IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF GEORGIA
COLUMBUS DIVISION

Y.A.P.A.,

Petitioner–Plaintiff,

v.

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

Respondents–Defendants.

Case No. 4:25-cv-144-CDL-CHW

PETITIONER–PLAINTIFF'S OPPOSITION TO RESPONDENTS' MOTION FOR LEAVE TO FILE UNDER SEAL

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Petitioner–Plaintiff ("Petitioner") opposes Respondents' motion to file the Declaration of Matthew L. Elliston, U.S. Immigration and Customs Enforcement, Enforcement and Removal Operations Deputy Assistant Director, and its accompanying exhibit under seal. ECF Nos. 16, 20. Because the supposedly sensitive information in the declaration is substantively identical to what is already in the public record through declarations filed on the public docket in this and other court proceedings around the country—including by Respondents themselves, not under seal—the motion should be denied. Indeed, when the government originally sought to file this substantively identical information in a declaration under seal in the Southern District of Texas, Judge Rodriguez quickly unsealed it, concluding that the declaration contains nothing that would remotely disclose sensitive operational details, and that there is no legitimate basis to support sealing—let alone a justification that would overcome the public's presumptive right of access to court records. *See*

Oral Order, *J.A.V. v. Trump*, No. 1:25-cv-72 (S.D. Tex. Apr. 24, 2025, 4:26 CT); Tr. 8:15–9:15, *J.A.V. v. Trump*, No. 1:25-cv-72 (S.D. Tex. Apr. 24, 2025) (attached as Exh. 1).[1]

In the declaration and exhibit, the government describes the notice procedures that it claims to be providing individuals who are designated for removal under the Alien Enemies Act ("AEA"). The Elliston Declaration includes critical information such as what detainees must do and on what timeline in order to request judicial review before they are summarily removed. This declaration therefore contains information relevant to any individual who might be subject to the AEA, any immigration counsel seeking to assist such a client, and the public more broadly. The Elliston Declaration asserts, without support, that the notice process "is law enforcement sensitive." That is insufficient to justify sealing the Declaration, especially in this context. Respondents' motion should be denied.

ARGUMENT

I. LEGAL STANDARD

As the Supreme Court and Eleventh Circuit have made clear, there is a "presumptive common law right to inspect and copy judicial records." *United States v. Rosenthal*, 763 F.2d 1291, 1293 (11th Cir. 1985); *Nixon v. Warner Commc'ns, Inc.,* 435 U.S. 589, 597 (1978) ("[T]he courts of this country recognize a general right to inspect and copy . . . judicial records and documents."). This common law right "is instrumental in securing the integrity of the [judicial] process." *Chicago Tribune Co. v. Bridgestone/Firestone, Inc.*, 263 F.3d 1304, 1311 (11th Cir. 2001) (per curiam); *see Wilson v. Am. Motors Corp.*, 759 F.2d 1568, 1571 (11th Cir. 1985) (per curiam) ("The district court must keep in mind the rights of a third party—the public, 'if the public is to appreciate fully the

[1] All information discussed in this opposition is already available to the public, including in filings by the government. *See, e.g.*, ECF No. 17 at 4 (discussing notice procedures described in Elliston Declaration).

often significant events at issue in public litigation and the workings of the legal system.'") (citation omitted). Court records are "presumptively available to the public under the common law so that the judicial process can remain accessible and accountable to the citizens it serves." *Callahan v. United Network for Organ Sharing*, 17 F.4th 1356, 1363 (11th Cir. 2021). Similarly, the First Amendment provides a presumptive right of public access to court proceedings and records. *See, e.g.*, *Chicago Tribune*, 263 F.3d at 1310 ("this court has extended the scope of the constitutional right of access to include civil actions pertaining to the release or incarceration of prisoners and their confinement") (citation omitted).

Relevant factors to consider include, but are not limited to, "(1) whether allowing access would impair court functions or harm legitimate privacy interests, (2) the degree of and likelihood of injury if made public, (3) the reliability of the information, (4) whether there will be an opportunity to respond to the information, (5) whether the information concerns public officials or public concerns, (6) the availability of a less onerous alternative sealing the documents, (7) whether the records are sought for such illegitimate purposes as to promote public scandal or gain unfair commercial advantage, (8) whether access is likely to promote public understanding of historically significant events, and (9) whether the press has already been permitted substantial access to the contents of the records." *Gubarev v. Buzzfeed, Inc.*, 365 F. Supp. 3d 1250, 1256 (S.D. Fla. 2019) (quoting *Romero v. Drummond Co.*, 480 F.3d 1234, 1246 (11th Cir. 2007)).

II. RESPONDENT'S MOTION TO SEAL SHOULD BE DENIED

Here, Respondents' attempt to seal the Elliston Declaration fails for the simple reason that the same supposedly sensitive information—including the exact same form attached as an exhibit to the declaration—has already been disclosed in other, high-profile AEA litigation around the

country, including *this* one. *Compare* Elliston Decl.,[2] *with* ECF No. 4-4 (Cisneros Decl.); ECF No. 4-3 (Form AEA-21B); *and* Cisneros Decl., *J.G.G. v. Trump*, No. 1:25-cv-766 (D.D.C. May 1, 2025), ECF No. 108-2 (attached as Exh. 2); *see also* Cisneros Decl., *J.A.V. v. Trump*, No. 1:25-cv-72 (S.D. Tex. Apr. 24, 2025), ECF No. 49; Cisneros Decl., *A.S.R. v. Trump*, No. 3:25-cv-113 (W.D. Pa. Apr. 24, 2025), ECF No. 40-1; Cisneros Decl., *D.B.U. v. Trump*, No. 25-cv-1163 (D. Colo. Apr. 24, 2025), ECF No. 44-1; Cisneros Decl., *G.F.F. v. Trump*, No. 1:25-cv-2886 (S.D.N.Y. Apr. 24, 2025), ECF No. 80; Cisneros Decl., *W.M.M. v. Trump*, No. 1:25-cv-59 (N.D. Tex. Apr. 29, 2025), ECF No. 55-1; Cisneros Decl., *M.A.P.S. v. Garite*, No. 3:25-cv-171 (W.D. Tex. May 10, 2025), ECF No. 3-2.

Indeed, as noted, Judge Rodriguez rejected the government's attempt to seal a declaration containing substantively identical information, overruling a similarly conclusory claim that the government's timeline and basic procedures for providing notice of AEA designation and removal were law enforcement sensitive. *See* Exh. 1 (*J.A.V.* Tr.) 8:15–9:15; *see also id*. Oral Order (S.D. Tex. Apr. 24, 2025, 4:26 CT) (granting opposed motion to unseal Cisneros declaration). Specifically, Judge Rodriguez stated that "the disclosure of form . . . AEA-21B and the declaration of Mr. Cisneros would not reveal confidential investigative methods, thought processes or jeopardize an ongoing or future investigation and would not pose a risk of harm to any individual." Exh. 1 (*J.A.V.* Tr.) 8:15–8:21.

None of the minor changes to the Elliston Declaration alter that conclusion: the details that the government claims could "endanger law-enforcement personnel and thwart lawful removals"—i.e., when "removals would be scheduled to occur based on when [detainees] receive

[2] The Elliston Declaration bears the caption for a different case—*J.G.G. v. Trump*, No. 1:25-cv-00766-JEB (D.D.C.)—and is dated May 9, 2025.

the notice," ECF No. 16 at 2—are all already in the public record. *See supra*. Notably, in granting the petitioners' motion to unseal the Cisneros declaration, Judge Rodriguez stated:

> In particular, [the government] noted that the sensitive information concerned the number of hours that individuals who were designated as enemy aliens would have to notify the government that the person intended to file a petition for habeas relief and the number of hours that the person would have to actually file the habeas action before the government would move forward with removal.
>
> That's obviously not part of any investigation because the person's already in custody and has been detained, will not affect any rights or . . . any ongoing investigation as to that individual , and it's hard to determine how that would affect investigation as to other individuals for the public to know how much notice the government is providing to designated enemy aliens.

Exh. 1 (*J.A.V.* Tr.) 8:22–9:12. Importantly, several courts have already discussed the government's procedures and timeline for providing notice and time to contest removal (and held they violated due process). *See G.F.F. v. Trump*, --- F. Supp. 3d ----, No. 25 CIV. 2886 (AKH), 2025 WL 1301052, at *6 (S.D.N.Y. May 6, 2025); *A.S.R. v. Trump*, No. 3:25-CV-00113, --- F. Supp. 3d ----, 2025 WL 1378784, at *7, *19–20 (W.D. Pa. May 13, 2025). The government has discussed this timeline in its own publicly filed opposition to Petitioner's motion for a temporary restraining order, citing to the Elliston declaration without redaction. *See* ECF No. 17 at 4. Because this information has been public for three weeks, the government cannot credibly claim that disclosure of that information would somehow *now* jeopardize public safety (even assuming it ever could).[3]

[3] The new information in the declaration does not involve the timeline for AEA notices and removals. Specifically, the new information falls into four categories, none of which is confidential: (1) comparing the AEA process to an existing immigration process (discussed in Respondents' brief, ECF No. 17 at 13–14), *see* Elliston Decl. ¶ 16, (2) reflecting the declarant's personal impressions about the process, *id*. ¶¶ 11, 17, (3) describing how ICE serves the notice on a noncitizen, *id*. ¶ 12, which is described in Respondents' brief, ECF No. 17 at 4, and (4) referencing a couple habeas petitions that have been filed and are in the public domain, Elliston Decl. ¶¶ 19–21. Respondents also do not base their security concerns on any of this information or explain how it could be law enforcement sensitive.

More generally, multiple factors weigh heavily in favor of the public's access to the Elliston Declaration. *See Callahan*, 17 F.4th. at 1363 (describing "important questions" a court will consider in evaluating whether presumption of public access has been overcome). First, the content of the declaration involves "public officials or public concerns," *id*., namely, the government's policy and practice in exercising an unprecedented wartime power outside the context of war and against an entity that is not a foreign government or nation. Relatedly, access is likely to promote public understanding of historically significant events and the press has already been permitted substantial access to the contents of the declaration.[4] The summary removals of Venezuelan detainees pursuant to the President's Proclamation and invocation of the AEA is a matter of great public concern, and this weighs heavily in favor of disclosure. *See, e.g.*, *Robinson v. City of Huntsville*, No. 5:21-CV-00704-AKK, 2021 WL 5053276, at *4 (N.D. Ala. Nov. 1, 2021) (unsealing police bodycam footage over city's objections to "allow the public to gain a better understanding of the [law enforcement] officer's conduct" and "because the press has already been permitted substantial access to the contents of the records").

Second, the information provided in the declaration is directly relevant to any Venezuelan noncitizen over the age of 14 in the United States who could be subjected to the Proclamation, as well as attorneys who may represent them. While the government claims to be providing sufficient notice and a reasonable opportunity to seek judicial review, it has filed under seal information directly relevant to how and when any individual is expected to pursue that judicial review. This information is not only of a public nature and of legitimate public concern, it would *hurt* litigants'

[4] *See, e.g.*, The Associated Press, *Venezuelans subject to removal under wartime act have 12 hours to contest*, NPR (Apr. 25, 2025), https://perma.cc/6GND-ZH78; Laura Romero, *DOJ giving migrants 'no less than 12 hours' to indicate they intend to contest AEA removal*, ABC News (Apr. 24, 2025), https://perma.cc/2XEH-UM6J.

and the public's confidence to allow the government to conceal its contents, especially when it goes directly to matters being litigated in multiple courts, including at the Supreme Court. *See Perez-Guerrero v. U.S. Atty. Gen.*, 717 F.3d 1224, 1235 (11th Cir. 2013) (per curiam) ("As Judge Easterbrook has explained, 'Judges deliberate in private but issue public decisions after public arguments based on public records . . . Any step that withdraws an element of the judicial process from public view makes the ensuing decision look more like fiat and requires rigorous justification.'" (quoting *Hicklin Eng'g, L.C. v. Bartell*, 439 F.3d 346, 348 (7th Cir. 2006))); *Robinson*, 2021 WL 5053276, at *3 ("transparency is crucial to maintain trust in our [legal] system and in our democratic society as a whole").

Finally, Respondents' proffered justifications for sealing are speculative and unsupported. They claim that disclosure of the Elliston Declaration and its supporting exhibit—the contents of which are, as discussed above, already available to the public—would lead to "coordinated resistance to removals," including "physical attacks on law-enforcement and removal-operations personnel." ECF No. 16 at 2. Respondents cite nothing to support such broad assertions. *See Mad Room, LLC v. City of Miami*, No. 21-CV-23485, 2023 WL 4571157, at *8 (S.D. Fla. July 18, 2023) ("'[g]eneralized concerns, conclusory statements, or unsupported contentions are insufficient reasons for entry of a protective order.' . . . The [movant]'s arguments are also rife with speculation[.]" (internal citations omitted)). Moreover, the government *itself* has already disclosed the very information that it claims would thwart removals. *See* Exh. 2 (Cisneros Decl., submitted in *J.G.G.*). Thus, the government cannot remotely meet its heavy burden, through a single conclusory sentence, that the declaration is "law enforcement sensitive" because the document does not implicate a "compelling interest in the protection of a continuing law enforcement investigation." *United States v. Valenti*, 987 F.2d 708, 714 (11th Cir. 1993); *see also Robinson*,

2021 WL 5053276, at *2-3 (unsealing records over objection that release "could compromise the safety of the defendant officers," in part because "the public already has considerable access to the contents" and there were no ongoing investigations at the time); *United States v. Sledge*, No. 16-0031-WS, 2016 WL 3024149, at *1 n.2 (S.D. Ala. May 25, 2016) ("The Government's Motion does not articulate any justification for the requested sealing order, and the Court's independent review of the recording reveals no sensitive contents, privacy concerns or *bona fide* law-enforcement interest in secrecy that might overcome the presumption of public access." (emphasis in original)).

Because of the factors weighing in favor of disclosure, the absence of any plausible justification for keeping the declaration and exhibit under seal, and most importantly, that the information is already public, sealing is improper.

CONCLUSION

Respondent's motion to seal the Elliston Declaration and its accompanying exhibit should be denied.

Dated: May 16, 2025

Respectfully submitted,

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Exhibit 1

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

J.A.V. et al	)	
	)	
	)	
VS.	)	CIVIL ACTION NO.
	)	1:25-CV-72
	)	
Trump et al	)	

INJUNCTION HEARING
BEFORE THE HONORABLE FERNANDO RODRIGUEZ, JR.
APRIL 24, 2025

A P P E A R A N C E S

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THE COURT: You can be seated. Good afternoon. We are here in the matter of J.A.V. et al. versus Donald J. Trump et al., 25-CV-72.

If lead counsel want to go ahead and make their appearances. And then if others at the table make argument, they can then present themselves at that time.

MR. GELERNT: Good afternoon, Your Honor, Lee Gelernt for the plaintiffs from the ACLU.

THE COURT: Okay.

MR. HU: Daniel Hu for the United States, but Mr. Velchik will argue for the government today.

THE COURT: Thank you. You're welcome to remain at -- at counsel's table, especially if -- if more than one individual may respond to some of the questions that -- that I have. Just when you do, please make sure that one of the microphones is pointing toward you so that it picks up your voice well and the record is -- is clearer.

We have four pending motions that I did want to address. We have the Motion for a Preliminary Injunction, that's document 42; a Motion to Certify Class; document 4; Motion to Unseal Cisneros Declaration, that's document 47; and the Motion to Proceed Under Pseudonym, that's document 5.

I want to begin first with the Motion to

Unseal Cisneros Declaration. And so question for the respondents here: The -- the -- how does the declaration and the form AEA-21B reveal confidential investigative methods, thought processes or -- sorry, or jeopardize an ongoing or future investigation?

MR. VELCHIK: Your Honor, the declaration combined with the form does include references to the movements of -- of vehicles, claims timing, the movement on individuals, its center. So certainly the -- the declaration I think we believe is law enforcement sensitive and we would oppose a -- a motion to unseal that.

THE COURT: The -- is it your contention that the disclosure of the -- the declaration and the form would create a risk of harm to any individual?

MR. VELCHIK: We believe that risks of harm in general apply in like circumstances, but we would emphasize for the court unique circumstances here which are described in Exhibits A & B to the respondent's motions noting the heightened risks to staff posed by gangs in general but in particular members of TdA.

And so we think that whatever law enforcement sensitive concerns generally apply in these circumstances, that they are exacerbated in this particular context.

THE COURT: I mean, I'm looking at the declaration, which is under seal, it's document 49, there's perhaps general references to movement of individuals, but nothing particularly specific.

And it just describes time periods and the procedures internally that the government would use in its discussions with detainees when providing the notice and explaining it to them in -- in -- in Spanish.

I guess I'm -- I have some difficulty understanding what, you know, the -- the declaration itself states that the declaration should be filed and remain under seal because this process is law enforcement sensitive, but -- but it's conclusionary in that sense. I guess just to ask again, I mean, what -- what is it about the procedures that reveals any type of investigative method or that would jeopardize an investigation?

MR. VELCHIK: The declaration does include quantitative estimates that if they were publicly available would allow others to understand and interpret the movement of law enforcement officials' vehicles.

And -- and we think that revealing information to members of a foreign terrorist organization about federal law enforcement movement of vehicles, particularly when it pertains to potentially

movements to foreign countries in coordination with other sovereigns, poses risks and we believe that release of this information in combination with other information individuals could glean could be used to create risks that we think justify maintaining this under seal.

THE COURT: A response?

MR. GELERNT: Your Honor, I want to choose my words carefully but I -- I would say there is zero merit to this sealing. To begin with, the forms are supposed to be, by the government's own admission, given to the detainee. Obviously, the detainee can give it outside of the detention center. So, right there, I -- I think that would have to defeat it.

But, more fundamentally, the declaration goes to how much notice they're going to give people. That is what's central to this court's determination on the merits, it's what the Supreme Court is looking at.

They have told the Supreme Court and other courts the amount of notice that they think they're going to give, now they're saying in this declaration that they're saying nobody can see. I -- I can find no conceivable basis for saying that they're not going to let the public or the courts know exactly how much time they're planning on giving people.

I don't understand remotely how it would tell people the movements of law enforcement, especially because if the form is given to detainees and they can give it out, there's one sentence there, I don't -- the fact that they think that these people are -- these alleged gang members are dangerous has no bearing on not revealing the notice requirements.

They have not submitted it to other courts, presumably, or I -- I don't want to say presumably but maybe that's not why they're not making it public. We would think they would have at least put it under seal in other courts that are considering this exact issue. As Your Honor knows, it's pending before the Supreme Court. I -- I -- I'm -- I apologize, I'm sort of at a loss to understand it remotely how this can be something that remains under seal when it goes to the heart of this case, it doesn't go to law enforcement movements.

I'm -- I'm happy to answer any questions, Your Honor, but I -- I think -- and I -- I don't mean to be cavalier about it, but I -- I don't see any possible basis for keeping this under seal.

THE COURT: Thank you.

Mr. Gelernt and Mr. Velchik, can you approach to side bar.

(BENCH CONFERENCE.)

THE COURT: This portion of the record will be under seal for the moment. So speak a little bit closer, this should be relatively brief. So this portion of the record will be under seal for the moment.

So, Mr. Velchik, this is document 49-1, can you identify for me the specific information that you feel is sensitive and law enforcement sensitive. I see the reference to the numbers of hours, I don't see other specific information that's (unintelligible) or movement. So if you can -- if you can take a look and identify for me what you believe is the most sensitive portion.

MR. VELCHIK: In reference to the specific hours that you identified, I think that is the part that I would emphasize.

THE COURT: Okay.

MR. VELCHIK: Just as an abundance of caution.

Yeah, certainly references to specific hours are something that the government feels strongly presents risks. I think -- I think it's important that I emphasize that. You asked specifically about this is law enforcement, but, as part of the analysis, I would include not just cost but also like what the probative

benefits.

There is ongoing litigation in other courts, I think there are other plaintiffs raising claims where some of that information might actually be necessary for a legal determination. We believe that the plaintiffs, the named plaintiffs in this case all have actual notice and so some of those things aren't necessary for a legal decision on some of the issues that we think are adequately or correctly presented before this court. So I think that also forms our analysis.

THE COURT: Okay. Thank you. And so we're un -- I unseal this portion of the record, so everything that has been said here is not sealed so you can return.

(OPEN COURT.)

THE COURT: The public has a general right to access and inspect judicial records. I find that the disclosure of form AE -- AEA-21B and the declaration of Mr. Cisneros would not reveal confidential investigative methods, thought processes or jeopardize an ongoing or future investigation and would not pose a risk of harm to any individual.

In particular, Mr. Velchik noted that the sensitive information concerned the number of hours that individuals who were designated as enemy aliens would have to notify the government that the person intended

to file a petition for habeas relief and the number of hours that the person would have to actually file the habeas action before the government would move forward with removal.

That's obviously not part of any investigation because the person's already in custody and has been detained, will not affect any rights or -- or any ongoing investigation as to that individual, and it's hard to determine how that would affect investigation as to other individuals for the public to know how much notice the government is providing to designated enemy aliens.

So the Motion to Unseal Cisneros Declaration is granted. I direct the clerk's office to unseal document 49-1.

The next -- the next matter is the Motion to Proceed Under Pseudonym. Does the government oppose that motion, that's document number 5?

MR. VELCHIK: The government does not oppose.

THE COURT: Okay. So the Motion to Proceed Under -- Under Pseudonym's, document number 5, is granted and we will continue in this proceeding using the initials of the individuals.

I have a number of questions on different

topics that the Motion for Preliminary Injunction and the Motion to Certify Class raise. I don't plan to cover all the issues that the motion and the briefs raise, but have questions on some issues that I think will facilitate my consideration of -- of the pending motions.

At the end of my questions, I will give each side ten minutes to present on any other issues that we have not covered or that you may want to emphasize to the court. So you can sort of keep track of the topics that we cover and then choose to either mention something we haven't raised or emphasize a particular point that we have covered.

On the first matter I want to talk about is the removal of the named petitioners. So this is related to J.A.V., J.G.G. and W.G.H. Question for respondents: Has the United States Government provided notice to any of the named petitioners, the three, since the Supreme Court's J.G.G. decision and the notice being that they are an enemy alien under the proclamation and subject to removal under the AEA?

MR. VELCHIK: The government is not aware at this time. We understand that the three named plaintiffs have actual notice of their ability to proceed in habeas, they have done so, we are here, and

the government has no plans to remove them pending resolution of this litigation. We think that this is the appropriate vehicle to evaluate the claims that they have as recognized by the Supreme Court's decision in J.G.G.

THE COURT: So those are my follow-up questions, right, do -- do you -- are you representing that the United States will not remove or deport any of the named plaintiffs based on the AEA and the proclamation during the pendency of this lawsuit?

MR. VELCHIK: That is my understanding of the government's position, yes.

THE COURT: Okay. And -- and do -- are you representing that the United States will not transfer the named plaintiffs outside of the Southern District of Texas during the pendency of this lawsuit?

MR. VELCHIK: Certainly the government is complying with the Temporary Restraining Order this court has issued and that would be a reasonable like constraint to preserve jurisdiction under this court.

THE COURT: Well, the question is whether I issue a preliminary injunction. So the question is, if I don't issue a preliminary injunction, will the government nevertheless not transfer the named plaintiffs outside of the Southern District of Texas

during the pendency of this lawsuit?

MR. VELCHIK: The government has no intention to transfer them out of the pend-- out of this jurisdiction pending their lawsuit. We believe this is the appropriate vehicle to do so. We think this is an appropriate arrangement to pursue their claims as they remain detained here. This is a proper venue.

THE COURT: And just to make sure, as intentions sometimes change, does the government stipulate that during the pendency of this lawsuit the government will not transfer the named plaintiffs outside of the Southern District of Texas?

MR. VELCHIK: While considering the claims under the Alien Enemies Act, provided there's no independent basis to remove them under Title 8, we think that that is an appropriate stipulation.

I -- I'm not aware of any intention to -- to move them and we think this is the appropriate forum for them to litigate their claims under the AEA.

THE COURT: Okay. And -- and you're choosing words carefully, but I receive your statement as an agreement and representation by the United States that during the pendency of this lawsuit it will not transfer the named plaintiffs outside of the Southern District of Texas during the pendency of this lawsuit.

If the United States Government, I know you've indicated that the United States doesn't intend to give notice to the named petitioners, but if the United States Government provided notice next week, tomorrow, to any of the named petitioners that he is an enemy alien under the proclamation and subject to removal under the AEA, would that individual have to restart his habeas action?

MR. VELCHIK: No. I think that with respect to those named plaintiffs, this is an appropriate forum. Government has no intention to -- to force them to re-litigate that. They've filed, the court properly has jurisdiction over these claims, we believe.

THE COURT: Okay.

And so, Mr. Gelernt, given the responses by -- by the government as to the named plaintiffs, why does the court need to enter a preliminary injunction? Don't the representations by the respondents provide the named plaintiffs the same protection that they seek through the Motion for Preliminary Injunction?

MR. GELERNT: Your Honor, so I think in light of your clarifications, either there was a lot of talking about intentions and -- and you sort of boiled it down to we will not, and I understand the government now to be stipulating that they will not move them out

of the district or remove them out of the country on the basis of the Alien Enemies Act. I think that, we -- we would trust the government to -- to abide by that stipulation to the court.

I think the real danger for us is this is exactly what happened in the Northern District of Texas before Judge Hendrix. The government said --

THE COURT: Well, let me stop you there.

MR. GELERNT: Okay.

THE COURT: That raises the issue of the class.

MR. GELERNT: Right.

THE COURT: But as to the named plaintiffs, no indication that the named plaintiffs in the matter pending before Judge Hendrix have been attempted to be removed or --

MR. GELERNT: Right.

THE COURT: -- or transferred, correct?

MR. GELERNT: That's our understanding, yes.

THE COURT: So we'll get to the issue of the class.

MR. GELERNT: Okay.

THE COURT: All right. So under -- under appropriate circumstances, a court can convert a Motion for Preliminary Injunction into a Motion for Summary

Judgment, particularly on -- on legal issues. Here, given the government's representations, there is no need for the court to issue a preliminary injunction as to the named plaintiffs.

But they continue to advance their attacks on the President's application of the AEA through the proclamation, the court's going to have to reach those issues at -- at some time, the parties have presented substantial briefing on those issues.

And -- and I know we've been operating under an abbreviated briefing schedule, the legal issues have been raised in similar litigation in various courts and -- and the briefs that the parties have presented are substantial and are -- are well prepared.

On the -- on the legal issues that the Motion for Preliminary Injunction raises, and as to the named petitioners, does either party object to the court converting the Motion for Preliminary Injunction into a Motion for Summary Judgment so as to issue a -- a summary judgment either way on that issue?

First from petitioners?

MR. GELERNT: We do not, Your Honor.

THE COURT: Okay. From respondents?

MR. VELCHIK: No, Your Honor. And I think doing so would be consistent with the government's

interest in facilitating a timely resolution of these important issues.

THE COURT: Okay. Thank you.

Any other evidence or legal arguments, in particular evidence that either side believes they would present with a Motion for Summary Judgment if we sort of followed a more traditional approach and -- and did not raise it for some time period? Anything else that you would submit from the petitioners, Mr. Gelernt?

MR. GELERNT: Your Honor, we would just ask for 24 hours to see whether there's additional information we need to present with respect to the now unsealed declaration. As Your Honor knows, we didn't get that till this morning, the actual attachment and the actual declaration till very late, well after the government was supposed to respond. So we would just ask for 24 hours to examine it a little bit more carefully to see whether there's anything we need to put in, but I suspect there won't be, but I would ask the court's indulgence for that.

THE COURT: Understood.

And then from the respondents, anything else?

MR. VELCHIK: We would also use additional time if provided to the opposing side on --

THE COURT: Well, the -- the -- my understanding is Mr. Gelernt is asking for an extra day just to file a supplemental reply to exhibit D, document 49-1, on that limited issue. That's -- that's the respondents document --

MR. VELCHIK: Right.

THE COURT: -- so you've submitted that and -- and I'm considering that. Any other evidence that the -- the government would submit if I allowed more time to consider this as a Motion for Summary Judgment in a more traditional schedule?

MR. VELCHIK: I can't think of any at this time.

THE COURT: All right. Thank you.

So as to the named petitioners, I convert the Motion for Preliminary Injunction into a Motion for Summary Judgment and notify the parties of my doing so.

To the extent that I certify a class, I will do the same and convert the Motion for Preliminary Injunction as to the class into a Motion for Summary Judgment. The issue of whether I certify a class, of course, is -- is separate.

One, I -- I do grant the petitioners until tomorrow, April 25th, to file a supplemental reply with argument and/or additional evidence related to the

declaration of Mr. Cisneros, that is document 49-1.

MR. GELERNT: Thank you, Your Honor.

THE COURT: So now, Mr. Gelernt, one caveat on my converting it into a Motion for Summary Judgment, given the respondent's position, can I reach the named petitioners challenge regarding the notice procedures? Right, the -- the intent of the notice procedures is to allow the individual designated as the enemy alien to seek relief in habeas. The named petitioners have done so.

Even if I conclude that the named petitioners are correct that the government's notice and procedures are inadequate, don't satisfy the -- the AEA based on the language that the Supreme Court in J.G.G., there's no relief that would stem from that conclusion, is there? It would effectively be an advisory opinion as to the named petitioners, would it not?

MR. GELERNT: Your Honor, so this is the first time we're hearing that the government is stipulating and so I -- I think, you know, if necessary, we would put something in about that.

But I -- I think you can, Your Honor, just because this is a class and so the government can't moot out a -- a ruling by taking the named petitioners off the board. So that's sort of standard class-action law.

So, for that reason, I'm not sure that it ultimately matters as a -- you know, as a sort of practical application of this. We could always put in a different named petitioner, but I don't think Your Honor would have to have that because, once a class is filed and the papers are on file, the government could continuously moot the issues by just taking the named petitioners off the board. So I don't think it's necessary.

I think the Supreme Court did want new notice. And you're right, Your Honor, that's a fair point that it was to be able to file a habeas and a habeas is on file, but we don't know exactly what the allegations specifically will be to the named petitioners. And so, in that respect, we can't assume that -- that the notice won't be necessary if they need to amend their habeas petition in some respect.

But I think it's a fair point, Your Honor, I would just say that one way or the other you can ultimately reach the merits because the named petitioners can't be mooted, can't moot the class.

THE COURT: Okay.

And respondent, respondents have a position on that point? Can I reach as to the named plaintiffs the issue of whether the notice and the procedures for

the notice satisfy the AEA's requirements as described in J.G.G.?

MR. VELCHIK: No, Your Honor, for the reasons that you described in your analysis, the named petitioners would lack standing with respect to that point, the court would therefore lack jurisdiction. To the extent that the court is evaluating punitive class action, that would also destroy typicality or commonality.

THE COURT: All right. Thank you.

Let me turn to the political question doctrine. The D.C. circuit's decision in El-Shifa, Judge, then Judge Kavanaugh notes in his concurrence that the political question doctrine has -- had never been applied to preclude review of a challenge based on a federal statute as opposed to the Constitution.

So question first for -- for the respondents: Aside from El-Shifa, are you aware of a -- of a court applying the political question document to preclude review of a statutory challenge?

MR. VELCHIK: Standing here now, I cannot name one specifically. But the government would emphasize that the Alien Enemies Act is a very old statute, dates back to the 5th Congress. It uses language that is similar to language in the Constitution

where we think the political question doctrine is most appropriate. The government continues to believe that a political question doctrine precludes review of whether or not the conditions have been met. And that remains our argument from the brief.

THE COURT: And on this point, Mr. Gelernt, does it make a difference that this challenge is -- is statutory? Aren't -- aren't the principles the same as if we were addressing the Executive Branch's responsibilities and powers under, for example, the invasion clause of the Constitution, don't the *Baker* factors apply equally whether the Executive Branch is making decisions regarding foreign policy and national security based on a Constitutional provision rather than -- and a statute?

MR. GELERNT: Right. Your Honor, we think it absolutely does, I think for the reasons Judge Kavanaugh said and the reasons the Supreme Court has increasingly emphasized in its political question doctrine that when you have Congress passing a statute and deciding what powers they are going to vest in the Executive Branch, it's critical that the courts be able to review those statutory predicates; otherwise, it's essentially saying the Executive Branch can do whatever they want.

And so I think that's why the Supreme Court has never permitted the political question doctrine to divest this -- any court of jurisdiction over the statutory predicate. So that -- that's the first thing generally about political question doctrine.

THE COURT: Well, let me -- let me just stop you there.

MR. GELERNT: Yeah.

THE COURT: I mean, can't the same concern also be raised as to constitutional issues? The courts construe the Constitution to determine whether a state actor has exceeded the powers that the Constitution gives that state actor, isn't that the same as -- as with a statute?

MR. GELERNT: I -- I don't think so, Your Honor, for the following reason that you don't have the same separation of powers question. It's a fair point, Your Honor, that it does raise delicate questions if the Executive Branch has completely unfettered discretion to interpret the Constitution. And the Supreme Court generally hasn't done that.

But I think what the Supreme Court is getting at what Judge Kavanaugh was getting at is, where Congress is acting in equal political branch, it's critical that the courts ensure that the Executive

Branch is not taking power away from Congress.

And -- and I would emphasize more specifically as to -- unless Your Honor doesn't want me to go there right now as to the Alien Enemies Act -- there has always been review of the statutory predicates. And I want to turn back to Ludecke, but just in the J.G.G. decision that Your Honor's aware of from April 7th of the Supreme Court, it specifically quoted the language from Ludecke saying the construction and validity of the act can be construed.

Otherwise --

THE COURT: Well, we'll get --

MR. GELERNT: Yeah. Okay.

THE COURT: I'll stop you there and we'll --

MR. GELERNT: Okay.

THE COURT: -- certainly get into those issues.

But I have another question for you: Is it your position -- yes, Mr. Gelernt -- is it your position, that as part of my analysis on the issues that the petitioners raise, I should weigh the truth of the President's statements about Venezuela and TdA and the proclamation and the -- or within the documents referenced in the proclamation?

MR. GELERNT: Your Honor, that's a critical

question and I'm glad you'd give me a chance to answer that. We don't think Your Honor has to reach that for the following reason: We think that if you construe the Alien Enemies Act in the way we have suggested and the way Judge Henderson suggested and they way I think all the historical materials suggest, once you construe those provisions to say it has to be a foreign government, not a gang that has some influence on a foreign government, and it has to be a military action, not a gang that commits criminal activity in the U.S., if you construe the statute that way, then I don't think you need to test the validity of the factual findings because nothing within the four corners of the proclamation remotely says this is a military action by a foreign government. And so that's all you would have to do.

Now we do think you could review fact -- the facts, the findings based on -- even under a deferential standard, I don't think those findings, those -- they're very conclusionary and I don't think those would stand up. But we think Your Honor doesn't need to go further than the -- the face of the proclamation and -- and to show that it's inconsistent with the Alien Enemies Act properly construed.

THE COURT: And I understand your position

regarding the definitions of invasion and foreign government and whatnot, and we'll -- we'll get to that here -- here in a bit, but assuming that I construe the terms more in line with the respondent's position, you submitted -- the petitioners submitted declarations from three individuals --

MR. GELERNT: Yes.

THE COURT: -- with extensive information about TdA and the government of Venezuela, the ties challenging the statements within the proclamation and presumably asking me to weigh that against the statements in the proclamation and the, you know, designation of TdA as a transnational criminal organization and things of that nature, isn't that exactly what the political question doctrine teaches that courts should not get into, you know, engaging, weighing decisions by the Executive Branch that rely on intelligence and data, weighing priorities related to national security and foreign policy considerations?

Aren't you -- at least that position seems inconsistent with the principles of the political question doctrine.

MR. GELERNT: Right. Well, well, certainly not weighing priorities, I agree that that is something for the Executive Branch. But factual determinations,

straight factual determinations, I think the court always can weigh those and did do that during World War II when we have cited cases.

Now Your Honor may decide there is some deference owed to the Executive Branch, but we think the declarations show that the find -- what are ultimately conclusionary findings have no basis in fact. And under any standard of review, we think they don't hold up. So I think fact -- straight factual findings, I don't think implicate the political question doctrine.

Now if you were to say to me can the government decide TdA is more dangerous than another gang and that's why we're going to prioritize them, I think then we would be getting into a realm where Your Honor would have to step back.

THE COURT: Okay. Let me --

MR. GELERNT: But not on the straight factual findings.

THE COURT: Right. I understand.

It is relatively easier, I think, to determine does a declared war by Congress exist as opposed to an invasion or a predatory incursion, so the --

MR. GELERNT: Right.

THE COURT: -- the three circumstances under

which the AEA has been previously invoked have all concerned declared wars, so it was easier.

And I understand that's part of the argument related --

MR. GELERNT: Yeah.

THE COURT: -- to the definition of those terms, but here it's based on invasion, predatory incursion --

MR. GELERNT: Right.

THE COURT: -- threatened invasion, predatory incursion, how do I weigh that without getting into sensitive intelligence and data that the Executive Branch holds?

MR. GELERNT: Well, well, so here -- here's what I would say, Your Honor, and I think that Judge Henderson laid it out nicely, that it would still have to be a military invasion or incursion. And so I think that's the key. And because it's paired with declared war, I think that's what Congress was getting at, that's what all the historical materials suggest. And, again, that's what Judge Henderson said. So once you find that it has to be a military invasion, I don't think that the findings go anywhere near a military invasion.

And I would look at the government's own

evidence, if you were going to go there, the -- the Smith declaration the government put in about TdA uses the word criminal or crime 15 times and says this is a law enforcement matter. Never once suggests that TdA is engaging in military activity.

So as long as Your Honor was defined that it has to be military, then I don't think it matters how dangerous TdA is, how much the President thinks TdA is engaging in incursion in the U.S. I think right there, that -- the government's own declaration, again the Smith declaration, shows that even the government is not really suggesting this is military in nature.

THE COURT: Okay. Thank you.

Mr. Velchik, sort of looking at it from the other side, Supreme Court has confirmed that an individual subject to detention and removal under the AEA is entitled to judicial review as to questions of interpretation of the statute.

Doesn't that right include the court defining the terms of the AEA to determine whether the Executive Branch has exceeded the scope of the AEA?

MR. VELCHIK: Certainly the Supreme Court's decision in J.G.G. emphasized that there were factual determinations left to review. We acknowledge that it also included language about the constitutionality in

the interpretation of the AEA.

The AEA has several sections, there may be some legal terms that may be amenable to interpretation and others may not, I think that this court and plaintiffs have focused on two terms in particular, one of which is the condition about whether there's a declared war or a predatory incursion or even a threatened predatory incursion.

For some of the reasons raised by this court, that particular determination could be precluded by the political question doctrine and yet there could be other portions of the statute that might be more amenable to judicial review.

I think in particular also emphasize, when it comes to a predatory incursion, there could be evolving situations with military -- with military incursions. If a court were to say today, you know, this does or does not satisfy a threatened predatory incursion, does that hamstring the ability of the Executive to alter that determination or to try again in other case? I think there are a number of complications in addition to the judicial amenable standards that this court has raised.

A second term of -- of art -- legal term of significance that has been challenged has been a foreign

nation or government. And whether or not TdA satisfies that, I think, is also amenable to the same arguments about it's a political question. But I think that there are also additional reasons to suggest that it might be inappropriate for a court to second guess the President's determination there.

I mean, in particular, Zivotofsky, you know, clarifies that the Executive Branch uniquely holds the power of recognizing foreign nations. And that might also further counsel of limited review of that term.

But, overall, I think the -- the structure with which I would analyze the question is, that as a threshold determination, we think that those two questions are political questions not subject to review by a court.

I think that there is a second option which is that this court could review the face of the President's proclamation to see whether it comported with the requirements of the AEA.

And then I think there's a third layer, where if this court, if it so chose, could engage in empirical fact finding investigations to determine whether or not there really is a declared war, predatory invasion by a foreign government.

There's evidence in the record that -- that

both sides have submitted, I think that there are a number of -- of problems with a court weighing those determinations. And so our first argument is that -- that both questions are subject to the political question doctrine.

But even if they are reviewable by a court, we believe that there's enough on the face of the President's proclamation, the State Department's designation of TdA as a foreign terrorist organization, offer this court to engage in interpretation to satisfy the Supreme Court's direction for review in this case.

THE COURT: Now you argue in your response that as for whether the acts preconditions are satisfied that is the President's call alone. The federal courts have no role to play.

Is it your position that the President under the AEA and its powers has the authority to define what an invasion or a predatory incursion includes and then declare that an invasion or declaratory -- or predatory incursion has occurred, been attempted or been threatened based on his own definitions?

MR. VELCHIK: Yes, for the -- the same framework that I think I explained.

THE COURT: I mean, doesn't that render the President's powers under the AEA effectively limitless?

MR. VELCHIK: The AEA is an emergency authority and we do recognize that the political question does limit judicial review in certain circumstances, but courts have done so in the context of -- of foreign affairs and national security.

But even if this court does interpret those terms for itself, we believe that applying traditional tools of statutory interpretation, combined with what we think would be the appropriate deference to the Executive Branch, would still satisfy the plain meaning of those terms as they've commonly been understood at law and at the time that the act was passed.

THE COURT: I mean, there are various decisions by the Supreme Court and lower courts that have defined terms of the AEA and citizen, denizen, that phrase. For example, doesn't that reflect that when J.G.G. confirms prior decisions that questions of interpretation of the statute are subject to judicial review, in part, at least means that courts get to define the words of the statute and then determine whether what the President has proclaimed falls within that definition?

Not gauge the facts, whether those purported facts are true or not, but is what is described in the proclamation fall within the defined terms of invasion

and predatory incursion as commonly, ordinarily understood at the time of its enactment?

MR. VELCHIK: Yes, we acknowledge those authorities. There are also a number of other authorities that do speak in quite broad terms about the AEA being unreviewable, but, yes, we do believe that the President's proclamation and his exercise of those authorities in this particular case would satisfy a judicial review of all the appropriate terms as they've been used in this case.

THE COURT: Thank you.

Mr. Gelernt, in looking at the President Roosevelt's invocation of the AEA in December 1941, the proclamation he issued includes no facts, at least from -- from my review of it, it merely declares that Japan had invaded the United States, declares that Germany and Italy threatened to invade the United States.

No one appears to have challenged the proclamation, so we don't have a judicial determination of whether that was appropriate or not, but doesn't FDR's invocation of the AEA in that matter support the idea that a president effectively can merely declare that the exigencies or conditions necessary to invoke the AEA exist without having to provide any additional

information?

MR. GELERNT: Yeah, Your Honor, so I feel like what is happening to us is that the government is asking us to fit a square peg into a round hole rather than them doing so.

And as Your Honor has noted, the proclamation -- I mean, the Alien Enemies Act has been around since 1798. It's only been used three times in the country's history, all during declared wars.

I don't think that someone thought, well, maybe I can walk into court and say the United States is not at war. And so I think those are the reasons why these types of questions haven't arisen because every other administration back to 1798 has understood we use this only during a declared war. And even during those declared wars, we're not aware of any removals except World War II. So we -- we do think that the proclamation would have to make findings. I think the Alien Enemies Act, the way the Supreme Court has suggested it, do need to make findings.

And I think, you know, just to re-emphasize Your Honor's point about J.G.G. must have meant something, the Supreme Court must have meant something in quoting that language you can construe the act; otherwise, the government -- the President could

literally name anybody, any gang under the proclamation. That can't be what Congress meant.

You know, I -- I don't need to sort of belabor the point, but every religious and ethnic group in this country has been tied to some criminal organization at some point in the past. It would mean the President could literally do whatever he wanted and all of a sudden people within 12 hours could be in a Salvadorean prison.

And so, you know, not only is it J.G.G. but they did quote Ludecke. And Ludecke, contrary to the government's understanding of it, did actually construe the terms and reach the merits. So what the individual in Ludecke walked into court and said is: There's no declared war. Meaning, I want to construe the declared war term because there's no longer a shooting war in the Supreme Court's terms. There's no longer actual hostilities.

And the Supreme Court said: We're going to construe declared war not to mean that there has to be actually shooting going on. Only after it construed the term to mean it doesn't have to be actual shooting at the time did it then go to say and then Congress and the President will decide when to declare the war over.

In case after case, as Your Honor has

pointed out, construed statutory terms; otherwise, there would literally be unlimited power. Congress passed a very specific statute and I think it goes to the fact that we are not here --

THE COURT: Let me stop you there for now --

MR. GELERNT: Yeah, I'm sorry, Your Honor.

THE COURT: -- and move on.

Just a follow up to -- to Mr. Velchik, on this issue of limits, under your position, could the President determine that an invasion or predatory incursion has occurred -- and this is a hypothetical so those are always tricky, but -- that -- that a foreign nation has sent or intends to send agents to the United States to obtain positions of authority in corporate America and from there make decisions that destabilize the nation's economy?

Is that enough? And that's an invasion under the proclamation. If the President gets to define the terms and then declare that it exists, would the President be able to invoke the statute for mere economic injury, the stealing of intellectual property by a foreign nation?

MR. VELCHIK: Certainly if the political question precludes judicial review, that would limit the ability of courts to second guess those determinations

even in some of the hypotheticals that you've raised.

THE COURT: Well, that's your position, it does preclude political review. So you're saying that it would preclude judicial review in that scenario?

MR. VELCHIK: And under those scenarios, I mean, there would also be checks on the Executive Branch. A lot of the sorts of questions that are uniquely committed to the Executive Branch under the political questions doctrine for which there's not judicial review, there are other mechanisms for accountability: This includes impeachment, democratic elections, so there are other backstops to second guesses and terminations even if judicial review is not available.

However, if judicial review is available, we do think that the facts are very different from that hypothetical and fall squarely within the terms as they're commonly understand.

THE COURT: Okay. And -- and, Mr. Gelernt, right, Mr. Velchik mentioned, I think it's Judge Story in one of the decisions references, I think it's under the militia act, but, you know, can this be abused? Yes, as any statute can be abused. But when it's a matter that is political in nature, the remedy is the political process. It's impeachment or the next

election or -- or Congress amending the statute. So if the AEA, if I determine that it should be construed broadly, isn't the appropriate remedy the political process and not the courts trying to determine or -- or limiting the President's powers under it that were not intended at the beginning?

MR. GELERNT: Yes, Your Honor, a -- a few things. One is that obviously the Supreme Court has decided that the political question doctrine should be narrowed in recent times. And that is why I think Judge Kavanaugh has pointed out that he's not aware of any time, even back in the day when statutes weren't construed, but certainly now the Supreme Court has emphasized it.

But I think your question assumes that you are going to review the statute at least to decide what the terms are. And so I think that goes beyond even what the government is saying you can do. I mean, if you can't review the statutory terms and there's literally no check and -- and it's not -- the political -- the political process can't be to check if there's a statute, Congress was very clear in (unintelligible).

And what I was going to say before is that it's not as if we're here saying you have two choices:

Either they can't use the Alien Enemies Act or let everyone roam around even if they think they're dangerous. No one's saying they can't be criminally prosecuted, no one's saying they can't be removed under the immigration laws. And, in fact, there's an alien terrorist court that allows them to use special procedures. No one's saying --

THE COURT: Well, I'll stop you there, I think you're getting off point, but I understand the point.

MR. GELERNT: Yeah, no, I --

THE COURT: And I agree that the ultimate outcome of this lawsuit does not result, at least -- at least as to the named petitioners, the release of the individuals. They're not seeking release.

MR. GELERNT: Right.

THE COURT: They're seeking adjudication or the ability to proceed under Title 8 in the immigration courts and the procedures that are set forth there.

MR. GELERNT: Yeah. And so, Your Honor, I just --

THE COURT: But let -- let me turn to a different topic.

MR. GELERNT: Okay. Well, I was just going to -- I apologize.

THE COURT: Well, I'll just --

MR. GELERNT: Okay.

THE COURT: You'll have your ten minutes at the end.

MR. GELERNT: Okay. I'm sorry, Your Honor.

THE COURT: The -- turning to the definition of invasion and predatory incursion, so, first, the -- the respondents, just to understand your proposed construction, how do you distinguish between an invasion and a predatory incursion for purposes of the AEA?

MR. VELCHIK: So the text of the AEA references declared war, which we think is a well-defined term under the Constitution.

THE COURT: Correct. I don't think that's at issue here.

MR. VELCHIK: Correct. But I would emphasize that invasion does appear in the text of the Constitution under suspension clause. And to the extent that there are legal authorities interpreting it there, that would also be probative of its interpretation in -- in this case.

Just applying purely textural tools of statutory construction, I would emphasize that the text of the AEA in this section is remarkably expansive when compared to any other provision either of the

Constitution or other similar statutes.

There are some provisions in the Constitution section that do turn on a declared war, and that has a legal significance, the suspension clause speaks of invasion or rebellion. But here we have the inclusion not only of those terms, but also predatory incursion. And we think that the inclusion of predatory incursion, alongside those other two terms, reflects Congressional intent that the scope of the AEA must be substantially broader; otherwise, you'd be rendering the term predatory incursion nukatory (ph).

We also think that those three terms are also read in the same sentence alongside. There -- there's a three-term series about whether it's threatened, and so I think that is further evidence of Congressional intent to be quite expansive in scope.

We think that interpreting those terms should be expansive because they are. And it also reflects a certain amount of deference to the Executive Branch to define that falls anything within either of the three terms or even the threat of those three terms.

In addition to strictly looking at the text of the statute, we also believe it's appropriate to look at the original understanding and the history. Certainly at -- at the time of the founding under the

5th Congress, the United States not only engaged in formal wars with other traditional European sovereigns, but also dealt with other groups that presented threats to national security of the United States, whether these were predatory attacks by Indian tribes, there were the Barbary pirates under Thomas Jefferson, and then even today the United States Government continues to deal with other threats from entities, governments or terrorist organizations.

There's obviously case law on al Qaeda and increasingly --

THE COURT: Let me stop you there.

MR. VELCHIK: Yes, sir.

THE COURT: So, I mean, on this issue, you note in your response a couple of dictionary definitions that include -- that have a meaning broader than some of the definitions in other documents that petitioners present to the court, are you aware of -- of secondary sources, such as letters or pamphlets, using invasion or predatory incursion, or just incursion for that matter, in a manner that does not expressly refer to or imply military activity or a military context?

I mean, it -- it's understood, I think, I accept that the promulgation of the AEA was with a potential war with France in mind on the -- the

potential imminence of a war. That doesn't necessarily mean that all the phrases of the AEA have to be read in a military context, what we're looking for is the plain ordinary meaning of what those words meant in that society at that time.

And so we -- we look for the usages of those terms within the various sources. There are some that petitioners have presented that are very clearly military in context, but I don't think that the respondents presented those types of usages other than other definitions exist.

Are you aware, you know, the pirates, you know, the -- the settlers in the west and perhaps incursions by native Americans, or -- or the French who were out there, were these terms also used to refer to those kinds of incursions?

MR. VELCHIK: I believe so. We agree with the court that it's appropriate and the court can take legal notice of authorities that are contemporaneous that use those terms, whether they be letters or otherwise, even if they haven't appeared in this brief.

I don't have a citation off the top of my head.

THE COURT: Did you provide any to the court other than the dictionary definitions in your briefing?

MR. VELCHIK: I mean, we have what's in the brief, which we refer to the court. I would emphasize, though, I think even just entomologically, like predatory invasions, I think, implies raids, which is somewhat distinct from a formal, you know, like military with tanks rolling across a -- a border.

THE COURT: Well, well, I'll stop you there.

MR. VELCHIK: Yes, sir.

THE COURT: I mean, you're -- you're giving me your view of what the words mean --

MR. VELCHIK: I understand.

THE COURT: -- in our society today. We -- we obviously were looking at what those words could have meant at the time, which I think we can only determine based on sources from -- from that time.

But let me ask you a separate question. In your briefing, you acknowledge a time that the AEA is a war time act. And, for example, it appears you argue that because of that the restrictions within the INA don't apply, that this essentially trumps the INA Title 8 because it's a war time act.

I mean, doesn't that argument support the petitioner's point that the conditions required to invoke the AEA should include a military context that effectively amount to war or imminent war?

MR. VELCHIK: No. Our analysis of reading Title 8 and the AEA proceeds chronologically where the AEA was originally enacted in 5th Congress, obviously the INA was passed much later. Under the traditional rules of a statutory interpretation, courts do not lightly interpret -- interpret implied repeals.

We think that whatever the appropriate interpretation of the AEA was enacted, that continues to be a discreet mechanism to remove individuals. It is codified in a separate title dealing with national security events, but we -- we regard that as an independent mechanism to remove individuals separate from Title 8.

THE COURT: Okay. And I think I -- just -- just to confirm, to the extent that courts have construed the meaning of invasion as used in the Constitution, that would be relevant to the meaning of invasion as to the AEA, is that accurate from your point of view?

MR. VELCHIK: It is correct that to the extent that courts have interpreted the meanings of one word in one text that may be probative of its meaning in another text, it does not mean that they are identical or that it collapses but certainly it would be probative.

THE COURT: And that principal applies to the word invasion in the AEA?

MR. VELCHIK: Yes, correct. Particularly in light of the -- the timing of the two texts.

THE COURT: On -- on the issue of foreign nation or government, are you aware of any historical record that uses foreign nation, foreign government to refer to a non-political entity or organization, for example, a fraternal order, a society, as opposed to a society or a group of people who are subject to governance and legal judicial political recognition?

MR. VELCHIK: We have the authority cited in the brief. I would emphasize, that in the AEA, the text includes a foreign nation or a government and those terms are used together and that suggests that they are not fully overlapping.

The fact that the term government appears next to foreign nation suggests that the scope of the AEA must be more expansive than might be traditionally interpreted solely from the term foreign nation itself.

THE COURT: Correct. Right. And one question I did have for both sides, because I'm not sure that it's briefed as distinctly as it could be, is there a distinction between foreign nation and foreign government for purposes of the AEA? You know, what's

the position of respondents on that?

MR. VELCHIK: Yes. The -- the very fact that the text of the statute refers to both indicates that -- that they are not co-extensive. Again, we also think that the inclusion of not just invasion but predatory incursion, you know, presupposes the sort of other sorts of entities that might be engaging in raids other than the traditional format of a foreign nation engaging in a traditional war.

THE COURT: And -- and from petitioners on that point, distinction between foreign nation, for -- and -- and I read it as foreign nation or foreign government.

MR. GELERNT: Right. That's the way we read it, Your Honor. We have been digging through historical materials, haven't found anything where Congress specifically addressed it, but I do think that foreign government is the entity that makes treaties, nation has a sort of broader term of un -- with citizens and denizens. And I think that, you know, is, as Your Honor knows in the Alien Enemies Act, is, you know, citizens, denizens. So I think they both refer to a formal nation government type, foreign as Your Honor as pointed the out.

THE COURT: Thank you. And let me follow

up, Mr. Gelernt, here. Proclamation states TdA has control over portions of Venezuela, that the government of Venezuela has ceded control of certain territories over Venezuela. If I accept that statement as true, isn't that an indication that TdA is governing in that portion of Venezuela?

MR. GELERNT: Your Honor, I don't think that the proclamation actually says they currently have control over any particular area of Venezuela. But even if they did, Your Honor, I don't think that goes to them being the foreign government or nation who has citizens and denizens who can make treaties with other nations. I think that would be a stretch. I -- I think you could look at almost any country, including ours, where, you know, there may be a gang that has significant control over a few blocks.

And I think that's what the proclamation seems to be getting at. But, even then, it's not saying they currently have control over particular areas, much less they're acting as the government.

But they certainly -- I don't -- the -- the proclamation nowhere says and none of the affidavits suggest that TdA is the government, is the nation.

And so the fact that they have influence over a few blocks, potentially, or a few areas is no

different than in a lot of places. That can't be what -- what Congress meant.

THE COURT: And -- and I guess to push a little bit on that point, I think they do say that Venezuela and TdA are indistinguishable. Which, it -- it may not be that -- or, effectively, as I read one possible read of the respondent's position is that the proclamation effectively says it is Venezuela that is through TdA that is engaged in these activities.

If that's the reading of the proclamation that's appropriate, then Venezuela's certainly a foreign nation or government.

MR. GELERNT: Your Honor, if they're literally saying TdA is the foreign government and TdA and Venezuela are literally the same thing, then we would have a different case. I think when -- when Your Honor goes back and looks at the proclamation, you'll see that they don't actually go that far.

And the affidavits describing TdA don't actually say, nowhere do they actually say TdA is the foreign government or nation, TdA can make treaties, TdA has denizens, TdA is the equivalent of the Venezuelan government. That's been recognized by our country.

I think we have not recognized TdA, obviously that would come with enormous implication

consequences if we were to recognize TdA, if TdA were to take a seat at the U.N. There -- there's some careful wording but they stop very -- they -- they stop very much short of saying TdA is the government or nation.

THE COURT: I don't think that respondents are saying TdA has become the government of Venezuela. But I think their position is that, through the infiltration of TdA into the Maduro government, Maduro, as the claimed President of Venezuela, is directing the conduct of TdA members, directing them to come to the United States and engaged in certain described activities.

Doesn't that effectively mean that the proclamation is pointing to Venezuela as the actor through TdA as its agents?

MR. GELERNT: Yeah, Your Honor, I -- I -- it's a fair question. I don't think that the proclamation fairly read is suggesting -- I mean, well, let me -- let me step back one second.

Obviously that doesn't go to invasion or incursion and we still have that military point, but I know Your Honor is getting at the foreign government point. I think it stops short of suggesting that Maduro is actually -- that this is a wing of the Venezuelan government. And if you were to going to reach the

facts, the -- the declarations are crystal clear that there is zero support for that.

But I -- I think the proclamation in our view fairly read does not suggest that TdA is acting as a wing of the Maduro government. And certainly there's zero support out there in the world for that.

THE COURT: And -- and so, Mr. Velchik, on -- on that point, what is the respondents position? There's a line in the response, if I remember correctly, that indicates that TdA and Venezuelan government are indistinguishable. I read that respondents claiming that effectively it is Maduro as the claimed President of Venezuela directing these activities. Is that the government's position?

MR. VELCHIK: Yes. The brief reflects that there's articulation of the government's position. I think your analysis of respondent's position, I think, has been accurate.

Analytically, I mean, I'll point out that one way of approaching this problem could be to say well, Venezuela is the foreign nation or foreign government. I think it would clearly satisfy the meaning of foreign nation in that term and that the President's exercise of the Alien Enemies Act is very limited in only applying to the TdA members.

I -- I think another argument could be that TdA itself gauges in enough attributes of government such that it qualifies for purposes of the AEA, but I do think that the reality is much more complicated, it's much more mixed.

There are empirical statements included in the exhibit that you referenced and the statements made by the President's proclamation that we think reflect sort of this -- this mixed situation. But your characterizations, the characterizations in the brief, we believe, is accurate.

THE COURT: On that point, under your proposed definition of foreign nation or government, is it critical that a group like TdA, MS-13, Mexican cartels have to, I think as the proclamation says, infiltrate or be ceded control over territory to constitute a foreign nation or government for purposes of the AEA?

MR. VELCHIK: We believe that the presence of those factors here make it an easy case in this situation.

THE COURT: And -- and I guess the -- the government's position is, one, it's Venezuela, so that's foreign nation or government; but as to TdA independently would represent a foreign government, not

a nation? Accurate?

MR. VELCHIK: Yeah, I -- yes, I think if -- for the argument that TdA itself qualifies under the Alien Enemies Act separate and apart from its -- its relationship with Venezuela, that, yes, it more naturally would fall within the definition of -- of the term government.

THE COURT: Correct. I mean, you're not claiming that TdA is a nation?

MR. VELCHIK: No.

THE COURT: Going back to -- to the issue of invasion, if -- if I construe invasion or we can look to the word invasion under the AEA similar to the use of invasion for the suspension clause, then would the President or Congress have the ability under the circumstances that the proclamation declares to suspend the Writ of Habeas Corpus based on TdA's activities?

MR. VELCHIK: That is an important and weighty question of Constitutional interpretation. As we've discussed, the fact that the terms are similar, I think, is probative of how each should be interpreted. I'm not prepared at this time to say definitively what would constitute a suspension for purposes of interpreting the Constitution in that case, but I -- I do agree that -- that that is a appropriate place to

look to inform this court's analysis.

THE COURT: Thank you.

Mr. Gelernt, just a couple here of sort of side issues or -- or getting away from statutory construction, do you agree that if the government obtains a final order of removal under Title 8 as to any of the named petitioners government can proceed forward with removal under that statute? And so to the extent that I issue a preliminary injunction, there should be a carve out to allow the government to move forward with removal proceedings as to the individuals under Title 8; and if they obtain a final order of removal, they can proceed as to that individual?

MR. GELERNT: Yes, Your Honor, we're not -- we're not arguing anything about Title 8 here.

THE COURT: Okay.

And then from Mr. Velchik, do you agree that if -- if the government transferred one of the named petitioners to another federal district that that transfer would not affect this court's jurisdiction over the named petitioners case here?

MR. VELCHIK: For purposes of the habeas action evaluating the constitutional -- constitutionality -- or the interpretation of the Alien Enemies Act, I think that sounds appropriate.

THE COURT: Correct. Right. And part -- one of your arguments is I have no jurisdiction to --

MR. VELCHIK: Correct.

THE COURT: -- enjoin the government from transferring individuals between districts or -- or to different detention facilities.

One concern is that the government would take the position that if they transfer the individual that moots or divests this court of jurisdiction over the habeas action even though it existed at the time of -- of the lawsuit's inception. I just want to make sure you're not taking that position. If there was a transfer of one of the named petitioners to another federal district, I would still retain jurisdiction over the habeas action that currently exists, correct?

MR. GELERNT: Yes. That sounds reasonable. We have no intention to remove any of the named petitioners pursuant to the AEA.

You've raised concerns about Title 8 and so I just want to be clear that we wouldn't necessarily foreclose the opportunity to continue proceeding with cases under Title 8, but -- but I think what this court said is appropriate.

THE COURT: Okay. Thank you.

Mr. Gelernt, turning to the issue of

voluntary departure and -- and whether the AEA's prerequisites have been met through the procedures as to the named petitioner. So is it your construction of Section 21 that it requires that before the government can detain an individual the government must afford the individual the opportunity to voluntarily depart?

MR. GELERNT: Your Honor, I think certainly before removal --

THE COURT: And so it's possible that the government can detain an individual, notify that person while in detention that the subject is -- that -- that he is subject to removal as an enemy alien and from within the confinement afford them the ability to leave the country voluntarily?

MR. GELERNT: Well, I think that's right, Your Honor. I think the detention question is an open question. But let's assume for the moment, just in answering your question, I think, if they did detain them, they would have to give them a time to voluntarily depart. And I think the government is conflating two different parts of the statute. Section 21, as Your Honor rightly pointed out, is the voluntary departure provision: Do you want to voluntary depart rather than us having to issue an Alien Enemies Act removal order.

The other part that the government's focused on is getting your affairs together. And the government did give Germans the -- the right to get their affairs together before they left. That can be overridden.

The voluntary departure thing can't be overridden, it -- the getting your affairs together can be overridden if they claim the individuals are engaged in actual hostilities.

They --

THE COURT: And -- and you're referencing 22?

MR. GELERNT: Yes.

THE COURT: And the -- and the language of 22.

MR. GELERNT: Is about that.

THE COURT: But that refers to Section 21 for individuals designated as enemy aliens under Section 21, and so I'm not sure that they're as -- as distinguishable as you're arguing.

Doesn't Section 22 effectively describe circumstances under which the ability -- ability to voluntarily depart does not have to be provided to the enemy alien if they're engaged in actual hostilities?

MR. GELERNT: Your Honor, we don't read them as conflating, we read them as two different things that

Congress was affording people who were designated as alien enemies. One is the right to voluntarily depart because if they're dangerous and they can't prove that they're not then they could voluntarily depart. The other is sort of an additional amount of time to actually get your affairs together.

So we don't -- we don't read them historically as linked. Certainly if Your Honor wanted additional briefing, but we're not aware of any authority for overriding the voluntarily departure provision.

THE COURT: Have -- have any of the named petitioners agreed to voluntarily depart the United States?

MR. GELERNT: They -- I don't think they've been given -- well, I think one of them -- one of them has. But what -- what it depends on, Your Honor, and this is a critical point, is, under the immigration laws, if they were to voluntarily be removed, they would go back principally to the country from which they came. In here, in this case, Venezuelans.

And if the government wanted to send them to a third country, it would have to go through many procedures, including making sure that they wouldn't be tortured in that third country.

And certainly if the government was going to send them to a foreign prison, directly to a foreign prison, they would get CAT relief and couldn't be sent. So I think the reason people are nervous if they were given a chance is to make sure they know what country they're going to be sent to. No one is going to say, yes, I would like to voluntarily be removed to that Salvadorian prison as a Venezuelan.

THE COURT: Thank you.

And, Mr. Velchik, so on this issue of voluntary departure, the -- the response doesn't address a couple of the decisions that the petitioners cite in -- in their briefs that appear to state that individuals must be permitted to voluntarily depart. They're from the 2nd Circuit, not binding, persuasive authority, but how do you distinguish them or contend that their reasoning or construction of Section 21 is -- is not appropriate?

And a couple of examples that I just noted here in my notes, I mean, the Ludwig decision, 1947, that writes that the individual has the right of voluntarily departure and only after his refusal or neglect to leave may the government deport him.

The Hayman decision from '47, 2nd Circuit, an individual in custody, this is the individual who was

detained in Costa Rica and then brought over to the United States, challenged his removal I believe back to Germany, that it writes it does not appear that this relator has ever refused, or except because of his internment, ever neglected to depart. His present restraint by the respondent is unlawful insofar 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.

Does the government contend that these individuals, the named petitioners at least, have been given the opportunity to voluntarily depart or how do you distinguish these authorities?

MR. VELCHIK: Yes. With respect to the three named plaintiffs here, we have no indication that they intend to voluntary -- to -- to voluntarily depart.

THE COURT: But has the government offered them that opportunity?

MR. VELCHIK: I think the government had to arrest and apprehend them for crimes and for removal.

THE COURT: And upon -- upon detaining them, was the opportunity to voluntary depart offered to them?

MR. VELCHIK: I don't have that information before me, but we are -- are skeptical that the three

individuals here would voluntarily depart. We would -- we would want to make sure that they -- they did so, of course.

THE COURT: And -- and is the government's position that under the AEA the Executive Branch can remove an individual to any other country or is it back to -- should it be limited to the individual's native country?

MR. VELCHIK: I think the Executive Branch has discretion. I know that there are certain policies that the Executive Branch tries to abide by, including various conventions. I think traditionally the Executive Branch has returned individuals to their home country.

In this particular circumstance and other circumstances implicating the Alien Enemies Act, I'm sure that there may be sensitive diplomatic negotiations that may be required to effectuate these removals and that could affect the availability of -- of different countries accepting individuals. I'm sure the Executive Branch would retain the prerogative to have flexibility in light of those diplomatic negotiations.

THE COURT: And -- and is it accurate that the United States, the Executive Branch, has removed individuals under the AEA and the proclamation to

El Salvador to be placed in CECOT?

MR. VELCHIK: I feel comfortable speaking about the record in these three cases. (Unintelligible) is ongoing litigation in other courts that are public record.

THE COURT: Okay.

COURT REPORTER: I -- I'm sorry, I'm comfortable -- repeat that.

MR. VELCHIK: Yes, ma'am.

I feel comfortable speaking to the record in this case. I understand there's ongoing litigation involving other individuals that are matters of public record that this court can reference.

THE COURT: Does the -- does the -- do the respondents believe that the Executive Branch has the authority under the AEA to remove the named petitioners directly to El Salvador to be placed in CECOT?

MR. VELCHIK: I believe the government does not waive that prerogative.

THE COURT: So you -- so your position is the President's --

MR. VELCHIK: I mean --

THE COURT: -- authority under the AEA does include that -- that ability?

MR. VELCHIK: Yes.

THE COURT: Turning to the Convention Against Torture, the -- the CAT, and -- and the INA.

Mr. Gelernt, a question for you: Respondents in their response argue that 8 U.S.C. 1252(A)(iv) divests the court of jurisdiction to review claims based on the CAT within a habeas proceeding, right, which is what we have here.

There's the decision of Kapoor, the decision of Mironescu, 4th Circuit decisions that -- that rely on the broad language of 1254 -- 1252(A)(iv) to conclude that an individual in habeas cannot present a challenge based on the CAT.

I -- I didn't, reading the reply, did not see or appreciate your attempt to distinguish those -- those decisions, in particular, Kapoor. You have an individual who is under, if I remember correctly, a certificate of extraditability is issued to be extradited to India, challenges extradition to -- to India in habeas, and as part of the challenge raises that doing so would violate the Convention Against Torture. The Kapoor decision denies jurisdiction over that claim based on the broad language of Section 1252(A)(iv).

How do you distinguish that -- that -- those decisions of persuasive authority, not -- not binding on

this court, but aren't petitioners in this -- in these habeas actions making the same type of challenge?

MR. GELERNT: So, as -- as far as I recall, and I apologize, I'm not positive, I think those were extradition cases.

THE COURT: Yes.

MR. GELERNT: So extradition has its own set of rules that have always been there, but I think there's authority going both ways.

But I want to say, outside of the extradition context, CAT applies, CAT always applies. And the decision I would suggest Your Honor look at is Huisha-Huisha -- H-U-I-S-H-A dash H-U-I-S-H-A -- from the D.C. circuit. There what the Supreme -- what the -- the government said is we're going to remove people under the public health law, what was called title 42, not under the INA. And, therefore, we don't think the Convention Against Torture applies and we don't think you can bring your claim in District Court.

And the D.C. circuit rejected that saying the reason 1252(A)(iv) is there is if someone's going to be removed under the immigration laws then the proper way to raise their CAT claim is the normal way: You go through the administrative proceedings and then you file a petition for review directly from the Board

of Immigration, appeals to the Court of Appeals -- Board of Immigration appeals to the relevant circuit Court of Appeals. But where the government's operating outside of the INA, you then have no way of following those procedures, you have to be able to enforce the Convention Against Torture, and you can bring it in District Court. And that's a full analysis and I think that's -- that's how we see this.

The government's suggesting we should do it through a petition for review. How would we do that? They are the ones who are circumventing the immigration laws, they are taking people out immigration proceedings. All these people have current immigration proceedings, they're taking them out of immigration proceedings where they were applying for asylum and CAT and then putting them into this AEA process.

And then when they want to raise these CAT claims, which they clearly have being sent to a Salvadorean prison, they're saying, well, no, no, you can't raise them now in District Court. So effectively they're saying you can never raise the CAT claim.

There's no question -- and the government is saying they're not going to talk about records in other cases. I think obviously Your Honor knows if you turn on the TV literally any second you know that there's

south Venezuelan men in that prison who the government sent there and has said that's lawful. So they would clearly have CAT claims and there's -- the government's giving them no way to raise those because they're not going to be in immigration proceedings and -- and being able to go to the circuit by petition for review, which is precisely what 1252(A)(iv) is about.

THE COURT: And the named petitioners in -- in this action, is it your representation that they have made claims under the convention under Title 8 in -- in their removal proceedings?

MR. GELERNT: They all have made asylum claims, I am fairly certain they have made Convention Against Torture claims but I think one --

THE COURT: One Venezuela, I suspect.

MR. GELERNT: Well, exactly, Your Honor, so that -- that's the critical point is now all of a sudden the rug's being pulled out from under them and they're going to be sent to El Salvador. And, in a foreign prison, well, of course, they would then make CAT claims. There -- there's no way they won't be tortured in that prison.

And I just want to correct one thing about the three petitioners. One of them has an immigration court, asked to take voluntary removal but to a country

that's not El Salvador and not in that prison.

THE COURT: Okay. All right. Thank you.

Let me turn to the class action issues. I mean, effectively, based on the respondent's positions as to the named petitioners, there's no need for a preliminary injunction as to the named petitioners. The -- the protections that the preliminary injunction would afford, the government has stipulated to.

The same cannot be said for a class action. The -- the proposed class action, which would include individuals who are within the Southern District of Texas and at some point in the future, or at least in the past week or so, have been notified as being subject to the proclamation and designated enemy aliens under the proclamation and subject to removal under the AEA.

So just a couple of -- of questions. First for Mr. Velchik, just to get an update, last hearing I believe the government's position was that currently the only individuals who were being detained in the Southern District of Texas and who had previously been designated as enemy aliens under the proclamation were the named petitioners in this case and Mr. Zacarias in the other litigation that's pending before me. Does that continue to be true?

MR. VELCHIK: Yes, Your Honor, I'm aware of

four total.

THE COURT: And -- and are there other individuals currently being detained in the Southern District of Texas who since that last hearing have been notified that they are enemy aliens under the proclamation and subject to removal under the AEA?

MR. VELCHIK: The -- the latest numbers that I have today are still four.

THE COURT: Okay. At some point, and I believe this was in the J.G.G. litigation over in D.C., there was information that there were over a hundred individuals within the Southern District of Texas who had been designated as enemy aliens under the proclamation and subject to removal under the AEA. That number is now down to -- to four. It's unclear were they transferred, were -- or removed, but they're no longer in the Southern District of Texas.

But is there an estimate from the respondents as to the number of Venezuelans over the age of 14, not United States citizens or legal permanent residents, who are currently detained in the Southern District of Texas under Title 8?

MR. VELCHIK: I'm still only aware of four subject to the alien removal act. In terms of any individuals who meet those criteria of merely being

Venezuelan citizens, I don't have specific numbers, it could be above that. But in terms of the AEA individuals, four is the number that I have as of this morning.

THE COURT: Correct. And I'm trying to determine what's the potential class in the future. At least, I mean, I -- we don't know whether the United States will transfer individuals in the future into the Southern District of Texas, but I'm just trying to ascertain whether the United States knows if there are other Venezuelan citizens who are being detained in the Southern District of Texas over the age of 14 and not legal permanent residents?

MR. VELCHIK: I don't have a specific number four this morning on that class.

THE COURT: Let me, I guess, continue with Mr. Velchik here. According to the Supreme Court's decision in J.G.G., and this gets to class action standing, the notice procedures, AEA detainees are entitled to notice and opportunity to be heard appropriate to the nature of the case.

Supreme Court required that AEA detainees be given notice after the date of its decision that they are subject to removal under the act. The notice must be afforded within a reasonable time and in such a

manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs.

So that's our standard.

Purpose of the notice: Afford the individuals the ability to actually seek habeas relief in the proper venue.

Government takes the position 12 hours to indicate an intent to file for a habeas action, followed by 24 hours to actually file the action is -- is sufficient.

As to the named plaintiffs, to the extent that they challenge the sufficiency of the notice, they run into an injury in fact problem because they have sought habeas relief. And -- and so to the extent that the notice was unreasonable, and -- and they weren't under what -- what the government has now prepared or -- or adopted, but to the extent that the procedures used as to the named plaintiffs, they -- they have no injury to the extent that that was insufficient because they were able to seek habeas relief which is the whole purpose of the notice.

But from my perspective, there's a Catch-22 that may exist for the proposed class of individuals in the Southern District of Texas who the United States Government notifies in the future that they are enemy

aliens under the proclamation and subject to removal under the AEA.

If the government gives an individual notice, he files a habeas petition, that individual can't challenge the reasonableness of the notice because he was able to seek habeas relief.

If the government gives an individual notice and she doesn't have time to file a petition, then the government removes that individual precluding her from filing for habeas relief and presenting the challenge to the reasonableness of that notice.

How does an individual challenge the reasonableness of the notice in habeas under these circumstances?

MR. VELCHIK: Yes, Your Honor. I think it's factually incorrect to suggest that it's impossible for someone to raise those claims or to get judicial relief because in fact this very thing has happened in Colorado.

My understanding is that named plaintiffs there were not subject to the Alien Enemies Act, they alleged that there was an imminent risk that they could be designated under the Alien Enemies Act, and therefore applied for relief in a Federal District Court there under habeas as the appropriate vehicle and received

judicial relief in a ruling earlier this week. So certainly there's ongoing litigation where individuals have been able to raise those notice claims.

THE COURT: But the government has opposed those or does the government agree that that's an appropriate vehicle?

MR. VELCHIK: I mean, the government acknowledges the court's ruling in that case and so certainly --

THE COURT: But you oppose that relief? Did -- did the government not oppose that relief?

MR. VELCHIK: At the time, yes.

THE COURT: Does the government continue to oppose that relief?

MR. VELCHIK: The government is appealing.

THE COURT: So I -- I take that as -- as an opposition. In this case, can I reach the issue of the reasonable -- reasonableness of the notice as to the named plaintiffs?

MR. VELCHIK: I think the government agrees with your first analysis that they do not have standing or injury in fact in this case, and that continues to be the government's position.

THE COURT: So is this not a circumstance where class certification or a class-like multi-party

proceeding, the All Writs Act, would be appropriate to allow the court to reach the legal issue of whether the notice on the notice procedures satisfy the due process requirements that the Supreme Court in J.G.G. recognizes need to be given?

MR. VELCHIK: I understand where the court is coming from, we would push back on -- on two items. Number one, we still think that you would have to satisfy requirements of Federal Rules of Civil Procedure 23(A). And it's not met for any number of reasons.

THE COURT: What about under the All Writs Act?

MR. VELCHIK: Under the All Writs Act, you know, we continue to think that you need at least one individual who would have standing. To the extent that the three named plaintiffs here do not have standing, it would be inappropriate to form a class, provide injunctive relief, and in particular provide injunctive relief against the Executive Branch in an area involving foreign diplomacy and national security would be -- would continue to be inappropriate, so we -- the government opposes.

THE COURT: You might want to slow down just a little bit for the court reporter.

MR. VELCHIK: My apologies.

COURT REPORTER: Thank you.

THE COURT: So if in these contexts the future individual who ends up being detained in the Southern District of Texas, notified that he or she is a enemy alien under the proclamation and subject to removal under the AEA, the -- the injury related to the notice, procedures and the form that petitioners challenge is in some sense transitory, right? It is -- it exists at the time that they're notified, they're -- they -- as they -- as they claim, right? They -- they challenge the sufficiency of the time, they may challenge, given that -- that the, we'll see, they may challenge the sufficiency of the form and -- and what the information that's included in the form.

But as soon as they file for habeas action, then that -- whatever injury they -- that they -- they had at that moment of being notified disappears because now they've been able to file a habeas action.

And so, in that sense, it is transitory, it exists but then disappears. Aren't there circumstances similar to that where courts have said when the injury can become moot or is transitory that class certification is proper?

MR. VELCHIK: I'm not thinking of examples that are on all fours with that and the -- the

government does not concede that it would be appropriate to certify a class when individual named members don't have standing. I'm not familiar with a precedence that would support that.

THE COURT: Okay. I don't know if the petitioners have a position on that point or to address this issue of, at least what I'm referring to, as potential Catch-22?

MR. GELERNT: I think you're absolutely right, Your Honor. I mean, the implications of the government's position is that, I mean, now the unsealed declaration says 12 hours down from 24, but what if they said one hour? We would never get into court, no one would ever get into court to challenge that one-hour notice.

So you're absolutely right, Your Honor, that you have jurisdiction whether you use the All Writs Act or habeas principles to reach this issue; otherwise, potentially no one will ever get in.

And there's also the -- the notion that when you have a class you can't continually moot the class by saying we're going to give petitioners -- certain petitioners relief and then moot the whole class.

And we obviously could put in another named petitioner, but we don't need to given the principle

you've just outlined about how transitory it is.

THE COURT: And you -- you seek to certify the class under Rule 23(B)(2) which applies when a single injunction or declaratory judgment would provide relief to each member of the class. I could conclude that the President can invoke the AEA under the proclamation, but still some members of the class would not be entitled to ultimate relief because I could determine that they are members of the TdA and -- and subject to removal under the AEA.

Assume that that's a possibility, is it true that the complained-of conduct is such that it can be enjoined or declared unlawful only as to all class members or as to none of them at all? It seems like it would differ.

MR. GELERNT: Right, Your Honor. So I -- I think -- I think what -- how we would conceptualize it is there are certain issues that go to everyone that if Your Honor ruled in our favor would enjoin the removal of anybody. And I think, you know, as we've been talking about whether the proclamation is consistent with the Alien Enemies Act is one of those. If Your Honor were to determine that it wasn't consistent with the Alien Enemies Act, then no would could be removed under the Alien Enemies Act. Title 8 would

still be out there.

I think whether individuals have the right to seek relief under the Convention Against Torture, at least seek it, would, of course, go to everyone. And also the notice is critical as to everyone, that everyone needs to have that notice so they can get into court.

Now if Your Honor were to rule against us and say the court -- the President can use the Alien Enemies Act in this context, it has given sufficient notice, people are being screened for -- for relief under the Convention Against Torture, but an individual then wanted to say, well, I'm not even a gang member so I don't fall within the proclamation, I think those would proceed in individual habeases and I believe Your Honor has one or two of those. So, at that point, I think those -- those would not be a class -- those issues would not be merged into the class and would be dealt with separately.

But I think as what Your Honor was getting at maybe initially in -- in converting this from a PI to a summary judgment is those threshold issues, I think, really need to be resolved; otherwise, we're going to be in fire drills all over the country all the time. And particularly, I think, in Texas where the government has

decided they're going to bring people.

Just if I could address your question about people being moved into the -- the district, I mean, I think that's what's happening is the government's moving people from all over the country.

Your Honor had a TR -- the -- the individuals who were originally here on March 15th are now in El Salvador. I think that is public record now and that we're fighting about that in the D.C. courts. That -- that's separate.

But now Your Honor issued a TRO, people were moved all over the country. Venezuelan men over the age of 14 who the government alleges were TdA were moved into the Northern District of Texas and now we're having a fire drill.

I suspect if this court doesn't have injunctive relief pending the outcome of its summary judgment ruling, people will then be moved again into the Southern District. So it's a very fluid situation, I think that's been the problem.

THE COURT: Okay. Thank you.

A question about irreparable injury, Mr. Velchik, you rely on -- on the, I think it's Nken decision from the Supreme Court to argue that removal in itself is not irreparable injury. It appears to me that

the key language in that decision is that Supreme Court notes that the law had changed and that the abilities of individuals had changed as a result under the law.

Under the new law that the court was considering, as the court wrote, aliens who are removed may continue to pursue their petitions for review and those who prevail can be afforded effective relief by facilitation of their return along with restoration of the immigration status they had upon removal.

That's why removal was not categorically irreparable injury. Can the same be said in the current circumstances as to the AEA? If the government removes one of the named petitioners under the AEA, can the person challenge the removal in any manner?

MR. VELCHIK: My understanding is that's a subject of ongoing litigation or diplomatic communications in the 4th Circuit. I'm aware of that, but I can't speak to that issue.

THE COURT: So you cannot guarantee that the individual could be returned?

MR. VELCHIK: I can refer the court to the 4th Circuit's litigation.

THE COURT: I mean, this is -- you're here representing the -- the government, and as to the named petitioners, if they're removed under the AEA, can they

continue to seek relief in habeas in this action?

MR. VELCHIK: The government does not --

THE COURT: Or will they be able to?

MR. VELCHIK: -- the government does not waive that -- that argument now.

THE COURT: Does not waive it, they would not be able to because they're no longer being detained here?

MR. VELCHIK: I think that would present obstacles.

THE COURT: And if the individual ultimately prevailed, is there a reasonable probability that the person would be able to obtain relief by being returned to the United States?

MR. VELCHIK: Again, I'm aware that there is ongoing litigation about a particular issue raising some of those concerns, I don't want to speak or implicate those ongoing discussions.

THE COURT: Well, doesn't that distinguish the Nken decision?

MR. VELCHIK: I acknowledge that analysis. We -- we would emphasize that any harm that -- no individual has a liberty interest in remaining in the country illegally. Particularly if they've been here for less than two years, there's a diminished liberty

interest that the Supreme Court recognized in (unintelligible).

And certainly to the extent that irreparable harm is being cause by the independent actions of alleged third countries -- third parties in foreign countries to which they may be transferred, I think that that raises concerns, limitations in the irreparable -- irreparably harm analysis here.

THE COURT: Let me, a final question, I think, for now to you, Mr. Velchik. We now have Exhibit D, declaration of Mr. Cisneros describing the procedures that the government has adopted regarding notice under the AEA and the form that it will use to provide notice. And -- and did the government submit a similar declaration and form in Southern District of New York, Northern District of Texas or the District of Colorado?

MR. VELCHIK: I can't speak to all of that litigation, I'm aware that -- I -- i believe similar counsel in the Colorado case included in the record similar copies of the form that they had provided that had not come from the government. So it's a different procedural posture, but I believe it was the same document submitted.

At least in Colorado, I believe

representations were made to the court to the effect that individuals would have at least 24 hours to file for habeas relief.

THE COURT: And that was my follow-up question, right, are the procedures at least in Colorado described the same as what Mr. Cisneros describes in his declaration? Is the form the same?

MR. VELCHIK: Yeah, I'm not aware of any inconsistencies between the two.

THE COURT: Of any inconsistencies?

MR. VELCHIK: I'm not aware of any inconsistencies between the two. Obviously it's the government's position that those processes comport with due process. And we would emphasize that certainly when you compare it to other mechanisms of removal that Congress has created, including expedited removal, which allows for the removal of individuals within 24 hours and no more than seven days, certainly by comparison to that, we think that the Alien Enemies Act procedures, as implemented by that memorandum, comport with due process.

THE COURT: All right. Thank you.

I'm going to take a ten-minute recess and then allow you, I may have a couple of follow-up questions, but then will allow you ten minutes each.

You don't have to use it, but just want to give you the opportunity if you think that there's a point that we haven't addressed or -- or something you want to go back to that I didn't give you a chance to finish your -- your answer. You have your ten minutes to use that time as -- as you wish.

Question?

MR. GELERNT: Your Honor, you ruled that the document should be unsealed, has that been unsealed yet? I think -- all right.

THE COURT: Not -- not yet.

MR. GELERNT: Okay.

THE COURT: But at least in the hearing, we can --

MR. GELERNT: Discuss it?

THE COURT: -- I mean, I referenced it.

MR. GELERNT: Right.

THE COURT: And -- and so essentially the -- the key, in terms of the procedures, is that the document allows the individual upon being notified 12 hours to state an intent to file for a habeas petition. If they do, and then if they do make that determination or if at any point before they're removed they state an intent to file for habeas petition, they have 24 hours to file it. After those -- those time periods have

elapsed. The government will then proceed with removal, although removal may not occur for days or -- or some time.

MR. GELERNT: Yes. Thank you, Your Honor.

THE COURT: All right. Thank you. So we're in recess.

(Court in short recess.)

THE COURT: You can be seated.

Just a couple of procedural matters before we proceed with your -- your statements. First of all, I find good cause to extend the current Temporary Restraining Order through next Friday to facilitate the court's consideration of the issues and allow for the court to rule on those issues. I'll issue the written TRO, but just to let you know that I will be extending it through next Friday. Hope to rule before then.

It will not be as to the named plaintiffs, but it will cover the punitive class to provide protection, even though government's current position is that there are no individuals within that class in the Southern District of Texas but there could be some that transferred into this district.

Second, we had -- I discussed the issue of converting the Motion for Preliminary Injunction into a motion for what effectively amounts partial summary

judgment because it doesn't reach all the issues; in particular, for example, the issue of whether one of the named petitioners is a -- a member of TdA. Obviously, if I -- if I find certain ways on the arguments, then -- then the named petitioners would prevail, but -- but they may not on those issues.

If I decline the -- the Motion for Preliminary Injunction, that's appealable automatically. Not so with a Motion for Summary Judgment. And so I would have to certify it for interlocutory appeal under 28 U.S.C. 1292B. And -- and I'm certainly open to doing so, but just want to give notice to the parties of my intent to certify the ruling on the converted motion for partial summary judgment for immediate interlocutory appeal and want to give parties any issue at this point or an opportunity at this point to object if they do so object.

From the petitioner?

MR. GELERNT: No objection, Your Honor.

THE COURT: Respondents?

MR. VELCHIK: No objection, Your Honor.

THE COURT: Thank you. All right.

With that, those are the issues. So first petitioners, you may make a statement if you wish.

MR. GELERNT: Your Honor, just a couple of

quick things. Your Honor, as leaving -- one of the issues I was going to address was the danger to the class in light of what happened in the Northern District of Texas. Your Honor has addressed that by leaving a TRO for the punitive class in place till Friday and hopefully, whichever way you rule, it'll give them protection. Because I think, absent protection, we'll have a situation like we did in the Northern District of Texas where the Judge -- they didn't give precise representations as to the class. A few hours later, they were all getting notice and were on buses. So however Your Honor rules.

I -- I want to just on the merits of whether the proclamation's consistent with the TdA, I mean with the AEA. If Your Honor finds that it needs to be a military invasion or incursion, which we hope that Your Honor will, I don't think you need to reach the foreign government question. You could assume that away or you could decide it however you want, but that would be sufficient to say that the proclamation is inconsistent with the AEA.

And just on to the government's point about incursion or invasion, those were -- are obviously military steps toward an invasion, the French were shooting at the U.S. during that time. And an incursion

is more limited military, the invasion is actually coming onto U.S. territory and invading with, you know, forces in a -- in a more significant way. And then, obviously, Congress always has the choice to -- to declare a war.

Just on the foreign government point, Your Honor, I think if you look at the proclamation on where they're saying that TdA is intertwined with, they stop short. It's a very carefully phrased proclamation, they stop short of actually saying they are the government or Maduro is directing the government -- directing TdA as part of the government. And I think that's all Your Honor actually needs to understand is that it's too carefully written to actually say TdA is part of the Venezuelan government.

The only other thing I would say about that is the government made a point of, well, what happens in the future if -- of course Your Honor's opinion is about this proclamation at this time. If TdA actually became the Venezuelan government and was invading us, of course Your Honor's opinion wouldn't cover that.

If some other gang is -- is invoked under the AEA and there were different -- a different proclamation, of course. So -- so that's -- I think all those issues are -- are not really relevant.

The main point I would just keep stressing is within the four corners of the proclamation, it's very carefully written. And if you note, the sworn declarations do not actually saying that Maduro is directing TdA as part of the government or that TdA is the government or that they're actually using military means. That this is a criminal organization, and on that I would look at the Smith declaration.

The other two points where we think summary judgment is clearly warranted is the notice is insufficient. 12 hours, now that the government has reduced it from 24 hours to 12 hours, even 12 -- 24 hours wasn't sufficient, 12 hours is clearly not sufficient.

And I also think Your Honor could hold at this point that people need to be screened for CAT. If they're going to be sent to El Salvador to a prison, that's very different than deportation. Not only is it being sent to a foreign country, a third country, but it's being sent directly to a prison where they may never get out of.

I think the government has pointed to the 4th Circuit's case, Abrego-Garcia, I think the court probably is aware that the government is taking the position, including in the Supreme Court, that once

someone's in that prison, the government has no obligation to get them out and that they could be there for the -- for the rest their lives as the Salvadorian prison -- President has said.

And so the only other thing I would just say is, with respect to the -- I -- I think I would just re-emphasize your point that of the transitional nature of this, the government can't have a situation where the notice is so short, take the named plaintiffs off the board and then say, well, the court can never reach the notice issue for anybody else because this will just keeping happening.

So unless the court has further questions, I will end there and just say that I think if the proclamation is upheld on the AEA, that's going to be a -- really going to have staggering implications that the President could name literally any entity. And if they can't -- if the courts can't review that or if any kind of conclusory sentence is sufficient, you literally could have anybody being sent to a Salvadorean prison or some other prison in the -- in -- somewhere else in the world. So I think the court should resist the government's position on that.

Thank you, Your Honor.

THE COURT: Thank you.

Mr. Velchik?

MR. VELCHIK: Nothing further from the government, Your Honor.

THE COURT: Thank you. So thank you for your arguments here this afternoon. So I am taking the pending motions under consideration. You are excused and so we're adjourned.

MR. GELERNT: Thank you, Your Honor.

REPORTER'S CERTIFICATE

I certify that the foregoing is a correct transcript from the record of proceedings in the above-entitled matter.

/s/ Sheila E. Heinz Perales
SHEILA E. HEINZ-PERALES
CSR RPR CRR

Exhibit 2

Exhibit B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

J.A.V., et al., *Petitioner.* v. DONALD J. TRUMP, et al., *Respondents.*	Civil Action No. 1:25-cv-072

DECLARATION OF ASSISTANT FIELD OFFICE DIRECTOR

Pursuant to the authority of 28 U.S.C. § 1746, I, Carlos D. Cisneros, an Assistant Field Office Director for U.S. Department of Homeland Security (DHS), United States Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO), Harlingen, Texas (TX) declare as follows:

1. I am an Assistant Field Office Director ("AFOD") for U.S. Department of Homeland Security, United States Immigration and Customs Enforcement, Enforcement and Removal Operations ("ICE ERO Harlingen"). I began my employment with ICE (Legacy Immigration and Naturalization Service) on January 18, 2000, and I have been serving as the AFOD for ICE ERO Harlingen since August 28, 2022.

2. In my role as AFOD, I oversee ERO enforcement operations for the Harlingen Office. As an AFOD, I am responsible for the supervision of deportation officers managing detained cases in Harlingen, Texas. I am also responsible for overseeing the safety, security and care of individuals in my custody.

3. While preparing this declaration, I have examined the official records available to me regarding the Alien Enemies Act (AEA) notice procedure. I submit this declaration to outline

the notice procedure and to inform the court about why a description of the procedure should be kept under seal.

A. The Notice

4. Attached as an exhibit to this declaration is a copy of Form AEA-21B, which ICE officers serve on aliens whom the Agency intends to detain or remove pursuant to the AEA.

5. ICE acknowledges that the Form AEA-21B is written in the English language; however, this does not mean that aliens do not receive the process due them. ICE officers are accustomed to working with aliens who do not understand English.

6. Through an ICE-wide contract with a language assistance vendor (i.e. language lines), ICE uses professional oral interpretation and translation services that cover more than 200 languages, including rare and Indigenous languages. Enforcement and Removal Operations (ERO) serves as the Contracting Officer Representative for this ICE-wide language services contract. Centralizing oversight over the contract allows better coordination with the vendor and the establishment of processes for obtaining regular reports. Additionally, many ERO staff have sufficient proficiency in one or more languages other than English and communicate with limited English proficiency (LEP) persons in their primary language when appropriate.

7. Pursuant to ICE detention standards, oral interpretation or assistance is provided to any detained alien who is illiterate or who speaks another language in which written material has not been translated.

8. The various ICE Detention Standards under which detention facilities operate require that information be provided to LEP persons in a language or manner they can understand throughout the detention process to provide them with meaningful access to programs and services. This may be accomplished through use of bilingual staff or professional interpretation and translation services. Depending on the type of facility and contract specifications, the contractor may have and use their own dedicated language line.

B. Habeas Components to the Process

9. The alien is served individually with a copy of the Notice, Form AEA 21-B, the notice is read to the alien in a language that he or she understands.

10. As part of the notice procedure, the alien is informed that he or she can make a telephone call to whomever he or she desires, including legal representatives. ICE ensures that telephones are made available for the aliens and that the aliens have access to the telephone lines.

11. Generally, the alien is provided at least 12 hours after receiving the AEA notice, including the ability to make a telephone call, before he or she is placed on a plane for removal. In general, if after 12 hours, the alien has not expressed any intent to file a habeas petition, removal can proceed. Otherwise, if the alien expresses an intent to file a habeas petition, ICE will allow 24 hours after the alien makes this selection, to file a habeas petition before proceeding with removal.

12. ICE will not remove an alien under the AEA, even if a Temporary Restraining Order is not yet entered, until the habeas petition is resolved.

C. Justification for Sealing the Description of the Notice Procedure

13. The internal notice procedure outlined in this declaration should be filed and remain under seal because this process is law enforcement sensitive. In this circumstance, revealing our notice procedure would disclose to the public guidelines that are integral to conducting law enforcement investigations and could risk circumvention of the law.

Signed this _____ day of April 2025.

CARLOS D CISNEROS JR

Digitally signed by CARLOS D CISNEROS JR
Date: 2025.04.22 20:58:47 -05'00'

Carlos D. Cisneros
Assistant Field Office Director
Enforcement and Removal Operations
U.S. Immigration and Customs Enforcement

NOTICE AND WARRANT OF APPREHENSION AND REMOVAL UNDER THE ALIEN ENEMIES ACT

A-File No:_____ Date:_____

In the Matter of: _____

Date of Birth: _____ Sex: Male Female

Warrant of Apprehension and Removal

To any authorized law enforcement officer:

The President has found that Tren de Aragua is perpetrating, attempting, or threatening an invasion or predatory incursion against the territory of the United States, and that Tren de Aragua members are thus Alien Enemies removable under Title 50, United States Code, Section 21.

_____ has been determined to be: (1) at least fourteen years of
(Full Name of Alien Enemy)
age; (2) not a citizen or lawful permanent resident of the United States; (3) a citizen of Venezuela; and (4) a member of Tren de Aragua. Accordingly, he or she has been determined to be an Alien Enemy and, under Title 50, United States Code, Section 21, he or she shall be apprehended, restrained, and removed from the United States pursuant to this Warrant of Apprehension and Removal.

Signature of Supervisory Officer: _____

Title of Officer: _____ **Date:** _____

Notice to Alien Enemy

I am a law enforcement officer authorized to apprehend, restrain, and remove Alien Enemies. You have been determined to be at least fourteen years of age; not a citizen or lawful permanent resident of the United States; a citizen of Venezuela; and a member of Tren de Aragua. Accordingly, under the Alien Enemies Act, you have been determined to be an Alien Enemy subject to apprehension, restraint, and removal from the United States. Until you are removed from the United States, you will be detained under Title 50, United States Code, Section 21. Any statement you make now or while you are in custody may be used against you in any administrative or criminal proceeding. This is not a removal under the Immigration and Nationality Act. If you desire to make a phone call, you will be permitted to do so.

After being removed from the United States, you must request and obtain permission from the Secretary of Homeland Security to enter or attempt to enter the United States at any time. Should you enter or attempt to enter the United States without receiving such permission, you will be subject to immediate removal and may be subject to criminal prosecution and imprisonment.

Signature of alien: _____ Date: _____

CERTIFICATE OF SERVICE

I personally served a copy of this Notice and Warrant upon the above-named person on _____ (Date) and ensured it was read to this person in a language he or she understands.

_____ Name of officer/agent

_____ Signature of officer/agent

Form AEA-21B