07/16/your-child-does-not-exist-here/human-rights-abuses-against-children-under-el (last visited Mar. 19, 2025).

9. The construction worker said the cell he was imprisoned in was so crowded that detainees had to sleep on the floor or standing, a description often repeated by people who have been imprisoned in El Salvador.
10. Another detainee we interviewed was held for two days in a police lock-up with capacity for 25 people, but he said that when he arrived, there were over 75 prisoners. He slept on the floor next to "the bathroom," a hole in the ground that smelled "terrible." He was sent in a group of other prisoners to Izalco prison on the third day, where they were ordered the group to take off their clothes. They were forced to kneel on the ground naked looking downwards for four hours in front of the prison's gate. Guards took the group to a room with five barrels full of water with ice, he said. Fifteen guards forced him and others to go into the barrels for around two hours in total, as they questioned them. The detainee was forced into a barrel "around 30 times," and was kept there for about a minute each time. Guards forced his head under water so he could not breathe. "I felt I was drowning," he said. Guards repeatedly insulted them, calling them "dogs" and "scum" and saying they would "pay for what [they] had done."
11. A third detainee held in prison in June 2022 described being sent to what he described as a "punishment cell." He said officers moved him and others there to "make room for other detainees." The new cell was constantly dark, detainees had to sleep standing due to overcrowding, and there was no regular access to drinking water.
12. For "We Can Arrest Anyone," Human Rights Watch and Cristosal gathered evidence of over 240 cases of people detained in prisons in El Salvador with underlying health conditions, including diabetes, recent history of stroke, and meningitis. Former detainees often describe filthy and disease-ridden prisons. Doctors who visited detention sites told

us that tuberculosis, fungal infections, scabies, severe malnutrition and chronic digestive issues were common.

13. Out of the estimated 350 detainees who have died in El Salvador's prisons, we documented 11 of these cases in detail in "We Can Arrest Anyone", based on interviews with victims' relatives, medical records, analysis by forensic experts, and other evidence.
14. In one case, a person who died in custody was buried in a mass grave, without the family's knowledge. This practice could amount to an enforced disappearance if authorities intentionally concealed the fate or whereabouts of the detainee.
15. In at least two other cases, officials appear to have failed to provide detainees the daily medication they required to manage underlying health conditions such as diabetes.
16. In at least four of the eleven cases, photographs of the bodies show bruises. Members of the Independent Forensic Expert Group (IFEG) of the International Rehabilitation Council for Torture Victims (IRCT), who reviewed the photos and other evidence in two of the cases, told Human Rights Watch and Cristosal that the deaths were "suspicious" given that the bodies "present multiple lesions that show trauma that could have been caused by torture or ill-treatment that might have contributed to their deaths while in custody."
17. In a separate Human Rights Watch report from February 2020, titled "Deported to Danger," Human Rights Watch investigated and reported on the conditions in Salvadoran prisons experienced by Salvadoran nationals deported by the United States.[3] In interviews with deportees and their relatives or friends, we collected accounts of three

[3] Human Rights Watch, *Deported to Danger: United States Deportation Policies Expose Salvadorans to Death and Abuse*, WWW.HRW.ORG, Feb. 5, 2020, https://www.hrw.org/report/2020/02/05/deported-danger/united-states-deportation-policies-expose-salvadorans-death-and (last visited Mar. 19, 2025).

male deportees from the United States who said they were beaten by police or soldiers during arrest, followed by beatings during their time in custody, which lasted between three days to over a year. During their time in prison, two of these individuals reported being kicked in the face and testicles. A third man described being kicked by guards in his neck and abdomen, after which he sustained injuries requiring an operation for a ruptured pancreas and spleen, month-long hospitalization, and 60 days of post-release treatment.

Executed on this 19th day of March, 2025 in Villa de Leyva, Colombia.

Signed by:
Juanita Goebertus
F2D78A8897CF4A6...

JUANITA GOEBERTUS

EXHIBIT C

Declaration of Dr. Sarah C. Bishop
Risks for Non-Salvadoran Actors Facing Third Country Removal to El Salvador

Introduction

1. I am writing this expert witness report to address human rights abuses in Salvadoran prisons. I am a full professor with tenure at Baruch College, the City University of New York. I was the 2020-2021 Fulbright Scholar to El Salvador during which time I lived and conducted fieldwork in the country; I have since returned to El Salvador each year for fieldwork related to both published and in-process projects about the State of Exception, human rights abuses by state actors, gang activity, and prison conditions.

2. Deportees who are imprisoned in El Salvador are highly likely to face immediate and intentional life-threatening harm at the hands of state actors and a secondary threat of violence from incarcerated gang members.

Expert Qualifications

3. I was the 2020/2021 Fulbright scholar to El Salvador, during which time I lived and worked in the Department of La Libertad consulting with local academics and non-profit personnel to develop a project that chronicles the experiences of individuals affected by gang-, government-, and domestic-based violence, as well as the professional and psychological outcomes for deportees. I have interviewed multiple people who have been deported back to El Salvador after failed asylum claims and have also interviewed personnel from non-profit organizations working to support individuals who had been deported by the United States or by another government.

4. I have published three books on the experiences of refugees and undocumented immigrants in the United States. In 2022, Columbia University Press published my book *A Story to Save Your Life: Communication and Culture in Migrants' Search for Asylum*. The book won the Abraham Brilloff Prize in Ethics and the Oral History Association's Best Book Award in 2023. My book *Undocumented Storytellers: Narrating the Immigrant Rights Movement* was published by Oxford University Press in 2019 and was the winner of the Best Book Award from the American Studies Division of the National Communication Association. *U.S. Media and Migration: Refugee Oral Histories* was published by Routledge in 2016 and won the Sue DeWine Distinguished Scholarly Book Award.

5. I am a migration scholar with a Ph.D. in Intercultural Communication from the University of Pittsburgh (2014). My dissertation was an oral history project analyzing the push factors and migration experiences of 74 refugees living in the United States. I received an M.A. from New York University in 2009 in Media, Culture, and Communication during which I took classes such as "Refugees and IDPs: Protection and Practice." I received a B.A. from the University of Akron in 2008.

6. I have published numerous articles in peer-reviewed academic journals on the experiences of forced migrants from Central America, including most recently "Hidden in Plain Sight: The In/Visbility of Human Rights in El Salvador's Prisons Under the State of Exception" coauthored with Salvadoran expert Dr. Mneesha Gellmen and forthcoming in *Latin American Research*

Review in 2025; "Beyond the Glowing Headlines: Social Science Analysis of the State of Exception in El Salvador," *Columbia Regional Expert Series,* coauthored with Salvadoran experts Dr. Tom Boerman and Dr. Tommie Sue Montgomery in 2023; "An Illusion of Control: How El Salvador's President Rhetorically Inflates His Ability to Quell Violence," published in *Journalism and Media* in 2023; "'What Does a Torture Survivor Look Like?': Nonverbal Communication in Asylum Interviews and Hearings," published in the *Journal of International & Intercultural Communication* in 2021; "Intercultural Communication, the Influence of Trauma, and the Pursuit of Asylum in the United States," published in the *Journal of Ethnic and Cultural Studies* in 2021; "An International Analysis of Governmental Media Campaigns to Deter Asylum Seekers," published in the *International Journal of Communication* in 2020. All of my books and the articles I have published in academic journals have been subject to peer review by other experts.

7. I regularly give talks about country conditions in El Salvador and the root causes of forced migration, including "Violence for Peace: Authoritarian Justifications of Human Rights Abuses in Central America," to be presented at the Anthropology of Peace, Conflict, and Security Conference in June 2025; "Intergovernmental Criminal History Information Sharing: Justice on Paper, Violence in Practice for Forced Migrants," presented at the Marxe School for International Affairs in March 2025; "Populism, Rhetorical Strategy, and the Regression of Democracy in Central America," presented at Cristosal in San Salvador in February 2023; "Addressing Misinformation and Distortion of Statistics in Country Conditions Research," presented at the International Studies Association in November 2024; "An Illusion of Control: How El Salvador's President Rhetorically Inflates His Ability to Quell Violence," presented at the annual meeting of the American Sociological Association in August 2022; "Health and Safety in El Salvador," presented at the Fulbright Pre-departure Orientations in June 2022, June 2023, and June 2024; and "The Returned: Communication and Culture in the Post-Deportation Lives of Former Asylum Seekers from El Salvador," presented at the annual meeting of the International Association for the Study of Forced Migration in July 2021.

8. I have received several competitive grants for my research on El Salvador, including a 2025 grant from the American Council of Learned Societies (ACLS) and a 2024 grant from the Waterhouse Family Institute to study post-deportation experiences in El Salvador through a family communication approach; a 2022-2023 PSC CUNY Grant for research that documents post-deportation harm in El Salvador; a 2022 grant from the Robert Bosch Stiftung Foundation to travel to El Salvador and meet with investigative journalists and human rights activists for a project about President Nayib Bukele's recent actions against independent media; and a 2018 fellowship from the Institute for the Study of Human Rights at Columbia University to study obstacles to human rights and efforts to promote peace in post-conflict societies including El Salvador.

9. I remain current on events in El Salvador through regularly reading local, national, and international sources including academic and government studies and investigative journalism studies, through frequent conversations with colleagues in the U.S. and El Salvador, and by presenting my research on El Salvador at national and international academic conferences.

10. At Baruch College, I teach classes on migration to the United States and global communication in the Department of Communication Studies, the Macaulay Honors College, and the Masters in International Affairs. I am affiliate faculty in the Department of Black and Latino Studies.

11. My migration research has been recognized for being ethical and applied to real-world contexts: I won the Abraham J. Briloff Prize in Ethics in 2017 and 2023, and the Stanley L. Saxton Applied Research Award in 2018. Moreover, in keeping with the New York State Ethics Commission Reform Act of 2022, I undergo annual ethics training at CUNY.

12. Methodologically, I rely on oral history, ethnography, critical-cultural analysis of governmental communication, and qualitative comparative analysis to conduct my research about country conditions in El Salvador. These are standard and widely used social science methodologies. At Baruch, I am responsible for teaching a graduate level required course on qualitative methods in which I train master's level students in these methods.

13. In 2025 I received $75,000 from the Russell Sage Foundation to continue the project "Recovering the Visibility of Post-Deportation Experiences in El Salvador: A Family Communication Approach" for the years 2025-2027 to involve additional participants who have family members who have been deported under the State of Exception.

Democratic Erosion and Governmental Corruption in El Salvador

14. El Salvador is experiencing a severe democratic decline that threatens the human rights and general safety of the whole population. The 2023 U.S. State Department's Human Rights Reports on El Salvador cites "credible reports of: unlawful or arbitrary killings; enforced disappearance; torture or cruel, inhuman, or degrading treatment or punishment by security forces; harsh and life-threatening prison conditions; arbitrary arrest or detention; serious problems with the independence of the judiciary; arbitrary or unlawful interference with privacy; extensive gender-based violence, including domestic and sexual violence, and femicide; substantial barriers to sexual and reproductive health services access; trafficking in persons, including forced labor; and crimes involving violence targeting lesbian, gay, bisexual, transgender, queer, or intersex persons."[1]

15. President Bukele was discovered through meticulously documented reporting by investigative journalists working for *El Faro* in 2020 to have been negotiating with imprisoned gang leaders who reportedly agreed to a reduction in homicides and electoral support in exchange for additional prison privileges and other benefits for incarcerated gang members.[2] During the weekend of March 25, 2022 there was a record-setting string of around eighty-seven gang-committed homicides across El Salvador that resulted from the unraveling of that secret pact between Bukele and the gangs in what MS-13 called a "betrayal" of Bukele's loyalty. The Monday following the homicides, Bukele successfully called on the Salvadoran Legislative Assembly to pass a State of Exception, which suspends many constitutional protections including due process, drastically increases police and military powers to arrest and imprison suspected gang members, and curtails the right to legal defense.

[1] "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 1.
[2] Carlos Martínez, Óscar Martínez, Sergio Arauz, and Efren Lemus. "Bukele has been negotiating with MS-13 for a reduction in homicides and electoral support." *El Faro.* 6 September 2020. https://elfaro.net/en/202009/el_salvador/24785/Bukele-Has-Been-Negotiating-with-MS-13-for-a-Reduction-in-Homicides-and-Electoral-Support.htm

16. As a result of the government's actions under the current State of Exception, El Salvador currently has the highest incarceration rate in the world.[3]

17. Salvadoran Vice President Félix Ulloa revealed plainly to the *New York Times*, "To these people who say democracy is being dismantled, my answer is yes — we are not dismantling it, we are eliminating it, we are replacing it with something new."[4] The politicized use of all three branches of government to enact and extend the power of the State of Exception disallows any guarantee of justice for Salvadorans against whom the State has acted.

18. The government of El Salvador claims that it has been effective at establishing peace in the country. Americas director at Amnesty International Ana Piquer explained in December 2024, "What the government calls 'peace' is actually an illusion intended to hide a repressive system, a structure of control and oppression that abuses its power and disregards the rights of those who were already invisible—people living in poverty, under state stigma, and marginalization—all in the name of a supposed security defined in a very narrow way."[5]

19. Bukele's director of prisons, Osiris Luna Meza, was indicted by the United States Federal Government for arranging meetings in prison for negotiations with MS-13.[6] As the U.S. Treasury Department reveals, "Osiris Luna Meza (Luna) and Carlos Amilcar Marroquin Chica (Marroquin) [chairman of Bukele's Social Fabric Reconstruction Unit] led, facilitated, and organized a number of secret meetings involving incarcerated gang leaders, in which known gang members were allowed to enter the prison facilities and meet with senior gang leadership. These meetings were part of the Government of El Salvador's efforts to negotiate a secret truce with gang leadership."[7] Luna has also been deemed corrupt by the U.S. Department of Treasury for developing a scheme with another senior Bukele official to embezzle millions of dollars from the prison commissary system.[8]

[3] "El Salvador Opens 40,000-Person Prison as Arrests Soar in Gang Crackdown." *Reuters*. 1 February 2023. https://www.reuters.com/world/americas/el-salvador-opens-40000-person-prison-arrests-soar-gang-crackdown-2023-02-01/#:~:text=SAN%20SALVADOR%2C%20Feb%201%20(Reuters,the%20prison%20population%20to%20soar.
[4] Natalie Kitroeff. "He Cracked Down on Gangs and Rights. Now He's Set to Win a Landslide." New York Times. 2 February 2024. https://www.nytimes.com/2024/02/02/world/americas/el-salvador-bukele-election.html
[5] "El Salvador: A thousand days into the state of emergency. 'Security' at the expense of human rights." Amnesty International. 20 December 2024. https://www.amnesty.org/en/latest/news/2024/12/el-salvador-mil-dias-regimen-excepcion-modelo-seguridad-a-costa-derechos-humanos/
[6] United States District Court. Eastern District of New York. Paragraph 35. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.justice.gov/usao-edny/press-release/file/1569726/download
[7] "Treasury Targets Corruption Networks Linked to Transnational Organized Crime." U.S. Treasury Department. 8 December 2021. https://home.treasury.gov/news/press-releases/jy0519
[8] "Treasury Targets Corruption Networks Linked to Transnational Organized Crime." U.S. Department of the Treasury. 8 December 2021. https://home.treasury.gov/news/press-releases/jy0519

20. In multiple recent documented cases, the Salvadoran government has falsified records, ignored international human rights laws, and detained and prosecuted individuals without evidence to support the ongoing expansion of the State of Exception and indiscriminately punish those who resist or oppose it. As described by Human Rights Watch, "In many cases, detentions appear to be based on the appearance and social background of the detainees, or on questionable evidence, such as anonymous calls and uncorroborated allegations on social media. In these cases, police and soldiers did not show people a search or arrest warrant, and rarely informed them or their families of the reasons for their arrest. A mother who witnessed the detention of her son said that police officers told her, 'We can arrest anyone we want.'"[9]

General Living Conditions in Prison

21. The 2023 U.S. State Department Human Rights Report on El Salvador emphasizes that "Prison conditions *before* the state of exception were harsh and life threatening …The addition of 72,000 detainees under the state of exception exacerbated the problem."[10] Rather than merely being a result of overcrowding, the same U.S. State Department report cites testimonies from released prisoners that show that the life threatening nature of the prison is a result of "systemic abuse in the prison system, including beatings by guards and the use of electric shocks."[11]

22. Salvadoran government officials have directly stated that the dangerous and unsanitary conditions for prisoners taken into custody during the State of Exception are being created intentionally: for example, the U.S. State Department notes that "From the start of the state of exception, the government frequently advertised on social media the overcrowded conditions and lack of adequate food in the prisons as appropriate treatment for gang members."[12] The Directorate General of Penal Centers advertised: "All the suffering these bastards have inflicted on the population, we will make happen to them in the prisons, and we will be very forceful with this. They live without the light of the sun, the food is rationed… they sleep on the floor because that is what they deserve."[13] Paradoxically, this was the same director who was indicted by the United States Federal Government for arranging meetings in prison for negotiations with MS-13,[14] and who has been deemed corrupt by the U.S. Department of Treasury for developing a scheme with another senior Bukele official to embezzle millions of dollars from the prison commissary system, emphasizing the scope of corruption common in prison leadership.[15]

23. In response to international human rights organizations that have raised the alarm about current conditions in El Salvador, President Bukele tweeted "Let all the 'human rights' NGOs know that we are going to destroy these damn murderers and their collaborators, we will throw them in

[9] Human Rights Watch and Cristosal. "We Can Arrest Anyone We Want": Widespread Human Rights Violations Under El Salvador's "State of Emergency." 7 December 2022, https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el

[10] "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 7, emphasis added

[11] Ibid., p 5.

[12] "El Salvador 2022 Human Rights Report." https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 6.

[13] Cited in Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/ p 34.

[14] United States District Court. Eastern District of New York. Paragraph 35. chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.justice.gov/usao-edny/press-release/file/1569726/download

[15] "Treasury Targets Corruption Networks Linked to Transnational Organized Crime." U.S. Department of the Treasury. 8 December 2021. https://home.treasury.gov/news/press-releases/jy0519

prison and they will never get out. We don't care about their pitying reports, their prepaid journalists, their puppet politicians, nor their famous 'international community' that never cared about our people."[16]

24. El Salvador's Public Security Minister has confirmed the plan not to release prisoners and claimed that there are 40,000 serial killers in El Salvador. He stated in an interview with CNN in 2024: "Someone who every day killed people, every day raped our girls, how can you change their minds? We are not stupid…In the US, imagine a serial killer in your state, in your community being released by a judge … how would you feel as a citizen? We don't have facts that someone can change a mind from a serial killer … and we have more than 40,000 serial killers in El Salvador."[17]

25. In October 2021 the Salvadoran government declared that information relating to all detained persons would be considered confidential; over 325 complains to the Interamerican Commission on Human Rights show that when family members have requested information about their detained loved ones, "authorities either refused or provided false information about their whereabouts."[18] In a sample of 131 cases, Cristosal found that 115 family members of detainees have not received any information about the whereabouts or wellbeing of their detained family members since the day of their capture.[19]

26. During my January 2024 visit to El Salvador, I visited Mariona prison where many informal vendors were set up outside the prison gates selling packets of food, medicine, soap, and clothing to individuals with detained family members. Family members can seek to protect their detained relatives from illness or starvation in prison if their family is able to purchase these expensive packets, which cost $100-$300 per month although the national minimum monthly wage is only $365.[20] However, even families who can afford these packets have no assurance that the resources they try to send will ever reach their loved ones inside the prison; there are reports of prison officials deliberately withholding medicine and food even when it is available,[21] and reports of guards forcing women to do sexual acts in exchange for food and medicine.[22]

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[16] Nayib Bukele. 16 May 2023. https://x.com/nayibbukele/status/1658608915683201030?s=20
[17] David Culver, Abel Alvarado, and Evelio Contreras. "Exclusive: Locking eyes with mass murderers in El Salvador." 13 November 2024 https://www.cnn.com/2024/11/06/americas/el-salvador-inside-cecot-prison/index.html
[18] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/ p 29.
[19] Noah Bullock. "The State of Exception in El Salvador: Taking Stock." Testimony before the United States Congress, Tom Lantos Human Rights Commission. 10 December 2024. https://www.youtube.com/watch?v=ChTW-gm-5SI
[20] Mneesha Gellman. "El Salvador voters set to trade democracy for promise of security in presidential election." *The Conversation.* 29 January 2024. https://theconversation.com/el-salvador-voters-set-to-trade-democracy-for-promise-of-security-in-presidential-election-221092
[21] "Testimonios: Sobrevivientes de las Cárceles del Régimen." A weekly series from *El Faro.* https://especiales.elfaro.net/es/testimonios/
[22] "El Silencio no es opción: Investigación sobre las practices de tortura, muerte, y justicia fallida el el regimen de excepción." 10 July 2024. Cristosal Foundation. https://cristosal.org/ES/presentacion-informe-el-silencio-no-es-opcion/

27. A 2024 Report on the Violation of the Right to Health in the Country's Penal Centers from the Human and Community Rights Defense Unit (UNIDEHC) found that upon arrival in prison, detainees under the State of Exception "were received by guards, where many of them were beaten to pressure them to declare which 'gang they belonged to,' and if they refused to say so, they were beaten and tortured more, some convulsed from the beatings they received and others died in these practices, on the first day of transfer."[23] In February 2025, the spokesperson for the organization who produced this report was arbitrarily detained during a raid on the organization's headquarters; Amnesty International concluded his detention was "particularly concerning, as he has been both a witness to and a denouncer of torture in penitentiary centers."[24]

28. The Human and Community Rights Defense Unit (UNIDEHC) also reported in 2024 after a round of interviews with a health professional who worked in a clinic that served some inmates from Mariona prison that inmates were "not provided with medication to treat their diseases that they already suffered from; for example: people with hypertension, diabetes, kidney failure, respiratory problems, among others. They did not receive medication, which caused decompensation and death in some cases. Guards were repeatedly asked for help when someone convulsed or felt ill, but they did not arrive until the following day, or the person's health became more complicated or they died, waiting for help from the prison authorities."[25]

29. Both the 2022 and 2023 U.S. State Department's Human Rights Report on El Salvador state that prison officials repeatedly denied access to the Salvadoran Human Rights Ombudsman's Office, the entity responsible for investigating accusations of human rights abuses in prison.[26]

30. In 2023, Bukele announced the opening of the new "mega-prison" called the *Centro de Confinamiento del Terrorismo* or CECOT. An analysis of the CECOT's design using satellite footage found that if the prison were to reach full supposed capacity of forty thousand, each prisoner would have less than two feet of space in shared cells—an amount the authors point out is less than half the space required for transporting midsized cattle under EU law.[27]

31. The U.S. State Department confirms that prisoners have been held in grossly overcrowded prisons with as many as 80 prisoners held in cells designed for just 12 so that they must sleep standing up.[28]

Systemic Torture as State Policy in Salvadoran Prisons

32. Although El Salvador is a signatory to both the Convention Against Torture and the International Covenant on Civil and Political Rights, Amnesty International has concluded that there is a

[23] Human and Community Rights Defense Unit (UNIDEHC). Violation of the Right to Health in the Country's Penal Centers. 2024. https://heyzine.com/flip-book/9849749093.html#page/1 p 17.
[24] "El Salvador: Repression against human rights defenders and community leaders." Amnesty International 5 March 2025. https://www.amnesty.org/en/documents/amr29/9100/2025/en/
[25]Human and Community Rights Defense Unit (UNIDEHC). Violation of the Right to Health in the Country's Penal Centers. 2024. https://heyzine.com/flip-book/9849749093.html#page/1
[26] "El Salvador 2022 Human Rights Report." U.S. Department of State. https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 4.
[27] Christine Murray, and Alan Smith.. "Inside El Salvador's mega-prison: the jail giving inmates less space than livestock." Financial Times, 6 March 2023. https://www.ft.com/content/d05a1b0a-f444-4337-99d2-84d9f0b59f95.
[28] "El Salvador 2022 Human Rights Report." U.S. Department of State. https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 6.

"systemic use of torture in Salvadoran prisons."[29] The organization notes with concern the three primary characteristics of the crisis: "1) the massive number of human rights violations being committed; 2) the high degree of state coordination in the design and implementation of this measure; and 3) a state response that tends to conceal and minimize these actions, refusing to recognize and diligently investigate the abuses."[30] They confirm that "torture and cruel, inhuman, and degrading treatment have become habitual practice rather than isolated incidents in the prisons."[31]

33. The range of violence occurring inside prisons in El Salvador at the hands of gangs and prison guards is acknowledged in the 2022 and 2023 U.S. State Department's Human Rights Reports on El Salvador; detainees are subject to beatings, waterboarding, and use implements of torture on detainees' fingers to try to force confessions of gang affiliation.[32] Likewise, family members of the detained have been threatened with arrest by security forces to "stop asking questions."[33]

34. A July 2024 report from Cristosal—compiled from 3,643 reports of abuses or rights violations, 110 interviews, case-by-case analyses of 7,742 detainees' experiences—concluded that "Torture has become a state policy, with cruel and inhuman treatment regularly practices in prisons and places of detention."[34]

35. Human Rights Watch conducted 90 interviews about human rights abuses under the State of Exception and published in July 2023 evidence of torture including suffocation, burning, and mock executions against children.[35] The report also found that authorities use abusive language and death threats when making arrests of children who are subjected to human rights violations before, during, and even after their release, and that "In many cases, authorities coerced children into making false confessions to crimes through a combination of abusive plea deals and sometimes mistreatment or torture."[36]

36. An extensive December 2022 investigative report by Human Rights Watch and Cristosal about the State of Exception found that "human rights violations were not isolated incidents by rogue agents. Rather, similar violations were carried out repeatedly and across the country, throughout a period of several months, by both the military and the police."[37]

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[29] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/
[30] Ibid.
[31] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/ p 33.
[32] "El Salvador 2022 Human Rights Report." U.S. Department of State. https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 5; "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 2, 15.
[33] Ibid.
[34] "El Silencio no es opción: Investigación sobre las practices de tortura, muerte, y justicia fallida el el regimen de excepción." 10 July 2024. Cristosal Foundation. https://cristosal.org/ES/presentacion-informe-el-silencio-no-es-opcion/
[35] Human Rights Watch. "Your Child Does Not Exist Here: Human Rights Abuses Against Children Under El Salvador's 'State of Emergency.'" 16 July 2024. https://www.hrw.org/report/2024/07/16/your-child-does-not-exist-here/human-rights-abuses-against-children-under-el
[36] Ibid. p 2.
[37] Human Rights Watch and Cristosal. "We Can Arrest Anyone We Want": Widespread Human Rights Violations Under El Salvador's "State of Emergency." 7 December 2022, https://www.hrw.org/report/2022/12/07/we-can-arrest-anyone-we-want/widespread-human-rights-violations-under-el; The Minister of Security is determined to see the number of arrests rise. See: Mario Gonzalez. "Security Minister wants to imprison 80,000 gang members." *El Diario de Hoy.* 17 June 2022. https://www.elsalvador.com/noticias/nacional/regimen-de-excepcion-ministro-gustavo-villatoro/968181/2022/

37. In some cases, many inmates are punished if one does not obey the guards' orders. UNIDEHC found in an interview with a health professional who had worked at Mariona prison, "In some cells, when an order of the guards or person was not obeyed, they were punished, some examples are: wetting all the people in the cell including their belongings with high-pressure hoses with ice cold water, invading the cell with tear gas; electric shocks, beatings with objects, confinement in the 'punishment cell,' where there were insects and animals (cockroaches, scorpions and mice)…[and] to deprive the right to food, use of the bathroom, and going out in the sunlight, for many days."[38]

38. Amnesty International confirms that "the grave human rights violations being committed under the state of emergency are systematic in nature due to the widespread and sustained manner in which they are occurring; the level of state organization and planning involving the convergence of the three branches of the state; the impunity and lack of accountability; the lack of transparency and access to information; and the widespread criminalization of poverty, as an aspect of discrimination."[39] This is not a matter of isolated acts of violence and torture but rather a coordinated dismantling of the rule of law and widespread practice of grave violations of human rights as the current norm.

39. A team of investigative journalists working to produce a report of human rights abuses under the State of Exception for an *Al Jazeera* documentary shared with me during my visit to El Salvador in early 2023 their preliminary findings, including an interview with an adolescent who had been released from Izalco prison who reported that there were daily beatings in prison, that "the guards would ignore people's requests for medical attention," that "guards would beat someone [un]til they were dead and then bring the body back into the cells and leave it there until the body started stinking," that food rations were so meager that they sometimes had to split one hard-boiled egg between two people for a meal, and that "usually the gang members in the cells would bully weaker people for their food." Former inmates revealed that tear gassing in the overcrowded prisons were so frequent that detainees would reserve one of the three small cups of water they usually received each day to flush their eyes after being gassed.[40]

40. Because the Salvadoran government has been actively attempting to conceal the human rights abuses occurring in prison, a team of investigative journalists at *El Faro* has been recording and publish weekly testimonies of individuals who survived incarceration under the State of Exception. These testimonies corroborate the reports cited above by confirming widespread torture including public beatings to death in front of other inmates, the deliberate withholding of medicine from sick inmates that has resulted in the need for appendages to be amputated, officials throwing prisoners' food on the ground so that inmates must lick the floor to survive, and guards knowing about but failing to take action to prevent some inmates from raping other inmates.[41]

41. Further testimonies gathered and published by the newspaper *El Pais* reveal practices such as prison officials in Izalco prison hosing down the floor of an overcrowded cell with water then

[38] Human and Community Rights Defense Unit (UNIDEHC). Violation of the Right to Health in the Country's Penal Centers. 2024. https://heyzine.com/flip-book/9849749093.html#page/1 p 18.
[39] "El Salvador: One year into state of emergency, authorities are systematically committing human rights violations." Amnesty International. 3 April 2023. https://www.amnesty.org/en/latest/news/2023/04/el-salvador-state-emergency-systematic-human-rights-violations/
[40] Mark Scialla, Salvadoran-based investigative journalist and director of documentary on human rights abuses under the State of Exception for *Al Jazeera* "Fault Lines." 28 February 2023, via message to Sarah Bishop.
[41] "Testimonios: Sobrevivientes de las Cárceles del Régimen." A weekly series from *El Faro.* https://especiales.elfaro.net/es/testimonios/

sending an electric current through the water to shock everyone inside, guards responding to inmates' pleas for medicine or food with beatings (sometimes to the point of death), and state officials' explicit threats to murder inmates and fabricate justifications, such as "I can shoot you right now and say you wanted to escape."[42]

42. El Salvador's government has repeatedly been accused of committing crimes against humanity. Zaria Navas, former Inspector General for the Salvadoran National Police and now head of Cristosal's Law and Security program, declared in June 2023 that due to the systemic and widespread human rights abuses committed during the State of Exception: "There is enough evidence for El Salvador to be tried for crimes against humanity."[43] Likewise, in July 2023, former Salvadoran Human Rights Ombudsman David Morales equated the abuses occurring in the prisons under the State of Exception with the 1932 genocide against the country's indigenous population and the atrocities committed during El Salvador's 1980-1992 civil war; like Navas, he described the government's actions as crimes against humanity.[44] More recently, in December 2024, Leonor Arteaga from the Due Process of Law Foundation concluded, "it is also likely that some of the torture enforced disappearances and extrajudicial executions that have been documented may constitute crimes against humanity which implies the existence of a plan or a policy to commit them involving a chain of command of government actors in El Salvador."[45]

Deaths in Prison

43. The deaths of around 375 incarcerated individuals since the start of the State of Exception have been recorded so far, but the human rights nongovernmental organization (NGO) Socorro Jurídico Humanitario that the actual number of deaths may exceed 1000 because of an estimated minimum of fifteen deaths per month that are not reported.[46]

44. In a sample of 100 cases of prison deaths that occurred during the first year of the State of Exception and for which a cause of death could be determined, Cristosal found through photographic, forensic, and testimonial evidence that 75% of the deaths were violent, probably violent, or with suspicions of criminality on account of a common pattern of hematomas caused by beatings, sharp object wounds, and signs of strangulation on the cadavers examined.[47] Others have died due to being denied medical care.[48]

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[42] David Marcial Pérez. "The rampant abuse in El Salvador's prisons: 'They beat him to death in the cell and dragged him out like an animal'." *El Pais.* 26 March 2023. https://english.elpais.com/international/2023-03-26/the-rampant-abuse-in-el-salvadors-prisons-they-beat-him-to-death-in-the-cell-and-dragged-him-out-like-an-animal.html

[43] Julia Gavarrete. "There is Enough Evidence for El Salvador to be Tried for Crimes Against Humanity." *El Faro*. 7 June 2023. https://elfaro.net/en/202306/el_salvador/26881/there-is-enough-evidence-for-el-salvador-to-be-tried-for-crimes-against-humanity#

[44] Lissette Lemus. "David Morales: Los Crímenes que está Cometiendo el Gobierno Actual son de Lesa Humanidad." *El Salvador.com*. 16 July 2023. https://www.elsalvador.com/noticias/nacional/capturados-cristosal-regimen-de-excepcion-breaking-news/1076092/2023/

[45] Leonor Arteaga. "The State of Exception in El Salvador: Taking Stock." Testimony before the United States Congress, Tom Lantos Human Rights Commission. 10 December 2024. https://www.youtube.com/watch?v=ChTW-gm-5SI

[46] Socorro Jurídico Humanitario (Humanitarian Legal Aid). 16 March 2025. https://x.com/SJHumanitario/status/1901454047162372257

[47] Cristosal (2023). One Year Under State of Exception: A Permanent Measure of Repression and Human Rights Violations. https://cristosal.org/EN/wp-content/uploads/2023/08/One-year-under-the-state-of-exception-1.pdf. Page 29.

[48] David Bernal. "Socorro Jurídico ya contabiliza 235 reos muertos bajo régimen de excepción en El Salvador." 24 February 2024. *La Prensa Grafica*. https://www.laprensagrafica.com/elsalvador/Socorro-Juridico-ya-contabiliza-235-reos-muertos-en-regimen-20240223-0089.html

45. The actual number of deaths is impossible to confirm because of the government's opacity on the matter.[49] Noah Bullock, the director of Cristosal, explains, "Our investigations demonstrate a clear pattern of torture within the prisons and so we don't discount that the number of people who have died in the State of Emergency could be much higher."[50] The Salvadoran state maintains that all prison deaths have been the result of natural causes despite forensic evidence to the contrary.[51]

46. The known death rate in Salvadoran prisons is around 70 times greater than the international violent death according to the United Nations' 2024 Global Prison Population report.[52]

47. The organization MOVIR (Movimiento de Victimas del Régimen de Excepción, or Movement of Victims of the Regimen of Exception) has corroborated that a considerable number of the deaths evaluated so far have been a result of physical attacks of various kinds carried out by state agents, in addition to "beatings inflicted by other prisoners with acquiescence of the prison authorities."[53]

48. The testimony of Professor Mario Alberto Martínez, who was arrested and detained after making a public statement denouncing the arbitrary detention of his daughter, includes the account of his being in a highly overcrowded cell where inmates were not allowed to speak or even to pray. When three boys were caught talking, the guards removed them from the cell and beat them until they appeared to be dead. Martinez reports that "people died every day" while he was in prison.[54]

49. Even the deaths described by medical legal obituaries as nonviolent have in some cases involved cadavers that show forensic evidence of torture. One 45-year-old man with an intellectual disability died in prison and was buried by the state in a mass grave with a legal obituary that showed he died from a "pulmonary edema." However, photographic evidence of the cadaver showed edemas of his face, and interviews with individuals detained in the same prison reveal that he was beaten so severely that he lost mobility including the ability to eat.[55] Others have been released from prison in such severe physical states that they have died within days of release because of injuries they sustained in prison; they are not counted among the numbers of deaths in prison.[56]

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[49] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/. p 33.
[50] "El Salvador's Prison State." *Fault Lines, Al Jazeera English*. May 24, 2023. https://www.aljazeera.com/program/fault-lines/2023/5/24/el-salvadors-prison-state
[51] Bryan Avelar. "Inmates in El Salvador tortured and strangled: A report denounces hellish conditions in Bukele's prisons." *El Pais*. 29 May 2023. https://english.elpais.com/international/2023-05-29/inmates-in-el-salvador-tortured-and-strangled-a-report-denounces-hellish-conditions-in-bukeles-prisons.html
[52] United Nations Office on Drugs and Crime (UNODC). "Global prison population and trends. A focus on rehabilitation." 15 August 2024. https://www.cdeunodc.inegi.org.mx/index.php/2024/08/15/global-prison-population-and-trends-a-focus-on-rehabilitation/; The figure of 366 deaths among an inmate population of 83,000 translates to a ratio of 404.82 deaths per 100,000, a rate 69.8 times greater than the international violent death rate of 5.8 per 100,000.
[53] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/. P 33.
[54] Williams Sandoval. ""Vi cuando llevaban gente tiesa; todos los días moría gente": así narra un profesor su paso por las cárceles del régimen de excepción." *La Prensa Grafica.* 14 June 2024. https://www.laprensagrafica.com/elsalvador/Vi-cuando-llevaban-gente-tiesa-todos-los-dias-moria-gente-asi-narra-un-profesor-su-paso-por-las-carceles-del-regimen-de-excepcion-20240614-0056.html
[55] Bryan Avelar. "Inmates in El Salvador tortured and strangled: A report denounces hellish conditions in Bukele's prisons." *El Pais*. 29 May 2023. https://english.elpais.com/international/2023-05-29/inmates-in-el-salvador-tortured-and-strangled-a-report-denounces-hellish-conditions-in-bukeles-prisons.html
[56] Cristosal. "One Year Under the State of Exception." May 2023. https://cristosal.org/EN/2023/08/17/report-one-year-under-the-state-of-exception/ p 53.

50. It sometimes takes several months for family members to learn of the death of a loved one in prison, as was the case for a 76-year-old woman who was arrested in April 2022, died while in custody the following November, and was buried in a mass grave. Her children were not advised of her death and continued to send care packages to the prison until February 2023 when a lawyer told them their mother would be released on bail if they paid $3,000. When they arrived at the prison to deliver one last care package before their mother's release, guards told them she had been dead for months.[57]

Governmental Attempts to Obscure the Visibility of Human Rights Violations

51. Public access to national data is a central tenet of democracy that has been severely curtailed under Bukele as a means of maintaining popularity while allowing widespread human rights abuses to be committed out of public view. The government of El Salvador is intentionally restricting access to previously publicly available information especially as related to the police and military, prisoners, and the judiciary. As a result, it is becoming increasingly difficult for academics, NGOs, and other governments to access the information and statistics that would reveal the full scope of the disregard for human rights taking place in El Salvador. To produce evidence that is statistically significant instead of just anecdotal in this repressive context requires a coordinated approach to identify patterns and fidelity among pockets of available data in the rapidly unfolding human rights crisis.

52. As I and my coauthors in a 2023 report in Columbia University's *Regional Expert Series* explain, President Bukele's government has attempted to prevent public knowledge of continuing and widespread human rights abuses through strategies that include (1) denying outsiders access to the prisons, including the Salvadoran Human Rights Ombudsman's Office; (2) criminalizing the media and threatening journalists; (3) subjecting family members of the detained to threats of arrest if they speak publicly of their loved ones' experiences; and (4) routinely charging that individuals and groups who expose the abuses associated with the State of Exception are supporters of gang members and terrorists, in some cases leading to their imprisonment.[58]

53. Though international NGOs have been working for all three years of the State of Exception to document and corroborate widespread claims of human rights abuses taking place in El Salvador, this work is made highly difficult and sometimes impossible by the government's resistance. As described by Amnesty International in December 2023, "It is not possible to obtain official statistics such as the number of prisoners, overcrowding rate at detention centres, deaths of prisoners, number of crimes, [and] whether abuses of force by public security agents are being recorded and disciplined, among other citizen security variables used to monitor and assess the security situation and state of emergency."[59] Likewise, clandestine graves discovered in El Salvador are deemed by Bukele's government as matters of national security and the identities of their contents classified.

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[57] "Relato: Las mentiras de un abogado y el deterioro en el penal le costaron la vida a Rosa." La Prensa Grafica. 11 February 2023. https://www.laprensagrafica.com/elsalvador/Relato-Las-mentiras-de-un-abogado-y-el-deterioro-en-el-penal-le-costaron-la-vida-a-rosa-20230210-0095.html

[58] Sarah Bishop, Tommie Sue Montgomery, and Tom Boermann. "Behind the Glowing Headlines: Social Science Analysis of the State of Exception in El Salvador" CeMeCA's Regional Expert Series No. 9, 2023.

[59] Amnesty International. "Behind the veil of popularity: Repression and regression of human rights in El Salvador." 5 December 2023. https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/ p 64.

54. The State Department's 2023 Human Rights Report on El Salvador explicitly remarks on the invisibility of and lack of access to national data: "Human rights groups observed that the government increasingly declined to make public data for monitoring and analysis purposes. *Gato Encerrado,* an investigative newspaper, noted the government continued to expand the types of information it classified as confidential and not subject to public disclosure requirements."[60] Without reliable access to national data, neither the State Department nor any other concerned party can provide a more exhaustive view of country conditions that would be possible in more democratic contexts.

55. There are increasing instances of the government blatantly obscuring evidence of state violence. For example, the Attorney General of El Salvador claims to have investigated 143 deaths in prison during the State of Exception and found that every one of the 143 was due to pre-existing conditions or natural causes. However, the U.S. State Department Human Rights report released in 2024 offers evidence from sources including Socorro Jurídico Humanitario, Cristosal, and *El Pais* determining through forensic evidence dozens of violent deaths in prison including those where prison guards beat inmates to death.[61] What the U.S. State Department calls "systemic abuse in the prison system" is effectively denied by the Salvadoran State.

56. The government's clampdown on information related to human rights appears to be devolving. Whereas the 2022 U.S. State Department Human Rights report on El Salvador revealed that "The government reported varying numbers of disappearances and sporadically declined to provide media with numbers and additional data on disappearances, often claiming the statistics were classified,"[62] the report from the following year explains that the Minister of Justice and Public Security had announced the total suspension of investigations into disappearances.[63] These kinds of data would be more readily available in more democratic contexts and offer evidence of El Salvador's sharp democratic decline.

57. To create an illusion of improving country conditions with respect to gang violence, Bukele relies on rhetorical strategies that include selectively revealing and concealing national data.[64] The Inter-American Commission on Human Rights (IACHR) has criticized the Salvadoran State for "a lack of access to statistical data and official records on violence and crime from the Attorney General's Office and the Institute of Forensic Medicine, as well as other data from the PNC [National Civil Police], making it difficult to verify, contrast, and analyze information on citizen security."[65] IACHR notes the "absence of updated official data on incidents of injured or dead persons related to police or Armed Force officers that could be construed as human rights violations."[66] In other

[60] "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 27.
[61] Ibid, p 2.
[62] "El Salvador 2022 Human Rights Report." US Department of State https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 3.
[63] "El Salvador 2023 Human Rights Report." US Department of State. https://www.state.gov/reports/2023-country-reports-on-human-rights-practices/el-salvador/ p 4.
[64] Parker Asmann. "El Salvador to Omit Key Data from Official Homicide Tally." *Insight Crime*. 18 July 2019. https://insightcrime.org/news/brief/el-salvador-omit-key-data-homicides/; Sarah C. Bishop. "An Illusion of Control: How El Salvador's President Rhetorically Inflates His Ability to Quell Violence." *Journalism and Media*, *4*, no. 1 (2023): 16-29.
[65]Inter-American Commission on Human Rights. "Follow-up of Recommendations Issued by the IACHR in its Country or Thematic Reports: El Salvador." 2022. https://www.oas.org/en/iachr/docs/annual/2022/Chapters/12-IA2022_Cap_5_El_Salvador_EN.pdf. p 874.
[66] Ibid., p 876.

words, the state has repeatedly refused to provide the information that would be necessary to know the full scope of and prosecute instances of police and military violence.

58. Americas Director for Amnesty International Ana Piquer reported in March 2024 that "the denial, minimization and concealment of reported serious human rights violations reflect the government's unwillingness to fulfil its duty to respect and promote human rights in the country."[67] By strategically concealing both the nature and scope of human rights abuses taking place, the government of El Salvador has managed to mitigate international awareness.

Gang Activity During the State of Exception

59. Publicly visible gang activity outside the prisons has quieted during the State of Exception, though gang violence inside the prisons subsists.[68] Since 2004, a practice had been in place to hold members of the two most powerful gangs in El Salvador, MS-13 and Barrio 18, in separate prisons in a measure designed to prevent both rival inter-gang violence and violence between gang members and civilians. Former Salvadoran Security Minister Bertrand Galindo explained, "The point was that if we left them in the same facilities, with the level of violence that was occurring and the weakness of the infrastructure, the state was not going to be able to prevent them from killing each other."[69] Bukele changed this policy in 2020 and reaffirmed on Twitter during the opening of his new 2023 mega-prison that gang members would be mixed together and held for decades[70]—a change certain to result in violence between the gangs and indicative of the Salvadoran state's determination not to protect its detained citizens from harm at the hands of the gangs.

60. The high probability of violent gang activity in prisons during the State of Exception in El Salvador since the policy changed has been confirmed by a range of instances such as a January 2025 riot in Izalco prison in which active gang members mixed together in a cell with retired gang members reportedly attacked each other using iron bars they had removed from their beds, resulting in at least three deaths.[71] Two weeks after the riot, three inmates from Izalco prison died in hospitals; the families of the deceased were informed that the cause of their deaths was "illness." [72]

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[67] Amnesty International. "El Salvador: The institutionalization of human rights violations after two years of emergency rule." 27 March 2024. https://www.amnesty.org/en/latest/news/2024/03/el-salvador-two-years-emergency-rule/

[68] "El Salvador 2022 Human Rights Report." U.S. Department of State. https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/el-salvador/ p 5.

[69] Roberto Valencia. "How El Salvador Handed its Prisons to the Mara Street Gangs." *InsightCrime* 3 September 2014. https://insightcrime.org/news/analysis/how-el-salvador-handed-its-prisons-to-the-gangs/#:~:text=On%20September%202%2C%202004%20the,active%20gang%20members%20call%20pesetas.

[70] Bukele, Nayib (@NayibBukele). 2023. Twitter, February 24, 2023. Translated from Spanish by Sarah C. Bishop. https://twitter.com/nayibbukele/status/1629165213600849920.

[71] David Bernal, Cindy Castillo y Claudia Espinoza. "Pedirán una investigación por motín en penal de Izalco." *La Presna Grafica.* 10 January 2025. https://www.laprensagrafica.com/elsalvador/Pediran-una-investigacion-por-motin-en-penal-de-Izalco-20250110-0063.html

[72] Oscar Reyes. "Reos de penal de Izalco mueren en hospitals." 28 January 2025. *La Prensa Grafica.* https://www.laprensagrafica.com/elsalvador/Reos-de-penal-de-Izalco-mueren-en-hospitales-20250128-0083.html

61. Bukele's failure to protect detainees from gang violence has been widely criticized by human rights organizations. Director for the Americas at Human Rights Watch José Miguel Vivanco stated that not separating gang-affiliated detainees from each other or from other detainees showed the government's "wickedness and cruelty;"[73] the Human Rights Commission of El Salvador stated that the practice "carries a total risk of mutinies or selective or collective murders."[74] Still, much of the news reporting on Bukele's change in procedure referenced the country's general prison overcrowding, as though the move was an inevitable reality in a national context where the prison population was already double its stated capacity. The fact that Bukele reiterated his intention to mix gang members together in the announcement of the opening of the new mega-prison that was promised to solve the issue of overcrowding reveals this practice as a deliberate strategy in knowing acquiescence to the violence likely to result rather than an unfortunate necessity.

62. In practice, this means that Salvadoran citizens, many of whom have been arrested arbitrarily, continue to be victim to gang control and authority even while detained. In some prisons, MS-13 and Barrio 18 are designating leaders of crowded cells to set cell rules and determine who receives food and water. Breaking the gang's rules may result in physical beatings.[75]

Conclusion

63. Deportees who are imprisoned in El Salvador are highly likely to face immediate and intentional life-threatening harm at the hands of state actors and a secondary threat of violence from incarcerated gang members.

Signature

I declare under penalty of perjury that the foregoing is true and correct to best of my knowledge.

Signature

March 19, 2025

Date

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[74] Marcos González Díaz. "Bukele contra las maras: las impactantes imágenes con las que El Salvador anunció que juntó a presos de diferentes pandillas en las celdas para combatir la violencia." *BBC News Mundo.* 28 April 2020. https://www.bbc.com/mundo/noticias-america-latina-52450557

[75] Stephen Dudley et al. "El Salvador's (Perpetual) State of Emergency: How Bukele's Government Overpowered Gangs." December 2023. https://insightcrime.org/investigations/el-salvador-perpetual-state-emergency-how-bukele-government-overpowered-gangs/#:~:text=In%20March%202022%2C%20the%20government,suspected%20gang%20members%20and%20collaborators p 6.

EXHIBIT D

Declaration of Linette Tobin

I, Linette Tobin, do hereby declare the following under penalty of perjury:

1. I am the immigration attorney for Jerce Reyes Barrios, born in January 16, 1989 in Venezuela.

2. In February and March 2024, Mr. Reyes Barrios marched in two demonstrations in Venezuela protesting the authoritarian rule of Maduro. At the second demonstration, he was detained and taken to a clandestine building where he was tortured (electric shocks and suffocation) along with other demonstrators.

3. Shortly after his release, he fled Venezuela for the United States. He registered with CBP One in Mexico, then presented himself to CBP officials on the day of his appointment. He was taken into custody and detained at Otay Mesa Detention Facility in September 2024.

4. We applied for asylum, withholding of removal, and CAT protection in December 2024. His final individual hearing is set for April 17, 2025 before Judge Robinson at the Otay Mesa Immigration Court.

5. On March 15, 2025, Mr. Reyes Barrios was deported to El Salvador with no notice to counsel or family. It was not until March 18, 2025 that counsel was able to reach an ICE official and learn that he had in fact been deported.

6. Mr. Reyes Barrios was/is a professional soccer player in Venezuela. He has never been arrested or charged with a crime. He has a steady employment record as a soccer player, as well as a soccer coach for children and youth.

7. Initially, Mr. Reyes Barrios was placed in maximum security at Otay Mesa and accused of being a Tren de Aragua gang member. The accusation is based on two things. First, he has a tattoo on his arm of a crown sitting atop a soccer ball with a rosary and the word "Dios." DHS alleges that this tattoo is proof of gang membership. In reality, he chose this tattoo, because it is similar to the logo for his favorite soccer team Real Madrid. See logo below.

Real Madrid logo

Mr. Reyes Barrios tattoo

8. Second, DHS reviewed his social media posts and found a photo of Mr. Reyes Barrios making a hand gesture that they allege is proof of gang membership. In fact, the gesture is a common one that means I Love You in sign language and is commonly used as a Rock&Roll symbol.

Mr. Reyes Barrios' social media post

9. After submitting a police clearance from Venezuela indicating no criminal record, multiple employment letters, a declaration from the tattoo artist who rendered the tattoo, and various online images showing similar soccer ball/crown tattoos and explaining the meaning of the hand gesture, Mr. Reyes Barrios was transferred out of maximum security.

10. Nevertheless on March 10th or 11th, he was transferred from Otay Mesa to Texas without notice. Then, on March 15, 2025, he was deported to El Salvador. Counsel and family have lost all contact with him and have no information regaring his whereabouts or condition.

Sworn this 18th day of March 2025.

Linette Tobin, Esq.
Counsel for Jerce Reyes Barrios

EXHIBIT E

DECLARATION OF AUSTIN THIERRY

I, Austin Thierry, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. I make this declaration based on my own personal knowledge or knowledge I have from representing my client, E.V., and if called to testify I could and would do so competently and truthfully to these matters.

2. My name is Austin Thierry. I am a staff attorney at The Bronx Defenders. I represent E.V., who is a young man from Venezuela. E.V. fled Venezuela in 2022 after he was imprisoned and tortured by the Venezuelan government for participating in an anti-government protest. E.V. turned himself over to immigration officials at the United States-Mexico border and was briefly detained before being release. He lived in New York City for over two years prior to being detained by ICE.

3. E.V. has only one arrest in the U.S., which resolved with a non-criminal disposition under New York state law and for which he received a sentence of a one-year conditional discharge.

4. E.V. was arrested by ICE after an incidental encounter. According to the Form I-213, ICE was looking for another individual at the home but decided to arrest E.V. when they encountered him. E.V. has an infant U.S. citizen son. Since E.V.'s detention, his partner and infant son have struggled to meet their expenses and maintain housing.

5. I was retained by E.V. on February 10, 2025. E.V. was in immigration detention at the Moshannon Valley Processing Center in Philipsburg, PA from January 28, 2025 until he was abruptly transferred to El Valle Detention Center in Texas sometime between March 7, and March 9, 2025.

6. E.V. does not have a removal order. He is in removal proceedings and his next individual hearing date is scheduled for June 05, 2025. As of the signing of this declaration, the Immigration Court calendar still has E.V.'s individual hearing date scheduled. As he did not have a final removal order, there was and is no basis to remove E.V. under the Immigration and Nationality Act.

7. ICE alleges in a Form I-213 that EV's visible tattoos indicate he is a member of Tren de Aragua. EV has various tattoos, such as tattoos of anime, flowers, and animals, that he chose to get for personal and artistic reasons. He denies being a member of Tren de Aragua or any other gang. E.V. intended to strenuously contest these allegations in his pending removal proceedings. E.V. also has a tattoo of a crown, which may be why ICE falsely accused him of gang membership. However, this crown is not related to Tren de Aragua but rather, a tribute to his grandmother whose date of death appears at the base of the crown.

8. On March 14, 2025, I received messages from E.V.'s family indicating that he had been taken to an airport and was going to be put on a plane to Venezuela. At the airport, he was told the plane had a mechanical issue and he was taken back to the El Valle Detention facility and told he would be put on a plane within four days. E.V. called me later that same day and confirmed the information his family provided me.

9. On March 15, 2025, I had a video legal call scheduled with E.V. at the El Valle Detention Facility. The call was supposed to begin at 9 a.m. Central Time (CT) and was confirmed by email. At approximately 9:20 a.m. CT, I spoke with an officer at the El Valle Detention Facility. The officer eventually told me that my call would not go forward because the facility was on lock down due to an incident. When I asked whether my client was being transferred, the officer informed me that contractors are not privy to this information.

10. Prior to this call, my client's family member communicated with me and informed me that he had reached out to her earlier today to inform her that he had been told that he was being removed to Venezuela.

11. From March 14, 2025 until March 16, 2025, I checked the ICE detainee locator numerous times. On March 14, 2025 and March 15, 2025, each time I checked, the ICE detainee locator listed E.V. as at the El Valle Detention Facility.

12. On the morning of Sunday, March 16, 2025, I saw news reports that the government had removed individuals to a prison in El Salvador. I was gravely concerned about E.V.'s whereabouts and checked the detainee locator again. It still listed E.V. as at El Valle. I attempted to call both El Valle Detention Facility and the Port Isabel Processing Center to try to ask about E.V.'s whereabouts. I was unable to get through to anyone. On the morning of Sunday, March 16, 2025, I also sent an email to El Valle requesting a legal call. The facility responded in the afternoon and stated that E.V. was no longer there and that there was no further information they had. Shortly after, I checked the ICE detainee locator again, and the detainee locator no longer showed E.V. in ICE custody.

13. I have not heard from E.V. since I spoke to him on the morning of Saturday, March 15, 2025. His family has also not heard from him since Saturday. I am extremely concerned that E.V. has been wrongfully removed based on the Alien Enemies Act despite his pending removal proceedings and the fact that he strongly contests the government's gang allegations.

14. Our office also has one other client and one prospective client, both of whom we believe were removed to El Salvador despite still having pending removal proceedings. Their family members recognized them from the photos circulating about the removal to El Salvador. We have been receiving numerous calls from distraught family members who are terrified for their loved ones' safety.

Executed on the 19th of March, 2025 in Brooklyn, New York.

Austin Thierry, Esq.
The Bronx Defenders
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Bronx, NY 10451
T: (347) 842-1336
AThierry@bronxdefenders.org

EXHIBIT F

DECLARATION OF OSVALDO E. CARO-CRUZ, ESQ.

I, Osvaldo E. Caro-Cruz, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge:

1. My name is Osvaldo E. Caro-Cruz. I am an Immigration Attorney representing JABV in his removal proceedings. I first entered my appearance in this case on October 29, 2024.

2. JABV is a Venezuelan national who was born on January 5, 2001, in Guanare, Venezuela. He lived there until he fled due to political persecution by the Maduro regime. He was an active supporter of opposition leader Maria Corina Machado and was persecuted for his political activism.

3. In January 2024, while participating in a peaceful campaign activity distributing materials in support of the opposition, he was violently abducted by masked men affiliated with the Venezuelan government. He was thrown into a black SUV and beaten severely. His captors threatened him, stating, "Today we spare your life, but if you campaign again, there will be no forgiveness next time."

4. He was taken to the Los Proceres police center, where he was detained for over four days. During this time, he was tortured, deprived of food, and physically assaulted by Venezuelan authorities and pro-government colectivos. His captors repeatedly told him he was a "traitor to the homeland" and that if he was found again, he would be executed.

5. I have obtained video evidence showing Venezuelan police raiding his home, confirming that he was being actively persecuted by the Maduro regime due to his political opposition. His removal places him at imminent risk of harm, including detention, torture, or death at the hands of Venezuelan authorities.

6. Fearing for his life, JABV fled Venezuela on February 12, 2024. He traveled through Colombia, the Darien Gap, and several Central American countries before reaching Mexico, where he applied for entry to the United States through the CBP One application. He did not seek asylum in any other country due to their alliances with the Maduro regime, fearing deportation back to Venezuela.

7. His Notice to Appear (NTA) states he applied for admission in the US at San Ysidro, CA, on August 3, 2024, using the CBP One app.

8. His Record of Deportable/Inadmissible Alien (Form I-213) states he had no prior criminal history in the US, that he was a citizen of Venezuela, and that he was fleeing the country because he feared for his life. The same document states: "Subject has gang-related tattoos which were photographed by CBPO Clesi. The tattoos are well-known tattoos that Tren de Aragua gang members tend to have. Subject denied being part of Tren de Aragua or any other gang."

9. The allegation that JABV was affiliated with the Tren de Aragua gang is entirely speculative and unsubstantiated. DHS never provided any evidence of his involvement with el Tren de Aragua, or any other gang.

10. His tattoos are a Rose, a Clock and a Crown with his son's name on it. These are common in Venezuela and bear no exclusive association with gang affiliation.

11. As his attorney, I did my due diligence regarding his past, JABV has never been arrested, charged, or convicted of any crime in Venezuela or the United States.

12. On November 7, 2024, I filed a Form I-589, Application for Asylum, Withholding of Removal, and Protection under the Convention Against Torture on behalf of JABV. His asylum claim is based on the previous events and his well-founded fear of persecution due to his political opposition to the Venezuelan government.

13. Because JABV was in expedited removal, he was detained while his case was pending before the Immigration Court. His individual hearing was scheduled for April 7, 2025, at 1:00 PM before Honorable Judge Francis Mwangi in the Jena Immigration Court. Even though he was frustrated with the fact that he was detained, he understood, and was patiently waiting for his day in court in order to present his case.

14. On March 16, 2025, while trying to schedule several Virtual Meetings with the El Valle Detention Center, I learned that JABV had been removed from the United States without any notice to me, his attorney on record, or to his family. Despite multiple inquiries to

ICE and DHS, I have not received any information regarding his current location or the country to which he was deported.

15. On March 18th, I received confirmation from ICE that JABV was in fact removed from the Country on or about midday 3/15/2025, but had no information regarding his current whereabouts.

16. According to pictures and flight plans made public through social media, that is the exact same day and time a plane carrying various immigrants was sent to El Salvador. This makes me believe that he is currently being detained there. His brother states he recognized him in the videos published by El Salvador president, Nayib Bukele.

17. It is important to emphasize that JABV had **NO** removal order at the time of his removal from the United States, and even as of today, he still has no removal order in Immigration Court.

18. JABV was abruptly transferred multiple times before his removal. Initially detained in Jena, Louisiana, he was transferred to El Valle Detention Facility in Texas without explanation. There were no formal notices provided to me as his attorney, and at no point was he advised of the reasons for these transfers. He was not given any documentation explaining the moves, nor was he allowed to contest them.

19. As of the time of writing this declaration, I have not been informed about the exact circumstances of my client's removal, where he has been sent, or whether any further action can be taken to rectify this situation.

I, Osvaldo E. Caro-Cruz, affirm under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Osvaldo Caro Cruz, Esq.

Dated: 3/19/2025

EXHIBIT G

DECLARATION OF KATHERINE KIM

I, Katherine Kim, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct.

1. My name is Katherine Kim. I am a licensed attorney in good standing in the state of New York. I am the Deputy Director of the Immigration Practice at The Bronx Defenders.

2. Our office represents L.G., who is a young man from Venezuelan who fled to the United States for safety, in removal proceedings.

3. When our office began representing him in February 2025, L.G. was detained at the Moshannon Valley Processing Center in Philipsburg, Pennsylvania. Starting on or about February 14, 2025, his removal proceedings were venued at the court in Elizabeth, New Jersey.

4. L.G. does not have a removal order. His removal proceedings are pending, and he has a pending claim for asylum. His next court date is scheduled for a Master Calendar Hearing on April 8, 2025. As L.G. does not have a final removal order, there is no basis to remove him under the Immigration and Nationality Act.

5. On or about March 10, 2025, L.G.'s legal team learned that L.G. was abruptly transferred to the El Valle Detention Facility in Texas. On March 11, 2025, the attorneys assigned to L.G.'s case appeared for a Master Calendar Hearing before the court in Elizabeth, NJ. The government did not produce L.G. The government filed a change of address form for L.G. and moved to change venue to the Port Isabel court in Los Fresnos, TX. The court in Elizabeth, NJ granted that motion and changed venue.

6. On or about March 13, 2025, the Port Isabel court scheduled a Master Calendar Hearing for March 18, 2025.

7. ICE has alleged in a Form I-213 that L.G. is an associate or member of the Tren de Aragua gang. L.G. denies being a gang member. Apart from the Form I-213, ICE has provided no other evidence to substantiate why they suspect L.G. of gang membership. L.G. strongly contests ICE's gang allegations.

8. L.G. does not have any criminal arrests or convictions in the U.S. ICE has alleged in a Form I-213 that L.G. is "pending indictment for firearms related investigations." The government has provided no other evidence to substantiate this allegation.

9. L.G. has three tattoos: one is a rosary, the other is his partner's name, and the third is a rose and a clock. None of these tattoos are related to Tren de Aragua gang membership or membership in any other gang.

10. On Friday, March 14, 2025, one of the attorneys assigned to L.G.'s case called El Valle Detention Facility to try to schedule a legal call with L.G. He was told by the facility that he was no longer there. He asked where L.G. was and was told by the facility employee that he did not know. Shortly after this call, he checked the ICE detainee locator, which stated that L.G. was still at El Valle.

11. On Saturday, March 15, 2025, one of the attorneys assigned to L.G.'s case called El Valle Detention Facility again. This time, the facility told him that L.G. had left earlier that morning. This was contradictory to what he had been told previously.

12. A supervising attorney from our office also called Port Isabel Processing Center on Saturday, March 15, 2025, and Port Isabel Processing Center told him that L.G. was not there. They recommended that he call El Valle Detention Facility.

13. After calling Port Isabel Processing Center, the same supervising attorney also called El Valle Detention Facility on Saturday, March 15, 2025, and El Valle Detention Facility told him that L.G. had been "picked up" sometime that day and that he was either transferred to another facility or removed. They recommended that he call Port Isabel Processing Center.

14. On the afternoon of Sunday, March 16, 2025, one of the attorneys on L.G.'s team checked the ICE detainee locator, and it showed that L.G. was no longer in ICE custody. Our team had checked the ICE detainee locator numerous times over that weekend, and previously the locator had shown that he was at El Valle Detention Facility.

15. On March 18, 2025, L.G.'s legal team appeared for L.G.'s Master Calendar Hearing before the court in Los Fresnos, TX. The government did not produce L.G. The government stated that L.G. was either transferred to another facility or removed from the U.S. The court continued the hearing to April 8, 2025, for an update on L.G.'s whereabouts.

16. L.G.'s legal team has not been able to speak with L.G. since Thursday, March 13, 2025. His partner also has not heard from him since the early morning of Saturday, March 15, 2025.

17. We are gravely concerned that L.G. has been wrongfully removed based on the Alien Enemies Act despite his pending removal proceedings and despite the fact that he strongly contests the government's gang allegations.

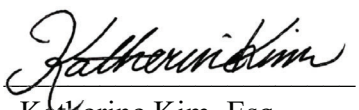
18. I regularly receive referrals for detained New Yorkers seeking immigration representation. Last week, our office was attempting to reach out to a prospective client, R.B., a Venezuelan national. At the time his case was first referred to us in late February, he was in ICE custody at the Moshannon Valley Processing Center in Philipsburg, PA. On March 11, 2025, Moshannon Valley Processing Center informed us that R.B. was no longer there. Through the ICE detainee locator, we saw that he had been transferred to El Valle Detention Facility.

19. On Monday, March 17, 2025, our office reached out to R.B.'s family member who informed us that she had not heard from R.B. since the morning of Saturday, March 15, 2025, and that ICE had told him on Friday, March 14, 2025 that he was going to be taken to Venezuela. R.B.'s family member informed us that she believes he was one of the people removed to El Salvador because she recognized him in a photo.

20. R.B. does not have a removal order. As of the signing of this declaration, the Executive Office of Immigration Review's Automated Case Information website shows that R.B.'s removal proceedings are still pending, with a court date scheduled for March 21, 2025. As R.B. does not have a final removal order, there is no basis to remove him under the Immigration and Nationality Act.

21. R.B.'s family member also informed us that he does not have a criminal record anywhere in the world. She believes that the government has falsely accused him of membership in Tren de Aragua based on a single tattoo, which is of a flower.

Executed on the 19th of March, 2025 in New York, NY.



Katherine Kim, Esq.
The Bronx Defenders
360 E. 161st Street
Bronx, NY 10451

EXHIBIT H

KARYN ANN SHEALY ATTORNEY AFFIRMATION:

ATTORNEY OF RECORD FOR J.L.G.O.

I, Karyn Ann Shealy, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. I am a staff attorney of the New York Immigrant Family Unity Project at The Legal Aid Society, located at 49 Thomas Street, Fifth Floor, New York, New York 10013. I am admitted to the New York State Bar, license number 6161160, and the Massachusetts State Bar, license number 703929. I represent J.L.G.O.

2. On March 14, 2025, I sent an email request to El Valley Detention Facility ("EVDF") for an urgent attorney call with J.L.G.O. on March 15, 2025. My request was not granted. On March 15, 2025, I sent another email request to EVDF for an urgent attorney call with J.L.G.O. on March 16, 2025. The request was granted and confirmed by EVDF. However, on March 16, 2025, I did not receive the confirmed attorney call. I called and emailed EVDF but did not receive a response. On March 16, 2025, I emailed another request to EVDF for an urgent attorney call with J.L.G.O on March 17, 2025. The request was granted, and the following reflects statements made by J.L.G.O. during attorney calls on March 17 and 18, 2025.

3. Around the beginning of March 2025, while J.L.G.O. was detained by ICE at the Orange County Correctional Facility in Goshen, New York, the risk designation on his identification badge was changed from low to medium high. J.L.G.O. asked an officer why his designation had been changed, and he was told that ICE must have seen something in his file.

4. The officer asked J.L.G.O. if he had been part of a gang. J.L.G.O. vehemently denied any affiliation with a gang, past or present. J.L.G.O. was confused about why he was being questioned about gang affiliation and asked to speak with an ICE officer. J.L.G.O. was told that he had to wait until the ICE officer was available in three days. J.L.G.O. has consistently stated to this affirmant that he has never had any connection or affiliation with any gangs.

5. Two days later, on March 8, 2025, at approximately 3 AM, J.L.G.O. was awoken, taken out of his cell and transferred along with other Venezuelans to EVDF. J.L.G.O. did not know his destination until he arrived.

6. On March 12, 2025, an officer at EDVF asked J.L.G.O. to sign a paper in English, which he cannot speak or read fluently. J.L.G.O. asked what the paper said and was told that the paper was to acknowledge his prior transfer from Orange County Correctional Facility to EVDF. J.L.G.O. asked for someone to translate the paper, but the officer said that he was wasting his time and instructed J.L.G.O. to leave. J.L.G.O. refused to sign the paper.

7. On March 14, 2025, at approximately 3 AM, J.L.G.O. was awoken, taken out of his

cell, and transported to a large building. J.L.G.O. was kept with more than 100 other detainees from Venezuela. At approximately 12:30 PM, an ICE officer announced that a flight had been cancelled because the plane did not pass inspection. The ICE officer also told J.L.G.O. that everyone would be deported the next night. J.L.G.O. heard from other detainees that they were to be deported to El Salvador or Guantanamo Bay and was terrified.

8. On March 15, 2025, around 7:30 AM, officers took J.L.G.O. into a big room with other Venezuelan detainees. Officers told everyone to change into their civilian clothing and receive their personal items. J.L.G.O. was shackled on his wrists, waist, and ankles and loaded onto a bus. J.L.G.O. was terrified and believed he was to be taken to another detention facility. However, J.L.G.O. was driven approximately 40 minutes to an airport.

9. At the airport, a helicopter and media crews took pictures and recorded video of J.L.G.O. and other Venezuelan detainees. J.L.G.O. saw officials in uniforms with the lettering of DEA, FBI, and ICE. J.L.G.O. and the other detainees were taken out of the buses and loaded in groups of 10 onto the airplanes.

10. On the plane, J.L.G.O. and the other detainees asked the officers where they were being taken. The officers would only say that they didn't know and then laughed. J.L.G.O. described a scene of panic and fear as he and the other detainees desperately begged for information. The officers refused to speak to the detainees and would only speak amongst themselves in English and laugh.

11. After J.L.G.O. was on the plane for what seemed like 30 minutes to one hour, an officer got on the plane and called out five names, including J.L.G.O. The officer told J.L.G.O. to get off the plane. After J.L.G.O. got off the plane, one of the five men asked the officer what was going to happen to them. The officer said that the group had "just won the lottery" and laughed.

12. The officers then loaded J.L.G.O. and the other four men onto the bus still shackled. The group was transferred to another bus where 8-12 other detainees were seated in shackles. J.L.G.O. was held shackled on the bus for what seemed like two to three hours. J.L.G.O. and the other individuals asked and begged officers for food and water. The officers did not provide any water or food but instead drank water themselves in front of them and laughed.

13. One of the other men who had been pulled off the plane was seated in direct sunlight on the bus. The man's nose began to bleed, and the officers yelled at the man to close his nose. However, the man was shackled and could not reach his nose. The officers continued to yell at the man to close his nose and to stop the drama.

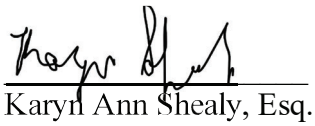
14. J.L.G.O. and the others on the bus returned to EVDF at approximately 8 PM and did not receive any food until around 9 PM.

15. J.L.G.O. was overcome with emotion many times, including crying uncontrollably and expressing fear of being deported at any moment, while recounting the events of the weekend during our attorney calls on March 17 and 18, 2025. J.L.G.O reports that he

is experiencing extreme fear, sadness, and anxiety as a result of the events of the weekend. He has a poor appetite and struggles to sleep. He sleeps at most two to three hours per night and when he manages to sleep, he experiences nightmares and flashbacks of the events of the weekend.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

March 19, 2025
New York, NY



Karyn Ann Shealy, Esq.

EXHIBIT I

DECLARATION OF STEPHANIE QUINTERO, ATTORNEY FOR J.G.G.

I, Stephanie Quintero, declare under penalty of perjury and under the laws of the United States, as follows:

1. My name is Stephanie Quintero, and I am licensed to practice law in California and Oregon. I have been licensed to practice law in California since March 15, 2024, and I have been licensed to practice law in Oregon since May 22, 2020. I am the attorney of record for J.G.G. before the Executive Office of Immigration Review.

2. I scheduled a video call to speak to my client (J.G.G.) on Sunday March 16, 2025, at 2:30pm. The El Valle Detention facility in Raymondville, Texas told me that they could not accommodate a video call within 24 hours, so I had a telephonic call with my client at 2:20pm, which lasted for twenty-seven (27) minutes. In that call my client (J.G.G.) relayed what happened to him and other detainees on Saturday March 15, 2025.

3. The guards took him as well as several other detainees out of their dorms at about 7am and told them that they would be taken to Port Isabel, Texas. They put my client and the rest of the detainees in a cramped room in El Valle Detention Center for hours. The guards then took J.G.G. and the other detainees that were in the room and loaded them onto buses. They were chained from top to bottom-wrists, waist, ankles, chains, which came up through their backs, so they could barely move. J.G.G. and the other detainees believed they were being taken to Port Isabel, Texas. However, they were taken instead to an airport.

4. Later that day, J.G.G. and the other detainees were put on three planes. Shortly thereafter, J.G.G. as well as several other Venezuelan detainees were taken off the plane before it departed. Everyone else that was put on a plane stayed on the plane. As J.G.G. and the other detainees were taken off the plane, an ICE Agent named Daniel Cantun verbally taunted them, he told them: "you all do not know how lucky you are, and you all hit the lottery because you are not getting deported today."

5. J.G.G. and the other detainees were put on a bus which contained several other detainees. Once they were back on the bus, which was hot, one of the detainees almost passed out from heat exhaustion and dehydration and started bleeding profusely from his nose. The detainees notified the guards, but they did not provide that person with medical attention. Instead, the guards just told him to clean up his nose. Some detainees on the bus told J.G.G. that some of the detainees who were placed on the plane for deportation had recently been picked up from their houses or jobs and quickly processed from deportation.

6. J.G.G. and the other detainees were then taken back to the El Valle Detention Facility. They were not given food or water until about late in the evening, a few hours after they arrived back at El Valle Detention Center.

I swear under penalty of perjury that I am accurately relaying what my client told me on Sunday March 16, 2025.

Stephanie Quintero

Stephanie Quintero

03/19/2025

Date

EXHIBIT J

GRACE CARNEY ATTORNEY AFFIRMATION:

ATTORNEY OF RECORD FOR G.F.F.

I, Grace Carney, declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct to the best of my knowledge and belief:

1. My name is Grace Carney. I am a Staff Attorney at The Legal Aid Society within the New York Immigrant Family Unity Project ("NYIFUP"). I am the attorney of record for plaintiff G.F.F. in his removal and bond proceedings. I first entered my appearance in this case on December 31, 2024.

2. I submit this declaration as a supplement to my prior declaration submitted to the Court on March 15, 2025.

3. G.F.F. has vehemently denied membership or any association with Tren de Aragua. G.F.F. did not know anyone suspected of being in Tren de Aragua would be at that party where he was arrested in December 2024. Notably, G.F.F. and his family fled Venezuela in part due to threats the family faced from Tren de Aragua. Moreover, G.F.F. has outlined individualized threats received from the gang on account of his sexuality. G.F.F. has submitted into the record of his asylum proceedings numerous letters from friends and family corroborating his good character and confirming that G.F.F. has never been involved in the Tren de Aragua criminal gang. Additionally, G.F.F. possesses no criminal history. He maintains, and my own research as his attorney confirms, that he has never been arrested or convicted of a crime in the United States, Venezuela, or any other country.

4. On the morning of March 15, 2025, I received a missed call from a collect call number at around 8:50EDT. I promptly checked the ICE Detainee Locator which indicated G.F.F. was still present at the El Valle Detention Facility. I thereafter contacted the El Valle Detention Facility by telephone to confirm the location of G.F.F. The officer informed me that G.F.F. was still at El Valle at that point and would be produced for our 10:00AM EDT call. Shortly after 10:00AM EDT I called the El Valle Detention Facility to be connected with G.F.F. After being placed on hold I was told that he would not be produced for our call because he was in the process of being "moved."

5. I informed the officer at the El Valle Detention Facility that as of earlier that morning, a temporary restraining order had been issued barring G.F.F.'s removal at this time. I was told by the officer that that information was not shared with her. At 10:22AM EDT, while on the phone, I emailed a copy of the TRO to her and the El Valle officers I had been coordinating with for call scheduling. I also included Harlingen ERO on the email.

6. I thereafter called the Harlingen, Texas ERO Office, the office in charge of El Valle Detention Facility, and left a voicemail about the TRO and G.F.F.'s attempted illegal removal. I additionally reached out to the cellphone of Carlos D. Cisneros, Jr., Assistant

Field Office Director for Harlingen ERO, who was included on a previous email chain with the El Valle Detention Facility regarding access to counsel and call scheduling.

7. At around 10:45AM EDT I spoke with Mr. Cisneros on the telephone about the TRO and the lawsuit filed the evening before. Mr. Cisneros inquired whether I had sent the TRO via email to the Harlingen ERO Outreach, which I confirmed I had. He indicated that he had access to that email and would call back shortly. Mr. Cisneros never called back. My later attempts to reach out to him directly via telephone went straight to voicemail.

8. The remainder of the day I reached out to several ICE contacts with a copy of the TRO and at no point did I receive a response. I also reached out via telephone to the El Valle Detention Facility, Harlingen ERO, and the Port Isabel Detention Facility on multiple occasions throughout the day without any response.

9. At around 11:00PM EDT, I received a call from Rosa, a family friend of G.F.F. indicating that he had returned to the El Valle Detention Facility. She described the call as brief, less than one minute, and that he had only informed her he was still in Texas.

10. The following morning, March 16, 2025, I reached out to El Valle Detention Facility to schedule a video call with G.F.F., but was told I could not schedule a same-day video call, and instead opted for a telephone call that evening at 6:00PM. The officer informed me that he had not been processed back into his unit until 2:00AM that morning.

11. At 6:00PM EDT on March 16, 2025, I was able to speak with G.F.F. for the first time since March 14, 2025. He told me that on the morning of March 15, 2025, he was awoken for breakfast at around 7:30AM CT. During breakfast the officers conducted a count of his unit, which he described was not customary thus far during his time at the El Valle Detention Facility. During the count, twenty-seven Venezuelans in his unit were called from a list. The twenty-seven were taken to a separate room at the El Valle Detention Facility with other Venezuelans. Everyone in the room was told that they were being transferred to the Port Isabel Detention Facility and told to collect their belongings. After collecting their belongings, everyone in the room was handcuffed and their ankles were shackled and led onto buses.

12. G.F.F. informed me that three buses full of Venezuelans left the El Valle Detention Facility. Instead of arriving at the Port Isabel Detention Facility, the buses arrived at the airport about one hour way. When they arrived at the airport, G.F.F. inquired where they were going, but at no point did the officers answer his questions.

13. G.F.F. informed me that he was loaded onto a plane in the afternoon. G.F.F. was on a plane for about forty minutes to an hour while other individuals were being loaded onto the plane. He described the plane as “chaos,” people were crying and frightened. After about forty minutes to an hour, a guard boarded the plane and called G.F.F.’s name and three or four others. When G.F.F. inquired as to what was going on, he was told he had “just won the lottery.”

14. After G.F.F. and the other individuals were pulled off the plane, they waited on a bus on the tarmac at the airport for the next several hours while the remaining planes were being loaded. G.F.F. recalled there being four planes total. While G.F.F. was waiting on the bus on the tarmac, one of his companions suffered a bloody nose. When the men asked for help, because they were shackled, the guards declined. According to G.F.F., one of the guards told the man he was "being dramatic." The guards additionally declined to provide the men water when they asked, despite being in the sun in Texas for several hours that day.

15. G.F.F. and the men were at the airport until the planes were loaded, and then left the airport at about 5:30PM CT. G.F.F. did not return to El Valle until around 8:00PM CT, but was not processed back into his unit until around 2:00AM CT.

16. It was not until later upon being reprocessed did G.F.F. hear from other detainees at El Valle that the guards had been discussing that the plane they were on was set to go to either Guantanamo or El Salvador.

17. During our call, G.F.F. was very emotional, and could not stop crying. He said he was very scared that the government would try to deport him again. He said that the officers told him they would deport him in 14 days. He said the whole time he was being moved in and out of the El Valle Detention Facility on March 15, 2025, he had his paperwork for his March 17, 2025 hearing with him, because he was only ever told he was being transferred to Port Isabel and wanted to use the time to review his case.

18. G.F.F. appeared for his March 17, 2025 hearing despite the events of the weekend, as the Immigration Judge denied his motion for an emergency continuance. During the hearing, G.F.F. explained that he had little sleep and little to eat in the prior 72 hours, and that the government twice tried to deport him during that time. During this hearing G.F.F. testified for around four hours, recounting his fear of harm of return, and vehemently denying any affiliation with Tren de Aragua. The government did not produce any evidence or elicit any testimony to substantiate the allegations that G.F.F. is a member of Tren de Aragua.

I, Grace Carney, affirm under penalty of perjury, that the foregoing is true and correct.

March 19, 2025
New York, NY

Grace T. Carney, Esq

EXHIBIT K

DECLARATION OF MELISSA SMYTH

I, Melissa Smyth, declare:

1. I am a Staff Attorney in the Immigration Practice at Brooklyn Defender Services, and I represent J.A.V. in his removal proceedings.
2. This is a supplemental declaration to that submitted by J.A.V. dated March 14, 2025.
3. J.A.V. is a national and citizen of Venezuela who entered the United States around May 3, 2023. He was processed by U.S. immigration authorities and released on his own recognizance on May 4, 2023.
4. Removal proceedings were first initiated through a Notice to Appear filed with EOIR on May 22, 2024, and then dismissed upon joint motion by the parties on June 11, 2024 for him to pursue an affirmative asylum application.
5. J.A.V. filed for asylum in the United States based on his political views and having been attacked by criminal gangs. He is gay, and suffered verbal and physical violence and harassment on account of his sexual orientation, including by gangs in Venezuela. J.A.V. is HIV positive and is terrified that he will suffer severe illness and death if he does not have access to daily medications and consistent medical care.
6. In New York, he was receiving stabilizing medical treatment and support. He was working and had a close-knit group of friends.
7. J.A.V. has never been arrested, charged, or convicted of any criminal offense in the United States. His only record of any legal infraction was a ticket issued for non-payment of a subway fare, for which he paid a fine.
8. J.A.V. has no criminal record in Venezuela.
9. J.A.V. is not and has never been a member of a gang.
10. J.A.V. has several artistic tattoos, which he has had for many years, including when DHS initially processed and released him on recognizance and when DHS joined his motion to dismiss removal proceedings.
11. After ICE arrested J.A.V. at his USCIS asylum interview on February 28, 2025, ICE officers suggested that they believed some of his tattoos were gang-related and asked him about Tren de Aragua. J.A.V. denied being a member of a gang or having any connections to gang members.
12. DHS filed a new Notice to Appear after arresting J.A.V. at his USCIS asylum interview.
13. On March 14, 2025, ICE prepared J.A.V. to be put on a plane, but did not inform him where the plane was going. However, the flight did not go forward and J.A.V. was returned to El Valle that night.
14. On March 15, 2025, ICE again prepared J.A.V. to be put on a plane, along with a group of other Venezuelan ICE detainees. He was transported by bus to another facility where the group of detainees were loaded onto a plane, except for J.A.V. and another individual. ICE officers said that he had "won the lottery." Several other individuals were subsequently

removed from the plane after boarding, before it took off. J.A.V. was returned to El Valle that night.

15. For all the reasons he fled to the United States and applied for asylum, J.A.V. fears being sent to El Salvador. Given the horrendous and notorious conditions of El Salvador's prisons, his health, safety, and his life would be at serious risk if detained there, or if removed from the United States before his asylum case is fully heard in immigration court. He is at serious risk of death if sent to the Terrorism Confinement Center in El Salvador.

I, Melissa Smyth, swear under penalty of perjury that the forgoing declaration is true and correct to the best of my knowledge and recollection.

_____ 03/19/2025

Name: Melissa Smyth

EXHIBIT L

Declaration of Solanyer Michell Sarabia Gonzalez

I, Solanyer Michell Sarabia Gonzalez, do hereby declare the following under penalty of perjury:

1. I am 25 years old and live in Arlington, Texas. My brother, Anyelo Jose Sarabia, is 19 years old. We are both nationals from Venezuela.

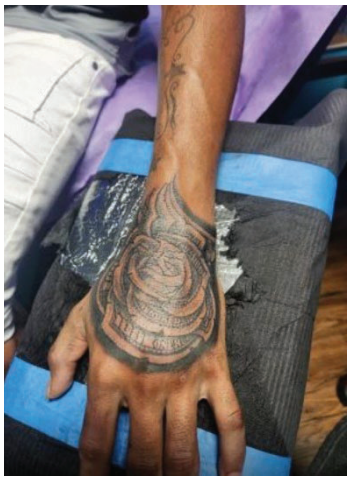
2. I believe that United States removed my brother to El Salvador on or about March 15, 2025, under the false pretense that he was a member of Tren de Aragua ("TdA").

3. Anyelo and I left Venezuela and entered the United States on November 22, 2023. We applied for asylum within one year of entering the country.

4. My brother has an immigration court date for his asylum application on May 20, 2025. To my knowledge, he had no removal order.

5. On or about January 31, 2025, Anyelo and I went to an ICE check-in appointment in Dallas, Texas. After meeting with officers, I was allowed to leave, but my brother was detained. I requested the reasons for his detention. The officers asked me whether my brother belonged to a gang and about a tattoo that is visible on his hand.

6. My brother is not part, or was never part, of any gang. The tattoo on his left hand is of a rose with money as petals. A picture of the tattoo is below. He had that tattoo done in August 2024 in Arlington, Texas, because he thought it looked cool. The tattoo has no meaning or connection to any gang.



7. My brother also has two other tattoos: 1) "fuerza y valiente" (strength and courage) on his bicep; and 2) a bible verse: "todo lo puedo en cristo que me fortalece" (I can do all things through Christ who strengthens) on his forearm. I did both of these tattoos when my brother was in Texas. These tattoos have no meaning or connection to any gang.

8. My brother has no criminal record in either Venezuela or in the United States.

9. After being detained, on or about March 11, 2025, my brother was transferred from Bluebonnet Detention Facility in TX to the Rio Grande Processing Center in Laredo, TX.

10. I last spoke to him on March 14, 2025, and believe he was removed to El Salvador shortly after that, because I have not heard from him since then and I can no longer find him on the ICE Detainee Locator. If he were detained anywhere in the United States, I know he would contact me because we spoke almost daily while he was detained. If he were back in Venezuela, I would hear from him as well. I am extremely concerned about the health and safety of my little brother.

Sworn on this 19th day of March 2025

Solanyer Michell Sarabia Gonzalez

CERTIFICATE OF TRANSLATION

I, Talia Roma, certify that I am fluent in both English and Spanish. On March 19, 2025, I personally spoke with Solanyer Michell Sarabia Gonzalez and read the foregoing declaration to her, translated into Spanish faithfully and accurately, over the phone. Ms. Sarabia affirmed that she understood my translation and that the information in the above declaration is true and accurate.

I declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

Talia Roma
Paralegal
American Civil Liberties Union Foundation
Immigrants' Rights Project
425 California Street, 7th Floor
San Francisco, CA 94609
(415) 343-0770
troma@aclu.org

EXHIBIT M

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

LAS AMERICAS IMMIGRANT ADVOCACY CENTER, *et al.*,

Plaintiffs,

v.

KRISTI NOEM, Secretary of Homeland Security, in her official capacity, *et al.*,

Civil Action No. 25-0418

DECLARATION OF COLONEL JENNIFER VENGHAUS

I, COLONEL JENNIFER VENGHAUS, pursuant to 28 U.S.C. § 1746, hereby declare as follows:

1. I am a Colonel in the United States Army and have served on active duty for 21 years. My prior positions include Legal Assistance Attorney (Fort Eisenhower, Georgia), Operational Law Attorney (Task Force 134 (Detainee Operations) in Iraq), Command Judge Advocate (513th Military Intelligence Brigade and 18th Engineer Brigade), Operational Law Attorney (United States Army Europe), Chief of Justice (82d Airborne Division), Personnel Law Attorney (Office of The Judge Advocate General, Pentagon), Special Victim Prosecutor (Fort Cavazos, Texas), Senior Plans Officer (Office of the Judge Advocate General, Pentagon), Executive Officer (United States Army Europe and Africa), Deputy Staff Judge Advocate (V Corps), and Staff Judge Advocate (United States Army South). I make the following statements based upon my years of service and experience in the United States military, personal knowledge, and information made available to me in my official capacity.

2. I currently serve as the Staff Judge Advocate for Joint Task Force Southern Guard (JTF-SG), at Naval Station Guantanamo Bay, Cuba (NSGB). I have held this position since 2 February 2025. I am responsible for providing legal advice to the JTF-SG Commander and staff on all JTF-SG operations. JTF-SG's mission is to support the illegal alien holding operations being led by Department of Homeland Security (DHS) at NSGB.

Missions Conducted at Naval Station Guantanamo Bay

3. NSGB serves as a key operational and logistics hub for the Department of Defense, supporting a variety of missions including maritime security, humanitarian assistance, and joint operations. Its unique geographic location provides strategic advantages, enhancing U.S. defense capabilities in the region and serving as a critical forward operating base for various military and humanitarian activities.[1]

4. Present on NSGB but separate from JTF-SG is Joint Task Force Guantanamo (JTF-GTMO) which, since 2002, has been responsible for the safe and humane custody of law of armed conflict detainees, as well as supporting ongoing military commission proceedings and other processes involving those detainees. These operations take place on the "windward" side of NSGB. (See attached map).

5. Since the early 1990s, part of NSGB has been used for migrant operations. DHS's Immigration and Customs Enforcement (ICE) and the U.S. Department of State have housed migrants interdicted at sea with humanitarian protection concerns at the Migrant Operations Center (MOC) at NSGB. The MOC is located on the "leeward" side of NSGB which is separated from the "windward" side by water. Travel from one side to the other is conducted by boat. (See attached map.)

[1] https://cnrse.cnic.navy.mil/Installations/NS-Guantanamo-Bay/

Creation of Joint Task Force-Southern Guard

6. On 20 January 2025, the President, in Executive Order (EO) 14165, "Securing Our Borders," directed the Secretary of Homeland Security to "take all appropriate actions to detain, to the fullest extent permitted by law, aliens apprehended for violations of immigration law until their successful removal from the United States."

7. On 29 January 2025, President Trump issued a Presidential Memorandum directing the Secretary of Defense and Secretary of Homeland Security to "take all appropriate actions to expand the Migrant Operation Center at [NSGB] to full capacity to provide additional detention space for high-priority criminal aliens unlawfully present in the United States and to address attendant immigration enforcement needs identified by the Department of Defense and the Department of Homeland Security."[2]

8. On 30 January 2025, the Secretary of Defense ordered the Commander, United States Southern Command, to expand migrant operations at NSGB. JTF-SG was created to execute that directive.

9. DHS, and more specifically Immigration and Customs Enforcement – Enforcement and Removal Operations (ICE-ERO) maintains custody of all illegal aliens at NSGB, while JTF-SG assists in the care of the illegal aliens. The role of military forces at JTF-SG is to provide for the safe and humane care and control of certain illegal aliens at NSGB when requested by and in support of DHS. JTF-SG currently provides supplies, food, care, shelter, medical support, and security when it exceeds the capability of DHS.

10. Beginning on 31 January 2025, members of United States Army South deployed to NSGB. As of 19 February 2025, JTF-SG consists of approximately 985 personnel, which

[2] https://www.whitehouse.gov/presidential-actions/2025/01/expanding-migrant-operations-center-at-naval-station-guantanamo-bay-to-full-capacity/

includes JTF-SG staff, medical, security, engineer, and logistics personnel. I arrived at NSGB on 2 February 2025. On 4 February 2025, JTF-SG reached initial operating capacity when the first flight of ten illegal aliens arrived at NSGB.

Transfer to and Housing of Illegal Aliens at NSGB

11. The Department of Homeland Security determines who is transferred to NSGB and categorizes the illegal aliens by threat level prior to their arrival. High threat illegal aliens (HTIAs), are those who DHS has advised pose a heightened security threat, and they are housed in Camp VI, a hard-sided secure facility located on the windward side of NSGB, formerly used to house law of armed conflict detainees. Low and medium threat illegal aliens (LTIAs and MTIAs) are currently housed at the MOC building on the leeward side of NSGB.

12. As of 17 February 2025, DHS has transferred 128 HTIAs to NSGB, 127 of whom are currently housed in Camp VI, with one returned back to the United States. Camp VI has a maximum capacity of approximately 175, but current maximum capacity is 131 HTIAs due to ongoing maintenance being performed in certain cells. United States Army military police serve as guards inside Camp VI, under the oversight of ICE-ERO.

13. Between 9 February 2025 and 13 February 2025, DHS transferred 51 LTIAs to NSGB. The LTIAs are currently housed in the MOC building on the leeward side of NSGB. ICE-ERO agents and contractors provide all interior security for the LTIAs housed at the MOC building, while military personnel assigned to JTF-SG provide exterior perimeter security.

14. Military personnel assigned to JTF-SG, with support from DoD contracts, provide food and medical support to the illegal aliens held at the MOC and in Camp VI. Supplies for illegal aliens, both at the MOC and in Camp VI, are provided by both DoD and DHS.

Individuals Named in Lawsuit

15. Tilso Ramon Gomez Lugo and Luis Alberto Castillo Rivera arrived at NSGB on 4 February 2025, and are housed in Camp VI.

16. Yoiker David Sequera arrived on 9 February 2025, and is housed at the MOC building.

Counsel Requests

17. Between 4 February 2025 and 12 February 2025 (the date a complaint was filed in Federal District Court), no HTIA counsel made any requests for access to counsel. Any such request would have been noted by facility staff and brought to my attention. Also, JTF-SG did not receive any requests from DHS to facilitate illegal alien access to counsel.

Counsel Calls for Three Individuals Named in Lawsuit

18. On 12 February 2025, I was informed that attorneys seeking to represent Tilso Ramon Gomez Lugo, Luis Alberto Castillo Rivera, and Yoiker David Sequera in federal court wished to have unmonitored telephonic conversations with them.

19. On 14 February 2025, those attorneys proposed dates and times for these conversations. Through consultations with DOJ attorneys and ICE personnel at NSGB, arrangements were made for those phone calls to occur on 17 February 2025.

20. On 17 February 2025, Tilso Ramon Gomez Lugo, Luis Alberto Castillo Rivera, and Yoiker David Sequera were each given the opportunity for a phone call with the attorneys. It is my understanding that each illegal alien had one 60-minute unmonitored telephone conversation with the plaintiff-petitioner attorneys. The phone call involving Mr. Sequera was

held at the MOC, while the other two calls were conducted near Camp IV, under the procedures detailed below.

Notice to HTIAs

21. On 19 February 2025, I was informed that ICE-ERO personnel posted a DHS-authorized notice at the MOC, informing LTIAs in both English and Spanish of their ability to contact an attorney and providing them with the procedures on how to request such a call. JTF-SG personnel posted the same notice in the common area of each cell block at Camp VI on 19 February 2025.

22. Subject to the procedures described below, as of 17 February 2025, HTIAs at Camp VI have the opportunity to have confidential telephone calls with counsel, if those HTIAs or their counsel request such a call.

General Procedures for HTIA-Counsel Calls

23. For the HTIAs housed at Camp VI, calls with counsel will be conducted in a building near Camp VI. It has six telephones in six separate rooms, each with a table and chair (one phone is currently inoperable and waiting on repair). These rooms can facilitate private telephonic conversations between the illegal alien and the counsel while guards maintain line of sight on the HTIA through the use of video monitoring (which does not include sound). This building is a short walk from Camp VI. ICE-ERO is responsible for escorting HTIAs from Camp VI to these telephones. For operational security reasons, this movement requires two ICE-ERO escorts for each HTIA.

24. HTIAs in Camp VI will be able to inform facility staff regarding desire to have a telephone call with counsel. The facility staff will have this information forwarded in a timely manner to the relevant counsel, who can then initiate a call request as described below.

25. Counsel will use a standardized form to request a counsel call with an HTIA. The counsel will forward the completed form to a DoD email address designed to process such requests. DoD personnel responsible for that email account will coordinate with facility staff regarding the proposed day/time for that call. At the agreed-upon time, facility staff will bring the HTIA to the building for the call.

26. A document memorializing this process and providing specific information on the above steps is being prepared for use by counsel.

Legal Mail

27. The transmission of privileged legal mail between counsel and illegal aliens at the MOC and in Camp VI will generally follow the procedures used in the habeas litigation involving law of war detainees. Legal mail originating from counsel will be delivered to NSGB on a weekly basis via the Defense Courier Service. Legal mail originating from IAs will also be transported to the Washington, D.C. area on a weekly basis.

28. A document memorializing this process and providing specific information on the above steps is being prepared.

In person counsel visits

29. JTF-SG and DHS are evaluating the feasibility and necessity of authorizing counsel travel to NSGB for in-person counsel visits, in light of the extensive logistical challenges with such visits, the potential need for counsel to possess security clearances, and the potentially high volume of counsel attempting to conduct such visits.

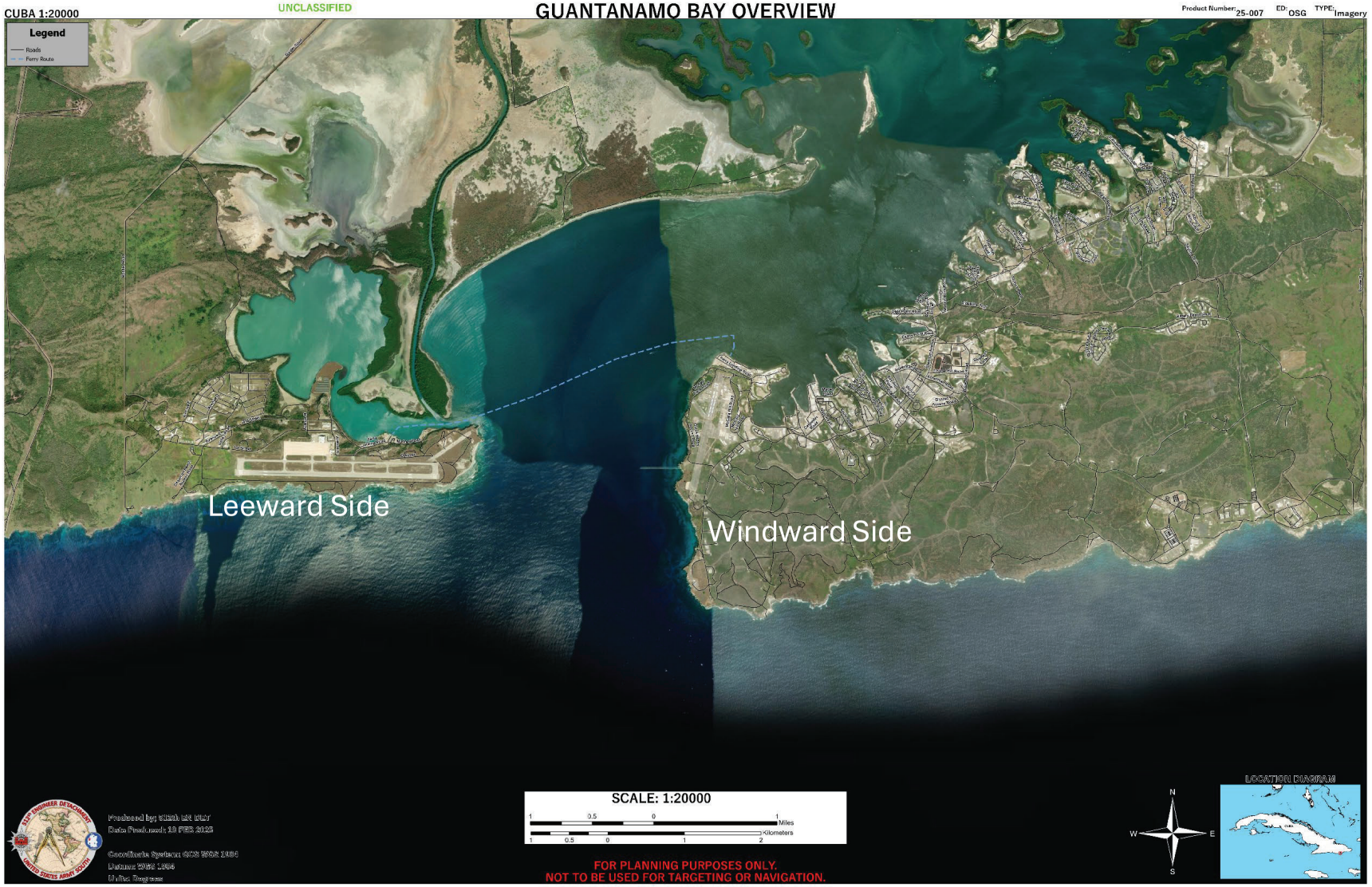
I declare under penalty of perjury under the laws of the United States of America that the forgoing is true and correct.

Dated: 19 February 2025

VENGHAUS.JENNIFER.LYNN.1255608254 Digitally signed by VENGHAUS.JENNIFER.LYNN.1255608254 Date: 2025.02.19 22:03:18 -05'00'

JENNIFER L. VENGHAUS
Colonel, U. S. Army
Staff Judge Advocate
Joint Task Force Southern Guard

EXHIBIT C


CUBA 1:20000
UNCLASSIFIED
GUANTANAMO BAY OVERVIEW
Product Number: 25-007
ED: OSG
TYPE: Imagery
Legend
Roads
Ferry Route
Leeward Side
Windward Side
SCALE: 1:20000
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FOR PLANNING PURPOSES ONLY.
NOT TO BE USED FOR TARGETING OR NAVIGATION.
LOCATION DIAGRAM
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UNCLASSIFIED