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# United States: Repeal the Alien Enemies Act

A Human Rights Argument



# **United States: Repeal the Alien Enemies Act**

## **A Human Rights Argument**

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## Summary

In March 2025, the Trump administration invoked an archaic 1798 statute to forcibly disappear at least 137 Venezuelan nationals and summarily deport them to El Salvador, where they have been indefinitely jailed in a notorious maximum-security prison. That statute, An Act Respecting Alien Enemies of July 6, 1798 (“Alien Enemies Act” or the “1798 Act”), purports to grant the president sweeping powers to detain, expel, and otherwise control people on US soil who are nationals of any foreign power deemed hostile. Prior to 2025, it had only been used three other times and never outside the context of a war declared by the US Congress.

President Trump’s ongoing campaign to detain and deport Venezuelan men under the Alien Enemies Act is without precedent, and its legality is being tested in domestic courts. This report advances a larger argument: not only are President Trump’s actions in violation of international human rights law, but the 1798 Act itself is inherently incompatible with the United States’ international legal obligations and should be repealed outright.

The Alien Enemies Act was drafted, and has always been applied and interpreted, in a manner that is adversarial to modern-day international human rights law frameworks and the laws of war.

The Alien Enemies Act was conceived as a wartime authority that allows the president of the United States to order the government apprehend, restrain, secure, and remove “natives, citizens, denizens, or subjects” of a “hostile nation or government.” During a period of “declared war” or “invasion or predatory incursion,” the 1798 Act allows the president to order measures including the relocation, imprisonment, and summary deportation of people the executive determines are “alien enemies.”

Prior to 2025, the Alien Enemies Act was invoked only three times—during the War of 1812, World War I, and World War II. In each case, the act was used during a period of declared war, to control, and in many cases detain or deport, people in the US who were nationals of hostile foreign powers on grounds related to national security.

US obligations under international law have evolved considerably in the 227 years since the Alien Enemies Act was drafted. Today, the US is party to numerous human rights treaties that oblige the government to ensure respect for fundamental rights, including due process and freedom from discrimination, and to ensure people removed from the US are not sent to countries where they would likely face persecution or torture. International human rights law also creates frameworks that define and govern the permissible scope of government actions that limit the exercise of some human rights during times of crisis. The Alien Enemies Act is ignorant of, and incompatible with, these international legal obligations.

The Trump administration's use of the Alien Enemies Act offers a stark illustration of the practical consequences of the act's misalignment with international human rights law. The administration has sought to use the 1798 Act as a potent instrument to target noncitizens for removal without adhering to the most basic standards of due process normally required by US immigration law. US authorities have summarily expelled at least 137 Venezuelans to a maximum-security prison in El Salvador under the act, where they are being held arbitrarily, indefinitely, and incommunicado. Human Rights Watch has documented abusive prison conditions in El Salvador, and the people deported there are at risk of torture and cruel, inhuman, and degrading treatment.

The US is not currently at war or engaged in any armed conflict that is relevant to the administration's actions under the act. The act's invocation now, when there is no declared war, raises concerns that the administration is using the flawed law merely as an expedient to speed up deportations without—what it seems to regard as the irritant of—giving all people meaningful due process.

Several domestic legal challenges to the administration's actions are working their way through the courts. Government attorneys have made it clear that, unless restrained by the courts, the Trump administration intends to carry out more deportations under the act moving forward. According to court filings, the US government has identified over 200 other Venezuelans it believes are subject to the March Order who it has yet to deport.

The 1798 Alien Enemies Act is a dangerous instrument, and it should be repealed by Congress. In the meantime, key international actors, including partner governments, should do what they can to raise their voices to prevent further abuses. International human rights monitoring bodies and experts, including the Committee on the Elimination

of Racial Discrimination (CERD), the treaty body tasked with overseeing state compliance with the International Convention on the Elimination of Racial Discrimination (ICERD), which boasts an urgent measures procedure, should produce and publish their own human rights analysis of the act and of the administration's actions under its authority.



# Recommendations

## To the President of the United States

- Issue an Executive Order rescinding the proclamation of March 14, 2025, invoking the Alien Enemies Act.
- Direct the executive branch of the US government to take all possible steps to secure the return of all those deported to El Salvador under the Alien Enemies Act to the United States.
- Direct the executive branch of the US government to afford any accused “alien enemies” still in the country with adequate notice of their status in advance of removal, due process in any future proceedings, including the right to seek asylum, and withholding of removal, including based on the risk of torture.

## To the Department of Homeland Security

- Do not carry out any further actions, including detentions and removals, under the Alien Enemies Act.
- Ensure notice is provided to individuals of their status as accused “alien enemies” in a language they understand, is provided to individuals with adequate time to pursue legal process in advance of removal, and includes information on *habeas* as an avenue for judicial recourse.

## To the US Congress

- Take immediate action to repeal the Alien Enemies Act, including by debating and considering the Neighbors Not Enemies Act of 2025.
- Hold Congressional hearings to publicly investigate whether government actions under the Alien Enemies Act amounted to enforced disappearances, arbitrary detention, refoulement, and other human rights violations.
- Provide effective remedies for serious human rights violations caused by detentions and removals under Alien Enemies Act and transfers to CECOT.

## **To Governments Engaged as Partners in Bilateral Diplomatic Relations with the US, including Australia, Brazil, Canada, Denmark, the European Union, France, Mexico, New Zealand, Sweden, and the United Kingdom**

- Condemn human rights violations associated with March-April 2025 use of the Alien Enemies Act by the US government, and urge the law's repeal.

## **To the UN Human Rights Council**

- Establish a mechanism to monitor rights abuses faced by people in transit across international borders, as recommended by civil society and the Special Rapporteur on the human rights of migrants at the 53rd session of the Human Rights Council.

## **To the UN Special Rapporteur on the Human Rights of Migrants**

- Issue a statement calling for the release of those migrants transferred to El Salvador and the repeal of the Alien Enemies Act.

## **To the UN Working Group on Enforced Disappearances**

- Track the status of all the individuals disappeared by US authorities into El Salvador's prison system, and seek to engage authorities in both countries to facilitate and encourage steps to bring their enforced disappearance to an end.

## **To the UN Working Group on Arbitrary Detention**

- Send urgent appeals and communications to the United States and El Salvador governments seeking to clarify the justification for the detention of the 137 Venezuelan men, and issue a statement calling for the release of those being arbitrarily detained in El Salvador.

## **To the Committee on the Elimination of Racial Discrimination**

- Issue a statement or decision as a part of an urgent measures procedure to spotlight how the Trump administration's use of the Alien Enemies Act violates the Convention's prohibition on discrimination based on nationality and call for repeal of the act.

# Terms

**Tren de Aragua:** Organized crime organization based in Venezuela.

**Alien Enemies Act:** 1798 law adopted alongside the Alien and Sedition Acts amid heightened tensions with France during the tenure of the United States' second president, John Adams.

**Terrorism Confinement Center or CECOT:** Maximum security prison in El Salvador opened in 2023.

**Homeland Security (DHS):** US Department of Homeland Security, the federal department created in 2002 that includes US Customs and Border Protection, US Citizenship and Immigration Services, and US Immigration and Customs Enforcement, along with other agencies.

**Department of Justice (DOJ):** US Department of Justice, the federal department responsible for enforcing federal law. The department is headed by the attorney general and includes the Federal Bureau of Investigation, the US Marshals Service, the Executive Office for Immigration Review, and other agencies, in addition to federal prosecutors.

**ICE:** US Immigration and Customs Enforcement, the agency of the US Department of Homeland Security that enforces immigration laws in the interior of the United States.

**Refugee:** A person who has fled their country to escape conflict, violence, or persecution and has sought safety in another country.

## Methodology

This report is based on interviews with the families of Venezuelan men transferred to CECOT, review of court documents, and an analysis of the Alien Enemies Act conducted by Human Rights Watch staff in March-April 2025.

Interviews with families of Venezuelan men transferred to CECOT were conducted over the phone in Spanish. Researchers also reviewed copies of criminal record certificates family members provided, including for countries where deportees had lived before arriving in the US (such as Venezuela, Peru, Chile, and Colombia), evidence of asylum applications, Temporary Protected Status conferred under US law, refugee status, and other documents (like Social Security cards, work permits, and screenshots from the ICE detainee locator system showing their places of detention and how they later appeared to be removed from the system). Researchers also reviewed screenshots from the immigration court website showing pending hearing dates, among other things.

Human Rights Watch reviewed publicly available official documents about the Alien Enemies Act, court decisions related to previous uses of the act in US history, and other documents related to this measure, as well as reports published by civil society organizations. We reviewed media publications, including interviews with government officials, members of Congress, and civil society experts. We also analyzed publications pertaining to individual cases stemming from the March 2025 use of the Alien Enemies Act including, where available, declarations by deportees' attorneys and family members, pleadings, oral proceedings, and orders.

Litigation challenging the legality of the Trump administration's actions under the Alien Enemies Act was ongoing in US courts on the date of publication.

## Background

The 1798 adoption of the four Alien and Sedition Acts, in response to heightened tensions with France,<sup>1</sup> is considered by historians to be a paradigmatic example of executive overreach and abuse, described alternately as “a disastrous mistake,”<sup>2</sup> “unquestionably the biggest blunder,”<sup>3</sup> and the “most reprehensible act”<sup>4</sup> of the tenure of John Adams, the second president of the United States. The Alien Enemies Act<sup>5</sup> is the only one of the measures passed as a part of the Alien and Sedition Acts that still remains on the books.<sup>6</sup>

Even at the time of their adoption, these measures were reviled.<sup>7</sup>

The Alien Enemies Act allows the president to detain or deport the nationals of a particular foreign nation, either in times of declared war or when the “foreign nation or government” has “perpetrated, attempted or threatened” to carry out an “invasion or predatory incursion of US territory.”<sup>8</sup>

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<sup>1</sup> For more on the context of the tensions with France at the time, see “Milestones 1784-1800: The XYZ Affair and the Quasi-War with France, 1798-1800,” *US State Department Office of the Historian*, <https://history.state.gov/milestones/1784-1800/xyz> (accessed April 19, 2025).

<sup>2</sup> Gordon S. Wood, *Empire of Liberty: A History of the Early Republic, 1789-1815* (Oxford: Oxford University Press, 2009), p. 247. (“However justified they may have been in enacting them, in the end these acts turned out to be a disastrous mistake. Indeed, the Alien and Sedition Acts so thoroughly destroyed the Federalists’ historical reputation that it is unlikely it can ever be recovered.”)

<sup>3</sup> PBS, “The Alien and Sedition Acts,” <https://www.pbs.org/wgbh/americanexperience/features/adams-alien-and-seditions-act/> (accessed April 10, 2025). (“Joseph J. Ellis voices the opinion of most modern historians when he calls Adams’ decision to support the acts “unquestionably the biggest blunder in his presidency.”).

<sup>4</sup> Sean Wilentz, “America Made Easy: McCullough, Adams, and the decline of popular history,” *New Republic*, July 2, 2001, <https://newrepublic.com/article/90636/david-mccullough-john-adams-book-review> (accessed April 10, 2025). (“He notes that the Alien and Sedition Acts, which Adams endorsed, have been “rightly judged by history as the most reprehensible acts of his presidency,” but he says hardly anything about what made them so reprehensible: the jailings and the peremptory trials of Adams’s critics for finding the least fault in the president; the despairing departure of shiploads of French nationals (including Adams’s ex-friend Moreau de St.-Mery) scared stiff by the anti-foreigner repression; the sheer hysteria that accompanied what Jefferson called a “reign of witches.”).

<sup>5</sup> 50 USC. §§ 21–24, Act of July 6, 1798, ch. 66, § 1, 1 Stat. 577, <https://www.archives.gov/milestone-documents/alien-and-sedition-acts> (accessed April 19, 2025) (hereinafter “Alien Enemies Act”).

<sup>6</sup> The Sedition Act and Alien Friends Act expired in March 1801; the Naturalization Act was repealed in 1802. Scott Bomboy, “The Alien Enemies Act: The One Alien and Sedition Act Still on the Books,” *Constitution Daily Blog*, March 17, 2025, <https://constitutioncenter.org/blog/the-one-alien-and-sedition-act-still-on-the-books> (accessed April 19, 2025).

<sup>7</sup> Marianne Holdzkorn, “Alien and Sedition Acts were reviled in their time, and John Adams was not sorry to see them go,” *Conversation*, March 12, 2025, <https://theconversation.com/alien-and-sedition-acts-were-reviled-in-their-time-and-john-adams-was-not-sorry-to-see-them-go-246019> (accessed April 19, 2025).

<sup>8</sup> Alien Enemies Act.

In 1798, when the act was being debated, some members of the US Congress expressed their concerns that the act would offer unchecked power to the executive branch, criticizing it for commanding the judiciary to be “obedient” not “to the laws” but rather “to the will of the President.”<sup>9</sup> The other three acts, which were immediately put into effect, were heavily criticized and quickly repealed or allowed to expire.<sup>10</sup> Thomas Jefferson, who became the third president of the United States, famously said: “I consider these laws as merely an experiment on the American mind to see how far it will bear an avowed violation of the Constitution.”<sup>11</sup> The Alien Enemies Act did not receive the same kind of pushback and was not invoked until the war of 1812, over a decade later.

The Trump administration’s 2025 invocation of the Alien Enemies Act comes as part of a series of executive actions to facilitate what it describes as a program of “mass deportations.”<sup>12</sup> In a speech in late October 2024, prior to his election that November, President Trump promised to launch the “the largest deportation program in American history.”<sup>13</sup>

The 2024 Republican Party platform, which President Trump campaigned on, previewed use of the Alien Enemies Act.<sup>14</sup> The platform did not mention anything like the “invasion or predatory incursion” described as the criteria for using the Alien Enemies Act.<sup>15</sup>

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<sup>9</sup> “Alien Enemies,” History of Congress, (May 1798), pp. 1793-4, <https://acrobat.adobe.com/link/track?uri=urn%3Aaaid%3Ausc%3A3bf7d735-b7ab-4a0f-be5c-b68fc20b1f38&viewer%21megaVerb=group-discover> (accessed April 19, 2025).

<sup>10</sup> Sedition Act and Alien Friends Act expired in 1801. Naturalization Act was replaced by the Naturalization Act of 1802. “Sedition Act Of 1798 Expires,” *Annenberg Classroom Timeline*, [https://www.annenbergclassroom.org/timeline\\_event/sedition-act-1798-expires/](https://www.annenbergclassroom.org/timeline_event/sedition-act-1798-expires/) (accessed April 22, 2025); “Artl.S8.C4.1.2.3 Early U.S. Naturalization Laws,” *Cornell Law School, Legal Information Institute*, <https://www.law.cornell.edu/constitution-conan/article-1/section-8/clause-4/early-u-s-naturalization-laws> (accessed April 22, 2025). See also Repeal of the Alien and Sedition Laws, 5th Cong., 3d Sess. (1799) (petition submitted to Congress by citizens of New York, New Jersey, Pennsylvania, and Virginia urging repeal of the Alien and Sedition Acts).

<sup>11</sup> National Archives Founders Online, “Letter from Thomas Jefferson to Stevens Thomas Mason,” October 11, 1798, <https://founders.archives.gov/documents/Jefferson/01-30-02-0375> (accessed April 19, 2025).

<sup>12</sup> Laurence Benenson and Nicci Matthey, “Forum Analysis: Trump’s Executive Actions Escalating Immigration Enforcement and Mass Deportation,” *National Immigration Forum*, January 24, 2025, <https://immigrationforum.org/article/trumps-executive-actions-escalating-immigration-enforcement-and-mass-deportation/> (accessed April 19, 2025).

<sup>13</sup> Beenish Javed, “Trump threatens mass deportations at rally in New York City,” video report, *DW*, October 28, 2024, <https://www.dw.com/en/trump-threatens-mass-deportations-at-rally-in-new-york-city/video-70617302> (accessed April 22, 2025).

<sup>14</sup> University of California Santa Barbara, American Presidency Project, “Republican Party Platform,” July 8, 2024, <https://www.presidency.ucsb.edu/documents/2024-republican-party-platform> (accessed April 22, 2025).

<sup>15</sup> *Ibid.*

Instead, it centers the ostensible goal of “ending the scourge of illegal gang violence,” which is best understood as a law enforcement or a policing activity, as follows:<sup>16</sup>

We will also invoke the Alien Enemies Act to remove all known or suspected gang members, drug dealers, or cartel members from the United States, ending the scourge of Illegal Alien gang violence once and for all.<sup>17</sup>

Expediting mass deportation appears to remain a driving factor in the Trump administration’s recourse to strategies to circumvent procedural protections as they exist in US law. In a series of posts on social media in mid-April 2025, US Vice President JD Vance has suggested that the administration sees due process as negotiable in service of the goal of “at least a few million” deportations per year. Vance wrote, in part:

To say the administration must observe “due process” is to beg the question: what process is due is a function of our resources, the public interest, the status of the accused, the proposed punishment, and so many other factors.... Here's a useful test: ask the people weeping over the lack of due process what precisely they propose for dealing with Biden's millions and millions of illegals. And with reasonable resource and administrative judge constraints, does their solution allow us to deport at least a few million people per year.<sup>18</sup>

Vance responded to a question that spotlighted the limited procedure currently provided by US immigration courts<sup>19</sup> by seeming to complain about the procedural protections afforded to migrants and immigration detainees prior to deportation, adding:

You say immigration courts adjudicate in minutes. Sometimes. How many minutes? And how much background work is necessary before an

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<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> X post, @JDVance, April 15, 2025, <https://x.com/JDVance/status/1912320489261027374> (accessed April 22, 2025).

<sup>19</sup> X post, @lwoodhouse, April 15, 2025, <https://x.com/lwoodhouse/status/1912341985832444375> (accessed April 22, 2025) (“You’re well aware that immigration courts aren’t “jury hearings.” They typically last a matter of minutes, often with no defense counsel present. You’re deliberately misleading people into believing we’d be burdened with millions of OJ Simpson trials instead of the rocket docket that immigration courts are.”).

immigration hearing? And add the times for appeals, first administratively and then judicially. Add asylum claimants, TPS revocations, and any number of other ways the left has used to game the immigration system over the last decade.<sup>20</sup>

In evaluating the administration's executive orders since coming into office, National Immigration Forum, a Washington D.C. based non-profit organization focused on immigration policy, described them as "the most formal framework for mass deportation proposed to date," citing the declaration of a national emergency at the border, the directive to use military forces to secure "complete operational control" over the southern border, prioritizing immigration enforcement by federal personnel, expedited removal processes, increased enforcement activity in "sanctuary jurisdictions," and new "registration requirements."<sup>21</sup> Trump's stated commitment to mass deportation must also be placed in the context of alarm over the US government's decision to "close" the border<sup>22</sup> and transfer newly arrived immigration detainees to third countries including Costa Rica<sup>23</sup> and Panama.<sup>24</sup>

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<sup>20</sup> X post, @JDVance, April 16, 2025, <https://x.com/JDVance/status/1912471504526123265> (accessed April 22, 2025).

<sup>21</sup> National Immigration Forum, "Summary: Trump's Executive Actions Escalating Immigration Enforcement and Mass Deportation," January 2025, <https://immigrationforum.org/wp-content/uploads/2025/01/Summary-Trumps-Executive-Actions-Relating-to-Interior-Enforcement-and-Mass-Deportation-Efforts.pdf> (accessed April 22, 2025). See also Vicki B. Gaubeca, "US Registration Directive Further Criminalizes Undocumented Immigrants," commentary, Human Rights Watch dispatch, February 28, 2025, <https://www.hrw.org/news/2025/02/28/us-registration-directive-further-criminalizes-undocumented-immigrants>; Bill Frelick, "Ten Harmful Trump Administration Immigration and Refugee Policies," commentary, Human Rights Watch dispatch, February 20, 2025, <https://www.hrw.org/news/2025/02/20/ten-harmful-trump-administration-immigration-and-refugee-policies>; Bill Frelick (Human Rights Watch), "No, Asylum Seekers Are Not Invading the Country," *Hill*, February 12, 2025, <https://www.hrw.org/news/2025/02/12/no-asylum-seekers-are-not-invading-country>.

<sup>22</sup> White House, "Fact Sheet: President Donald J. Trump Protects the States and the American People by Closing the Border to Illegals via Proclamation," January 22, 2025, <https://www.whitehouse.gov/fact-sheets/2025/01/fact-sheet-president-donald-j-trump-protects-the-states-and-the-american-people-by-closing-the-border-to-illegals-via-proclamation/> (accessed April 22, 2025). See also Vicki B. Gaubeca (Human Rights Watch), "'Tough' Border Policies Don't Work. It's Time Harris and Trump Accepted That," *Nation*, October 10, 2024, <https://www.hrw.org/news/2024/10/10/tough-border-policies-dont-work-its-time-harris-and-trump-accepted>.

<sup>23</sup> Human Rights Watch, "Costa Rica: Allow Deported Migrants to Seek Asylum," Human Rights Watch News Release, March 18, 2025, <https://www.hrw.org/news/2025/03/18/costa-rica-allow-deported-migrants-seek-asylum>; Jabes Ojwang, "Migrants deported from the US could be held in Costa Rica for up to six weeks," *Jurist News*, February 21, 2025, <https://www.jurist.org/news/2025/02/migrants-deported-from-the-us-could-be-held-in-costa-rica-for-up-to-six-weeks/> (accessed April 22, 2025).

<sup>24</sup> Human Rights Watch, *"Nobody Cared, Nobody Listened": The US Expulsion of Third-Country Nationals to Panama* (New York: Human Rights Watch, 2025), <https://www.hrw.org/node/391050>. See also PBS, "Asylum-seekers deported from US to Panama fear they will be forgotten as options dwindle," March 21, 2025, <https://www.pbs.org/newshour/world/asylum-seekers-deported-from-u-s-to-panama-fear-they-will-be-forgotten-as-options-dwindle> (accessed April 22, 2025).



Taken together, these measures signal a shift by the US government to unprecedented efforts to deport, criminalize, and create hostile conditions for a large number of migrants, even those seeking asylum.<sup>25</sup>

These changes exacerbate problems in an immigration removal system that already entails widespread violations of internationally recognized human rights.<sup>26</sup> In August 2018, during the last Trump administration, the Committee on the Elimination of Racial Discrimination (CERD) wrote to the US government to express concern that the US “zero tolerance” policy for unauthorized migrants would result in “indirect discrimination based on ethnic and national origin, against migrants and asylum seekers.”<sup>27</sup>

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<sup>25</sup> See also, Migration Policy Institute, “Collection of MPI Analysis Related to Trump Administration Actions on Immigration” <https://www.migrationpolicy.org/programs/us-immigration-policy-program/data-and-analysis-related-trump-administration-actions> (accessed April 22, 2025).

<sup>26</sup> See for example Human Rights Watch, “*We Need to Take Away Children*”: Zero Accountability Six Years After “Zero Tolerance” (New York: Human Rights Watch, 2024), <https://www.hrw.org/report/2024/12/16/we-need-take-away-children/zero-accountability-six-years-after-zero-tolerance>; Disrupt and Vilify: The War on Immigrants Inside the War on Drugs (New York: Human Rights Watch, 2024), <https://www.hrw.org/report/2024/07/15/disrupt-and-vilify/war-immigrants-inside-us-war-drugs>; “*They Treat You Like You Are Worthless*”: Internal DHS Reports of Abuses by US Border Officials (New York: Human Rights Watch, 2021), <https://www.hrw.org/report/2021/10/21/they-treat-you-you-are-worthless/internal-dhs-reports-abuses-us-border-officials>.

<sup>27</sup> CERD Committee, Letter to Deputy Permanent Representative of the United States of America, Geneva, CERD/96<sup>th</sup>/EWUAP/MJA/USA/2018 (August 30, 2018), [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=dhKvw3kUuia1l1YIP7/MGiXRLfbNgpt05SBMSvqweOPsB4B58GesqTJ/ndYEGnn](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/DownloadDraft.aspx?key=dhKvw3kUuia1l1YIP7/MGiXRLfbNgpt05SBMSvqweOPsB4B58GesqTJ/ndYEGnn) (accessed April 19, 2025).

## Past Uses of the Alien Enemies Act

Prior to 2025, the Alien Enemies Act had only been deployed on three occasions, each of which involved a formally declared state of war:<sup>28</sup> James Madison invoked the act during the War of 1812,<sup>29</sup> Woodrow Wilson during World War I,<sup>30</sup> and Franklin Roosevelt during World War II.<sup>31</sup> In addition to using the act to deport or detain people, presidents have cited it when imposing restrictions and regulations to limit where noncitizens could live, where they could work, how they could travel, what they could own, and which books they could access, all on penalty of detention.<sup>32</sup>

A review of that history follows, including an overview of how courts have approached challenges to detentions under the act during each of these periods. Even considering the relative rarity of the act's historical use, there is remarkably little judicial precedent on the precise scope and limits of the authority it grants the executive.

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<sup>28</sup> J. Gregory Sidak, "War, Liberty, and Enemy Aliens," *New York Law Review*, vol. 67 (1992), pp. 1402-1431, doi: 10.2139/ssrn.293344 (accessed April 19, 2025) ("The formality of declaring war, with its accompanying high transaction costs, provides what may be the only significant safeguard in the Alien Enemy Act for protecting individual liberty, for the decision to terminate its power rests, in practical terms, with the President himself, and the limited judicial review available under the Act does not extend to claims that the President has abused his discretion.").

<sup>29</sup> The original text of the proclamation is unavailable, however a circular, sent to the states a few days later, describes the invocation of the 1798 act: "Circular, Jas. [James] Monroe, Department of State, Washington [D.C.], to the secretary of the Mississippi Territory, transmitting "enemy aliens" acts, giving instructions about how to carry into effect," *Mississippi Department of Archives and History*, July 11, 1812, <https://da.mdah.ms.gov/series/territorial/s499/detail/10761> (accessed April 19, 2025).

<sup>30</sup> "April 6, 1917: Proclamation 1364," *University of Virginia Miller Center*, April 6, 1917, <https://millercenter.org/the-presidency/presidential-speeches/april-6-1917-proclamation-1364> (accessed April 19, 2025).

<sup>31</sup> Proclamation 2525—Alien Enemies, Japanese, 6 Fed. Reg. 6321 (December 7, 1941), *University of California Santa Barbara, American Presidency Project*, <https://www.presidency.ucsb.edu/documents/proclamation-2525-alien-enemies-japanese> (accessed April 19, 2025); Proclamation No. 2526—Alien Enemies, German, 6 Fed. Reg. 6323 (December 8, 1941) *University of California Santa Barbara, American Presidency Project*, <https://www.presidency.ucsb.edu/documents/proclamation-2526-alien-enemies-german> (accessed April 19, 2025); Proclamation No. 2527—Alien Enemies, Italian, 6 Fed. Reg. 6324 (December 8, 1941), *University of California Santa Barbara, American Presidency Project*, <https://www.presidency.ucsb.edu/documents/proclamation-2527-alien-enemies-italian> (accessed April 19, 2025).

<sup>32</sup> "Statement of the Brennan Center for Justice at New York University School of Law before the United States Senate Judiciary Committee Hearing on how Mass deportations will separate American families, harm our Armed Forces, and Devastate our Economy," *Brennan Center*, December 10, 2024, <https://www.brennancenter.org/our-work/research-reports/written-testimony-how-mass-deportations-will-separate-american-families> (accessed April 19, 2025) ("At times, these regulations have appeared to conflict with established constitutional rights—as when President Roosevelt limited Japanese, German, and Italian noncitizens' access to certain books. Unlike many regulations under contemporary law, 130 these Alien Enemies Act regulations can be and have been promulgated by the president without any notice-and-comment process."). See also Sidak, "War, Liberty, and Enemy Aliens."

Prior to April 2025, the US Supreme Court had decided only one case regarding the legality of executive action under the act, in 1948, and this turned on a very narrow question that the court held non-justiciable. To the extent federal courts have weighed in, they have consistently upheld presidential actions under the act, stepping in only to consider whether specific individuals were wrongfully detained.<sup>33</sup> Typically, those cases considered claims that the detained person was not properly understood to be a member of the “alien enemy” class the president had identified.

The Alien Enemies Act’s use in the context of “invasion and predatory incursion” outside of declared war has never been scrutinized by the courts.

## War of 1812

The 1798 Act was invoked for the first time by President James Madison to require British nationals register monthly with federal marshals during the War of 1812.<sup>34</sup> The act was only invoked following Congress’s declaration of war.<sup>35</sup> A few months later, the Madison administration promulgated additional regulations, which required, among other things, registered individuals engaged in business or commerce to either move away from coastal areas or be subject to detention.<sup>36</sup> The proclamation did not provide for deportations or expulsions.<sup>37</sup> There were a handful of legal challenges to detentions carried out pursuant to that proclamation.

In *Lockington v. Smith*, a British resident of Philadelphia was detained after he did not comply with requirements that he relocate further inland.<sup>38</sup> The Pennsylvania Supreme Court

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<sup>33</sup> *Ludecke v. Watkins*, 335 US 160 US Supreme Court (1948), [https://scholar.google.com/scholar\\_case?case=11618476027227715138&hl=en&as\\_sdt=6&as\\_vis=1&oi=scholar](https://scholar.google.com/scholar_case?case=11618476027227715138&hl=en&as_sdt=6&as_vis=1&oi=scholar) (accessed April 19, 2025).

<sup>34</sup> The original text of the proclamation is unavailable, but a circular, sent to the states a few days later, describes the invocation of the 1798 act: “Circular, Jas. [James] Monroe.”

<sup>35</sup> Congress declared war on Great Britain on June 17, 1812: United States Senate, Declaration of War with Great Britain, 1812, June 17, 1812, <https://www.senate.gov/about/images/documents/war-of-1812-senate-amendments.html> (accessed April 22, 2025).

<sup>36</sup> Gerald L. Neuman and Charles F. Hobson, “John Marshall and the Enemy Alien: A Case Missing from the Canon,” *Green Bag*, vol. 9 (2005), pp. 39-34, [https://www.greenbag.org/v9n1/v9n1\\_articles\\_neuman.pdf](https://www.greenbag.org/v9n1/v9n1_articles_neuman.pdf) (accessed April 22, 2025).

<sup>37</sup> *Ibid.*

<sup>38</sup> *Lockington v. Smith*, 15 F. Cas. 758 (D. Ct. Penn. 1817) *Lockington’s Case*, The Case of Alien Enemies, Considered and Decided upon a Writ of Habeas Corpus Allowed on the Petition of Charles Lockington, an Alien Enemy, by the Hon. William Tilghman, Chief Justice of the Supreme Court of Pennsylvania, The 22nd Day of November, 1813, reported by Richard Bache (Philadelphia 1813), <https://www.loc.gov/resource/rbpe.15102400/?st=text> (accessed April 22, 2025)

agreed to hear his *habeas* petition but ruled against him on the merits.<sup>39</sup> *Lockington* has since been cited mainly in support of the principle that a court order is not a mandatory prerequisite to the detention of an alien under the 1798 Act.<sup>40</sup> More generally, the *Lockington* court clearly believed that the act afforded great deference to the president:

It is never to be forgotten, that the main object of the law is, to provide for the safety of the country, from enemies who are suffered to remain within it.... The president being best acquainted with the danger to be apprehended, is best able to judge of the emergency which might render such measures necessary.... He is to make any regulations which he may think necessary for the public safety, so far as concerns the treatment of alien enemies. It is certain, that these powers create a most extensive influence, which is subject to great abuse: but that was a matter for the consideration of those who made the law, and must have no weight, with the judge, who expounds it.<sup>41</sup>

In a second case challenging the application of the act, *United States v. Thomas Williams*, a federal circuit court forced the release of a British man in a case that turned on whether his detention complied with Madison's own orders under the act.<sup>42</sup> The court ordered the detainee released because he was not given a chance to relocate on his own accord, which President Madison's 1813 order required.<sup>43</sup>

In *United States v. Lavery*, a federal district court ruled against the government when it attempted to detain individuals who had been born in Great Britain but resided in the newly purchased Louisiana territory.<sup>44</sup> Deciding all "bone fide inhabitants" of the territory of Orleans had been naturalized en masse when Louisiana became a state, the courts forced the release of those men, deeming them to have become US citizens.<sup>45</sup> This type of inquiry, which narrowly focuses on whether the individuals in question can prove a

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<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Neuman and Hobson, "John Marshall and the Enemy Alien."

<sup>43</sup> Ibid.

<sup>44</sup> *United States v. Lavery*, 26 F. Cas. (3 Mart.) 875, 875–76 (D. La. 1812) (No. 15,569a) <https://www.cetient.com/case/united-states-v-lavery-7288024> (accessed April 19, 2025).

<sup>45</sup> Ibid.

citizenship or nationality other than that of the “enemy” country, became the signature question that judges weighed in on when considering challenges to detentions under the act in later periods.

## World War I

The Alien Enemies Act was utilized for the second time during the First World War, on the same day Congress declared war in 1917.<sup>46</sup> President Wilson imposed a requirement that Germans, Austro-Hungarians, Turks, and Bulgarians age 14 or older be entered into a registry, photographed, fingerprinted, and, in some cases, detained.<sup>47</sup> Enemy “aliens” who failed to comply with rules established by the executive were subjected to detention. In 1918, Congress amended the Alien Enemies Act, which originally only covered males over the age of 14, to include women.<sup>48</sup> As a result of this change, these rules were also extended to women born in the United States who had married German men.<sup>49</sup> In all, at least 6,000 noncitizens, most of them German nationals, were detained,<sup>50</sup> and around 480,000 more were registered under the Alien Enemies Act.<sup>51</sup> The regulations imposed by the executive branch on “alien enemies” controlled 12 key activities, including owning firearms, approaching federal forts or navy vessels, and writing or publishing

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<sup>46</sup> “April 6, 1917: Proclamation 1364,” *University of Virginia Miller Center*, April 6, 1917, <https://millercenter.org/the-presidency/presidential-speeches/april-6-1917-proclamation-1364> (accessed April 19, 2025). See also National Archives, “World War I Enemy Alien Records,” <https://www.archives.gov/research/immigration/enemy-aliens/ww1> (accessed April 19, 2025).

<sup>47</sup> Claire Kluskens, “The Alien Enemy Index, 1917-19, Is Now Digitized,” *History Hub*, May 2, 2023, <https://historyhub.history.gov/genealogy/b/genealogy-blog/posts/the-alien-enemy-index-1917-1919-is-now-digitized> (accessed April 23, 2025). See also Tim Balk, “A History of the Alien Enemies Act of 1798,” *New York Times*, March 21, 2025, <https://archive.ph/CW6uG#selection-1069.39-1069.172> (accessed April 23, 2025).

<sup>48</sup> US Department of State, Office of the Historian, “Proclamation No. April 19, 1918, Extending Regulations Prescribing Conduct toward Alien Enemies to Include Women,” April 19, 1918, <https://history.state.gov/historicaldocuments/frus1918Supp02/d188> (accessed April 19, 2025).

<sup>49</sup> This was due to a law, the Expatriation Act of 1907, which stated that American women who married foreigners lost their American citizenship and took on their husband’s nationality. See Meg Hacker, “When Saying I Do Meant Giving Up Your Citizenship,” *Genealogy Notes, Prologue*, Spring 2014, <https://www.archives.gov/files/publications/prologue/2014/spring/citizenship.pdf> (accessed April 19, 2025). See also National Archives, “World War I Alien Enemies Records,” <https://www.archives.gov/research/immigration/enemy-aliens/ww1> (accessed April 19, 2025).

<sup>50</sup> Detainees included a famous conductor, Karl Muck, and two prominent German research scientists from Yale University, Richard B. Goldschmidt and Rhoda Erdman, who were eventually paroled early and allowed to return to campus but barred from their labs: Jacob L. Wasserman, “Internal Affairs: Untold Case Studies of World War I German Internment,” *Kaplan Senior Essay Prize for Use of Library Special Collections*, vol. 8 (2016), [https://elischolar.library.yale.edu/mssa\\_collections/8](https://elischolar.library.yale.edu/mssa_collections/8) (accessed April 22, 2025).

<sup>51</sup> Claire Pretchel Kluskens, “Internment of Enemies During World War I,” *NGS Magazine*, vol. 43, no. 2 (April-June 2017), pp. 35-39., <https://twelvekey.com/wp-content/uploads/2017/12/ngsmagazine2017-04.pdf> (accessed April 22, 2025).

attacks on the measures or policies of the US government.”<sup>52</sup> Later, eight more prohibited activities were added for a total of twenty.<sup>53</sup> There is no record of summary expulsions or deportations during this period.<sup>54</sup>

There were several notable legal challenges to the application of the act in the context of World War I. In its briefs at the time, the US government made clear that it saw the act allowing the President “to act, in such cases, frequently on suspicion, rather than on proven facts.”<sup>55</sup> Courts gave the president incredible deference. Challenges turned on the narrow question of whether a person detained under the act was in fact an “alien enemy,” but these rulings also offer some insight into contemporary courts’ understanding of the breadth and nature of executive authority under the statute.

The only case to directly consider the constitutionality of detention under the act during World War I was *De Lacey v US*. The ninth circuit dismissed that challenge brusquely in large part on the strength of its assertion that noncitizens had “no rights and no privileges except by special favor” during times of war under common law, and that “international law” recognized the “power to enact such a law may at times be essential to the preservation of the government.”<sup>56</sup> As discussed below, international law has evolved considerably since then.

The proceedings in *Ex parte Gilroy* involved a habeas petition brought on behalf of a man named Walter Alexander, arguing Alexander had been wrongly detained as a German national pursuant to the 1798 Act when he was in reality a naturalized US citizen.<sup>57</sup> A federal district court decided in favor of the petitioner and ordered Alexander released

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<sup>52</sup> National Archives, “World War I Enemy Alien Records.”

<sup>53</sup> US President, Proclamation, “Alien Enemy Regulation” Statutes at Large, vol. XL, Part 2, pp. 1651-1652; US President, Proclamation, “Additional and Supplemental Regulations Concerning Alien Enemies” Statutes at Large, vol. XL, Part 2, pp. 1716-1718, <https://web.viu.ca/davies/H324War/Wilson.Anti.alien.proc.1917.htm> (accessed April 22, 2025).

<sup>54</sup> Ibid.

<sup>55</sup> United States Department of Justice, “Supplemental brief of the United States in support of the plenary power of Congress over alien enemies, and the constitutionality of the Alien enemy act (Revised statutes, sections 4067-4070),” 1918, <https://lccn.loc.gov/18003639> (accessed April 10, 2025), p. 43. See also Jennifer K. Elsea, “Detention of US Persons as Enemy Belligerents,” *Congressional Research Service*, updated January 23, 2014, <https://www.congress.gov/crs-product/R42337> (accessed April 10, 2025).

<sup>56</sup> *De Lacey v. United States*, 249 F. 625, 626 (9th Cir. 1918), <https://case-law.vlex.com/vid/lacey-v-united-states-884661046> (accessed April 22, 2025).

<sup>57</sup> *Ex parte Gilroy*, 257 F. 110 (S.D.N.Y. 1919), <https://case-law.vlex.com/vid/ex-parte-gilroy-890843291> (accessed April 22, 2025).

after finding that he was, in fact, a US citizen and not an alien.<sup>58</sup> Still, the *Ex parte Gilroy* court did reaffirm the view that no court hearing is required to carry out a detention pursuant to a proclamation issued under the Alien Enemies Act:

The statute does not provide for any hearing, and necessarily so. To have required that there should have been a hearing before the executive could seize or detain an alien enemy would have defeated the protective and safeguarding objects of the enactment at the threshold.<sup>59</sup>

At the same time, in defending the proposition that detention under the act must be reviewable in habeas proceedings, the court also wrote:

Vital as is the necessity in time of war not to hamper acts of the executive in the defense of the nation and in the prosecution of the war, of equal and perhaps greater importance, is the preservation of constitutional rights.<sup>60</sup>

In *Ex parte Graber*, a district court considered another habeas petition brought by a Croatia national<sup>61</sup> challenging his detention under the act.<sup>62</sup> The court rejected the petition after finding that the petitioner was not a naturalized US citizen.<sup>63</sup> As to any suggestion that the President's discretion under the act might be challenged, it stated as follows:

[T]he President, or the officers through whom he acted, is the exclusive judge of whether Graber was such an alien enemy as for the safety of the United States should be restrained as provided by law. It is no answer that

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<sup>58</sup> Ibid.

<sup>59</sup> Ibid.

<sup>60</sup> Ibid.

<sup>61</sup> Croatia was part of Hungary which fell under the Austro-Hungarian government and was deemed a hostile power.

<sup>62</sup> *Ex parte Graber*, 247 Fed. 882, 885 (N. D. Ala. 1918), <https://case-law.vlex.com/vid/ex-parte-graber-887940807> (accessed April 22, 2025) (“Graber, the petitioner, has never actually been naturalized. Of course, his mere declaration of intention to become a citizen of the United States, such declaration never having been carried into effect, did not confer citizenship upon him; and such declaration of intention did not absolve Graber from the allegiance which he owes to the Austro-Hungarian government.... Graber has not divested himself of his alienage, and cannot do so until he becomes an American citizen by naturalization. It cannot be doubted that by the declaration of war he became in law an alien enemy, one who owes allegiance to an adverse belligerent”).

<sup>63</sup> Ibid.

such a power may be abused, for there is no power which is not susceptible to abuse.<sup>64</sup>

Graber argued in his habeas petition that he had not committed, nor did he contemplate committing, any act prohibited by the proclamation. In its ruling that it would not look into the factual question of whether Graber was “about to violate a regulation duly promulgated by the President,” the district court judge explained its view that those facts were not a justiciable issue in habeas, cautioning that:

[I]nevitable disclosing of facts would not always be best for the safety of the peace and security of the government. Congress recognized this by the provisions of the [act,] vested the President with summary power to direct the confinement or removal of alien enemies.<sup>65</sup>

## World War II

The Alien Enemies Act was invoked for the third time during World War II and resulted in the detention of approximately 31,000 people of German, Italian, and Japanese nationality for the duration of the war.<sup>66</sup> Like Wilson, President Roosevelt’s proclamation imposed a series of restrictions on “alien enemies,” including being in possession of a camera, undertaking any “air flight,” and entering enumerated restricted areas, including forts, camps, and certain factories.<sup>67</sup> During this use of the act, the government established Hearing Boards to process the claims of individuals designated as “enemy aliens.”<sup>68</sup> These Hearing Boards,<sup>69</sup> which were staffed by volunteer community leaders, did not provide

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<sup>64</sup> Ibid.

<sup>65</sup> Ibid.

<sup>66</sup> Proclamation No. 2525, 6 Fed. Reg. 6321 (1941) (Japanese enemy aliens); Proclamation No. 2526, 6 Fed. Reg. 6323 (1941) (German enemy aliens); Proclamation No. 2527, 6 Fed. Reg. 6324 (1941) (Italian enemy aliens).

<sup>67</sup> Ibid.

<sup>68</sup> University of Washington Pacific Northwest Historical Documents, “Department of Justice statement announcing the enstatement of the Enemy Alien Hearing Boards, December 20, 1941,” December 20, 1941, <https://digitalcollections.lib.washington.edu/digital/collection/pioneerlife/id/17306> (accessed April 22, 2025). See also Charles W. Harris, “The Alien Enemy Hearing Board as a Judicial Device in the United States during World War II,” *International and Comparative Law Quarterly*, vol. 14, no. 4 (1965), pp. 1360–1370, <http://www.jstor.org/stable/757333> (accessed April 22, 2025).

<sup>69</sup> During judicial challenge of the 2025 invocation of the act, Judge Patricia Millett raised the Enemy Alien Hearing Boards as a point of contrast: Ximena Bustillo, “Judge contends Nazis got more due process than Trump deportees did,” *NPR*, March 24, 2025, <https://www.npr.org/2025/03/24/nx-51-5338794/appeals-alien-enemies-act-trump> (accessed April 22, 2025).



anything close to judicial process.<sup>70</sup> The government also offered a 30-day grace period to those flagged for deportation, giving them a chance to leave voluntarily.<sup>71</sup>

As a result of its broad application, the act was used to justify interning Jewish refugees who fell into the category of “alien enemies” under the President’s proclamation due to their German nationality.<sup>72</sup> This led to the absurd situation of Jewish detainees being interned alongside Axis sympathizers, who took advantage of the close quarters to abuse and taunt them.<sup>73</sup> This historical anecdote points to the risks of blanket treatment of individuals based on their nominal citizenship or place of origin.

In a 1946 challenge to the application of the act, the Second circuit in *US v Watkins* reiterated that the act allowed removing people “without a court order and without a hearing of any kind, except on the issue of whether or not the [person contesting their removal] actually is an alien enemy,” emphasizing, “when the procedure is through executive action, the statute calls for no hearing in court or elsewhere.”<sup>74</sup> While the decision is sweeping, it is worth noting that the court did reaffirm its right to weigh in on the question of whether the individuals in question met the criteria outlined in the president’s proclamation as “alien enemies.”<sup>75</sup>

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(“Nazis got better treatment under the Alien Enemies Act than has happened here,” she said. “And they had hearing boards, before people were removed. And yet here, there’s nothing in there about hearing boards. There are no regulations, and nothing was adopted by the agency officials that were administering this. People weren’t given notice – they weren’t told where they were going.”).

<sup>70</sup> At least 100 such Alien Enemy Hearing Boards operated across the United States, staffed by volunteer members of the community. An ‘attempt’ was made to ensure each Hearing Board had a lawyer on it but aliens were not allowed to have their own lawyers. Final decisions rested with Attorney General Francis Biddle who created the Alien Enemy Control Unit to review the recommendations of hearing boards. See Harris, “Alien Enemy Hearing Board.” (“From the legal and judicial side the boards represented hardly more than a feeble gesture. It was a situation of an informal tribunal carrying out a judicial function with little or no standard in the form of a law, written or unwritten, to be used as a guide.”).

<sup>71</sup> Attorney General Regs., Removal of Alien Enemies from the United States, 28 CFR, 1945 Supp., 30.71-30.75. (“The regulations pursuant to this section provide for a thirty-day period for “voluntary departure” and for forcible removal in the event the alien enemy “fails or neglects” to depart within that period.”).

<sup>72</sup> Harvey Strum, “Jewish Internees in the American South: 1942–1945,” *Jewish Archives*, vol. 27 (1990), pp. 27-48, [https://sites.americanjewisharchives.org/publications/journal/PDF/1990\\_42\\_01\\_00\\_strum.pdf#search=%20Jewish%20Internees%20](https://sites.americanjewisharchives.org/publications/journal/PDF/1990_42_01_00_strum.pdf#search=%20Jewish%20Internees%20) (accessed April 22, 2025).

<sup>73</sup> Ibid.

<sup>74</sup> The court here distinguished executive action from when a “complaint” is filed by a citizen against an alien. The Alien Enemies Act requires due process in those cases. *US v. Watkins*, 158 F.2d 853 (2d Cir. 1946), <https://law.justia.com/cases/federal/appellate-courts/F2/158/853/1473523/> (accessed April 22, 2025).

<sup>75</sup> Ibid.

In another 1946 decision on the Alien Enemies Act's application, the D.C. Circuit in *Citizens Protective League v. Clarke* asserted that “unreviewable power in the President to restrain, and to provide for the removal of alien enemies in time of war is the essence” of the act.<sup>76</sup> Under President Harry Truman, the US government deported Germans and Japanese citizens back to their home countries.<sup>77</sup>

The US Supreme Court considered its first challenge to government actions under the Alien Enemies Act in 1948, 150 years after it was first adopted.<sup>78</sup> In *Ludecke v. Watkins*, a German national detained under the act during World War II challenged the continued legality of his confinement.<sup>79</sup> The case considered the petitioners argument that his internment under the act was no longer lawful because armed hostilities with Germany had come on an end. The court held that very narrow question of whether and when the war with Germany was over to be a “non-justiciable one,” subject to the determination by other branches of government.<sup>80</sup> When deciding *Ludecke* the Supreme Court did note that questions regarding the act’s “construction and validity” are reviewable.<sup>81</sup>

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<sup>76</sup> *Citizens Protective League v. Clarke*, 155 F.2d 290 (D.C. Cir. 1946), <https://case-law.vlex.com/vid/citizens-protective-league-v-887320776>.

<sup>77</sup> Harry S Truman, Proclamation 2655—Removal of Alien Enemies, *University of California Santa Barbara American Presidency Project*, <https://www.presidency.ucsb.edu/node/287778> (accessed April 22, 2025) (“[A]ll alien enemies now or hereafter interned within the continental limits of the United ... who shall be deemed by the Attorney General to be dangerous to the public peace and safety of the United States because they have adhered to the aforesaid enemy governments or to the principles of government thereof shall be subject upon the order of the Attorney General to removal from the United States and may be required to depart therefrom in accordance with such regulations as he may prescribe.”); Proclamation 2685, “Removal of Enemy Aliens,” April 10, 1946, (1) 3 CFR 1945 Supp., <https://www.trumanlibrary.gov/library/proclamations/2685/removal-alien-enemies> (accessed April 22, 2025) (“All alien enemies within the continental limits of the United States brought here from other American republics after December 7, 1941, who are within the territory of the United States without admission under the immigration laws, shall, if their continued residence in the Western Hemisphere is deemed by the Secretary of State to be prejudicial to the future security or welfare of the Americas, be subject upon the order of the Secretary of State to removal from the United States and may be required to depart therefrom in accordance with such regulations as the Secretary of State may prescribe.”). See also “Picking Up the Pieces: Release, Resettlement and ‘Repatriation,’” *The Alien Enemies Files: Hidden Stories of World War II*, *National Japanese American Historical Society*, 2025, <https://njahs.org/enemy-alien-files/online-exhibit-enemy-alien-files/picking-up-the-pieces/> (accessed April 22, 2025) (Some 3,500 Issei and renunciants- young Nisei who were manipulated by the US into renouncing their US citizenship, becoming “enemy aliens”- were deported to Japan. “Between November 1945 and June 1946, at least 945 Japanese Peruvians and 112 other Japanese Latin Americans were deported to war-devastated Japan.” Many Germans and their US citizen families were involuntarily “repatriated” to war-devastated Germany and left there to fend for themselves.).

<sup>78</sup> *Ludecke v. Watkins*, 335 US 160 (1947), <https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf#page=12> (accessed April 22, 2025) (“The Act is almost as old as the Constitution, and it would savor of doctrinaire audacity now to find the statute offensive to some emanation of the Bill of Rights.”).

<sup>79</sup> *Ibid.*

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

Four years after deciding *Ludecke*, in 1951, the Supreme Court granted a writ of habeas corpus to a German citizen, Hubert Jaegerler, who had been interned for 10 years under the Alien Enemies Act.<sup>82</sup> While the court was considering his petition, Congress enacted a joint resolution terminating the state of war with Germany. The court found that the government’s power to hold or remove Jaegerler ended when Congress “terminated the war with Germany.”<sup>83</sup>

The use of the Alien Enemies Act during World War II coincided with one of the darkest episodes in American history, when the president invoked a separate legal authority to justify the internment of nearly 70,000 American born citizens of Japanese heritage.<sup>84</sup> The Supreme Court of that era did not block the abusive policy,<sup>85</sup> upholding it as legal in *Korematsu v. US*.<sup>86</sup>

When given an opportunity, many decades later, to weigh in on the World War II era court’s decision in *Korematsu*, current Chief Justice of the US Supreme Court John Roberts made clear that the court did not view it as good law. Writing in 2018, Roberts repudiated *Korematsu*, saying the “forcible relocation of U. S. citizens to concentration camps, solely and explicitly on the basis of race, is objectively unlawful and outside the scope of Presidential authority.”<sup>87</sup>

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<sup>82</sup> *Ex rel Jaegerler v Carusi*, 342 US at 348, <https://case-law.vlex.com/vid/united-states-jaegerler-v-892040085> (accessed April 23, 2025).

<sup>83</sup> *Ibid*.

<sup>84</sup> Executive Order 9066, signed by President Franklin D. Roosevelt on February 19, 1942, authorized the Secretary of War and military commanders to designate military areas and exclude any persons from them as deemed necessary for national security. This led directly to the forced removal and incarceration of over 120,000 men, women and children from the West Coast to internment camps further inland. Nearly 70,000 of the evacuees were American born citizens while the others were first-generation Japanese immigrants. The government made no charges against them, nor could they appeal their incarceration. All lost personal liberties; most lost homes and property as well. Shortly after Executive Order 9066 was issued, Congress passed Public Law 503 on March 21, 1942. This law made it a federal offense to violate military orders issued under Executive Order 9066, thus providing statutory backing and criminal penalties for noncompliance. See National Archives, Milestone Documents, “Executive Order 9066: Resulting in Japanese-American Incarceration (1942),” <https://www.archives.gov/milestone-documents/executive-order-9066> (accessed April 22, 2025).

<sup>85</sup> In 1988, President Ronald Reagan signed the Civil Liberties Act. The remaining survivors of the camps were sent formal letters of apology and were awarded \$20,000 in restitutions from the United States government.

<sup>86</sup> *Korematsu v. US* (1944), 323 US 214 (1944), <https://www.oyez.org/cases/1940-1955/323us214> (accessed April 22, 2025).

<sup>87</sup> *Trump v. Hawaii*, 585 US 667, 138 S. Ct. 2392 (2018), [https://www.supremecourt.gov/opinions/17pdf/17-965\\_h315.pdf](https://www.supremecourt.gov/opinions/17pdf/17-965_h315.pdf) (accessed April 22, 2025).

He added that the ruling “affords this Court the opportunity to make express what is already obvious: *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and to be clear ‘has no place in law under the Constitution.’”<sup>88</sup>

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<sup>88</sup> Ibid.

# Analysis of the Alien Enemies Act under International Law

In evaluating the Alien Enemies Act against the standards enshrined in the US Constitution, the Brennan Center for Justice at New York University School of Law<sup>89</sup> and the American Civil Liberties Union<sup>90</sup> have raised significant concerns. Many of these same concerns are mirrored in an analysis of the act's compatibility with US obligations under international law.

The following pages assess the 1798 Act's alignment with US obligations under international human rights law. While not at all salient to the current situation in the United States, it also briefly considers the law's compatibility with international humanitarian law ("IHL")—the laws of war—given that the Act had until 2025 only been applied during periods of declared war. The act's archaic and sweeping grant of presidential power is not compatible with either international human rights law or international humanitarian law. A later section of this report considers the Trump administration's 2025 use of the act, spotlighting how these deficiencies have paved the way for violations of international human rights law, including obligations that have been incorporated into US law.

The US has ratified several international human rights treaties and is obliged to protect the rights those frameworks codify. The US ratified the International Covenant on Civil and Political Rights (ICCPR), which enumerates a broad range of human rights and guarantees,

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<sup>89</sup> Katherine Yon Ebright, "The Alien Enemies Act is Outdated, Dangerous, and Ripe for Abuse," *Brennan Center for Justice*, February 28, 2024, <https://www.brennancenter.org/our-work/analysis-opinion/alien-enemies-act-outdated-dangerous-and-ripe-abuse> (accessed April 23, 2025).

<sup>90</sup> Naureen Shah, "Trump Invokes the Alien Enemies Act to Carry Out Mass Deportations, Explained," *ACLU*, updated March 26, 2025, <https://www.aclu.org/news/immigrants-rights/anti-immigrant-extremists-want-to-use-this-226-year-old-law-to-implement-a-mass-deportation-program> (accessed April 22, 2025) ("The history of the Alien Enemies Act serves as a reminder of how emergency powers can be abused to unfairly target people based on their nationality, ancestry, or even political ideology – and Trump's invocation of this outdated law serves as a harrowing call to action to ensure our government does not repeat the mistakes of the past."). See also ACLU District of Columbia, "ACLU and Democracy Forward Sue Trump Administration Over Expected Invocation of Alien Enemies Act," March 15, 2025, <https://www.acludc.org/en/press-releases/aclu-and-democracy-forward-sue-trump-administration-over-expected-invocation-alien> (accessed April 22, 2025).

in 1992.<sup>91</sup> The US has not ratified the 1951 Refugee Convention,<sup>92</sup> but is a party to its 1967 Protocol,<sup>93</sup> which codifies many important rights related to the status of refugees. The U.S. ratified the Convention Against Torture (CAT) in 1994,<sup>94</sup> and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) in 1994.<sup>95</sup> Some human rights obligations are also enshrined as principles of customary international law.

The United States is obliged to ensure its domestic legal framework and actual conduct align with these obligations.<sup>96</sup> Furthermore, under international law a state “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”<sup>97</sup> Instead, states must adjust their domestic legal frameworks as necessary to ensure compliance with treaty obligations.

International human rights law does allow states some room to impose restrictions on the exercise of certain rights, under very limited circumstances.<sup>98</sup> In truly exceptional circumstances, the ICCPR permits states to declare a state of emergency and on that basis, to derogate—or suspend—some, but not all, of their human rights obligations for a limited period of time. This is permissible only in the face of an emergency that “threatens the life

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<sup>91</sup> The International Covenant on Civil and Political Rights (ICCPR) was signed by the US on October 5, 1977, but was not ratified until September 8, 1992, 26 years after it was unanimously adopted by the United Nations General Assembly. International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976.

<sup>92</sup> President Truman declined to sign the 1951 Refugee Convention, due to sovereignty concerns. Convention relating to the Status of Refugees, 189 U.N.T.S. 150, entered into force April 22, 1954.

<sup>93</sup> The US did accede to its 1967 Protocol on November 1, 1968, thereby binding itself to the convention's provisions, which were later incorporated into US law through the Refugee Act of 1980. Protocol Relating to the Status of Refugees, 606 U.N.T.S. 267, entered into force October 4, 1967.

<sup>94</sup> The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) was signed by the US on April 18, 1988, and ratified in October 1994. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), adopted December 10, 1984, G.A. res. 39/46, annex, 39 U.N. GAOR Supp. (No. 51) at 197, U.N. Doc. A/39/51 (1984), entered into force June 26, 1987.

<sup>95</sup> The United States signed the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1966 and ratified it in October 1994, entering into force for the United States on November 20, 1994. International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), adopted December 21, 1965, G.A. Res. 2106 (XX), annex, 20 U.N. GAOR Supp. (No. 14) at 47, U.N. Doc. A/6014 (1966), 660 U.N.T.S. 195, entered into force January 4, 1969, adopted by the United States on November 20, 1994.

<sup>96</sup> See UN Human Rights Committee, “The Nature of the General Legal Obligation Imposed on State Parties to the Covenant,” General Comment No. 31, CCPR/C/21/Rev.1/Add.13, (2004) <https://www.refworld.org/legal/general/hrc/2004/en/5245> (accessed April 17, 2025); Vienna Convention on the Law of Treaties (Vienna Convention), adopted May 23, 1969, 1155 U.N.T.S. 331, 8 I.L.M. 6 (1969), entered into force on 27 January 1980.

<sup>97</sup> Vienna Convention, art. 27.

<sup>98</sup> See, e.g., ICCPR Arts. 12, 14, 18, 19.

of the nation” and *not* merely an emergency that represents some less existential kind of menace.<sup>99</sup>

The Alien Enemies Act’s broad, outdated framework does not align with the carefully constructed limitations of these international law standards. This is unsurprising, given that the archaic statute predates all these international law requirements, and the various U.S. domestic laws that implement them, by 150 years or more. The following pages support this larger analysis with reference to the specific human rights protections implicated most directly by the exercise of power under the Alien Enemies Act.

## Protection from Being Returned to Persecution and Torture

International law places important limits on the United States’ authority to expel foreign nationals from its territory. The 1951 Refugee Convention and the subsequent 1967 Protocol prohibit the expulsion of refugees, except on grounds of national security or public order.<sup>100</sup> The instruments also require “due process of law,” unless compelling national security reasons dictate otherwise. National security exceptions to this guarantee would still require a specific individualized determination. A blanket characterization would be insufficient.

Even under the limited circumstances where refugees may be expelled, the United States is prohibited from returning them to situations where they are likely to face persecution or torture. This is the principle of nonrefoulement under international law.<sup>101</sup>

The Refugee Convention generally prohibits the United States from expelling refugees to places where their lives or freedom would be threatened on account of race, religion, nationality, membership of a particular social group, or political opinion.<sup>102</sup>

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<sup>99</sup> ICCPR, art. 4. See also UN Human Rights Committee, General Comment No. 29: Article 4: Derogations During a State of Emergency, CCPR/C/21/Rev.1/Add.11 (2001), <https://www.refworld.org/legal/general/hrc/2001/en/30676> (accessed April 17, 2025).

<sup>100</sup> Refugee Convention, art. 32-33

<sup>101</sup> Article 32 of the Refugee Convention needs to be read together with Article 33. Art. 32 allows limited expulsions but does not say to where; Art. 33 says those expulsions cannot be to places where the refugee would face persecution.

<sup>102</sup> Refugee Convention, art. 33.

Human rights law entails even stronger protections that prohibit the US from returning *any* person to a country where they face a substantial risk of torture, with no exceptions. CAT prohibits the US from expelling, returning, or extraditing any person to a state where there are “substantial grounds for believing that he would be in danger of being subject to torture.”<sup>103</sup> Under ICERD, the US should “[e]nsure that non-citizens are not returned or removed to a country or territory where they are at risk of being subject to serious human rights abuses including torture and cruel, inhuman or degrading treatment.”<sup>104</sup>

The UN Human Rights Committee, which is the primary United Nations treaty body of experts dedicated to interpreting the ICCPR emphasized:

[T]he article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm, such as that contemplated by articles 6 (capital punishment) and 7 (torture) of the Covenant, either in the country to which removal is to be effected or in any country to which the person may subsequently be removed.<sup>105</sup>

The Alien Enemies Act’s broad authority to carry out summary deportations is not compatible with international legal protections. It is also inconsistent with modern US legal frameworks that have sought to align with US international legal obligations.

US immigration law’s withholding-of-removal provisions implement the 1967 Refugee Protocol by entitling noncitizens to a hearing if they express a fear of persecution or torture in their country of origin. In addition, the Refugee Act of 1980 provides for the right to seek asylum. In a 2022 ruling, the DC Circuit court highlighted these protections in its consideration of a separate deportation program, stating clearly that the executive has the “the power to expel” but only to “to ... any place where the[y] will not be persecuted [or

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<sup>103</sup> CAT, art. 3.

<sup>104</sup> UN Committee on the Elimination of Racial Discrimination (CERD), General Comment 30 on Discrimination Against Non-Citizens, (2004), <https://www.refworld.org/legal/general/cerd/2004/en/39027> (accessed April 10, 2025), para. 25.

<sup>105</sup> UN Human Rights Committee, General Comment No. 31, para. 12.



tortured].”<sup>106</sup> US law also codifies the broader prohibition on returning foreign nationals to countries where they are likely to be subjected to torture.<sup>107</sup>

The Alien Enemies Act offers a possible end run around the measures US lawmakers have taken to ensure respect for the principle of nonrefoulement. It appears to afford the president wide latitude to create a mass deportation regime that affords foreign nationals no right to an individualized determination about whether they risk return to persecution or torture, let alone meaningful due process rights in the context of such a proceeding. It is not even clear whether US courts would require the executive to exercise its powers under the act in a manner that is cognizant of the principle of nonrefoulement at all.

## Arbitrary Detention and Due Process

International human rights law prohibits arbitrary detention. The ICCPR requires the US to ensure any deprivation of liberty takes place on “grounds and procedures established by law.”<sup>108</sup>

Unlawful detention is inherently arbitrary. In addition, as emphasized by the Human Rights Committee, a detention can be arbitrary even if it is authorized by domestic law:

The notion of “arbitrariness” is not to be equated with “against the law,” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.... Aside from judicially imposed sentences for a fixed period of time, the decision to keep a person in any form of detention is arbitrary if it is not

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<sup>106</sup> *Huisha-Huisha v. Mayorkas*, 27 F.4th 718, 735 (D.C. Cir. 2022).

<sup>107</sup> Foreign Affairs Reform and Restructuring Act of 1998 (FARRA), Div. G., Pub. L. 105-277, 112 Stat. 2681.

<sup>108</sup> ICCPR, art. 9(1); American Convention on Human Rights (“Pact of San José, Costa Rica”), adopted November 22, 1969, O.A.S. Treaty Series No. 36, 1144 U.N.T.S. 123, entered into force July 18, 1978, reprinted in Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1 at 25 (1992), art. 7(2) and (3) (“No one shall be deprived of his physical liberty except for the reasons and under the conditions established beforehand by the constitution of the State Party concerned or by a law established pursuant thereto.”); African [Banjul] Charter on Human and Peoples’ Rights, adopted June 27, 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982), entered into force October 21, 1986, art. 6 (“Every individual shall have the right to liberty and to the security of his person. No one may be deprived of his freedom except for reasons and conditions previously laid down by law. In particular, no one may be arbitrarily arrested or detained.”).

subject to periodic re-evaluation of the justification for continuing the detention.<sup>109</sup>

Human rights law also requires detainees be provided access to independent legal advice, preferably of the detainee's own choosing, and the detaining authority disclose the essence of the evidence on which the decision to detain is taken.<sup>110</sup>

The Human Rights Committee also explains that administrative detentions carried out to address perceived security risks, "not in contemplation of prosecution on a criminal charge," by its very nature presents "severe risks of arbitrary deprivation of liberty."<sup>111</sup> It went on to explain that:

Such detention would normally amount to arbitrary detention as other effective measures of addressing the threat, including the criminal justice system, would be available. If, under the most exceptional circumstances, a present, direct, and imperative threat is invoked to justify the detention of persons considered to present such a threat, the burden of proof lies on States parties to show that the individual poses such a threat and that it cannot be addressed through alternative measures.<sup>112</sup>

The Alien Enemies Act is in no way cognizant of these modern legal frameworks or of US obligations under international law to respect them. It authorizes a regime of administrative detention of exactly the sort that the Human Rights Committee warns against and incorporates no explicit protections against arbitrary detention prohibited by international law. If the exercise of presidential authority under the act does have any

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<sup>109</sup> Human Rights Committee, General Comment No. 35 on Article 9, Liberty and Security of Person, CCPR/C/GC/35 (2014), <https://www.ohchr.org/en/calls-for-input/general-comment-no-35-article-9-liberty-and-security-person> (accessed April 10, 2025), para. 12; Human Rights Council, Report of the Working Group on Arbitrary Detention, A/HRC/22/44, December 24, 2012, [https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/HRBodies/HRCouncil/RegularSession/Session22/A.HRC.22.44_en.pdf) (accessed April 10, 2025), paras. 61, 84.

<sup>110</sup> ICCPR, art. 9; Human Rights Committee, General Comment No. 35, para. 15; United Nations, Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, United Nations General Assembly resolution 43/173, adopted December 9, 1988, <https://www.ohchr.org/en/instruments-mechanisms/instruments/body-principles-protection-all-persons-under-any-form-detention> (accessed April 23, 2025) principles 14, 17, and 18.

<sup>111</sup> Human Rights Committee, General Comment No. 35., para. 15.

<sup>112</sup> *Ibid.*, para. 15.

meaningful protections against the arbitrary detention of people lawfully designated as alien enemies, it will require new judicial precedent to elaborate them.

The Human Rights Committee notes: “the enjoyment of the rights recognized under the Covenant can be effectively assured by the judiciary in many different ways.”<sup>113</sup> Article 14 of the ICCPR guarantees all persons “a fair and public hearing by a competent, independent and impartial tribunal” in matters affecting their rights.

International human rights and refugee law also guarantee that a noncitizen:

[E]xcept where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.<sup>114</sup>

The act, however, requires no individualized determinations prior to detaining or removing an “alien enemy,” let alone any guarantee of due process. To date, US courts have maintained that the only legal right to challenge the legality of detention or removal under the act lies in habeas corpus proceedings brought after the fact of a person’s detention. Even there, courts have generally confined themselves to determining whether a petitioner is in fact an “alien enemy” within the meaning of a presidential proclamation under the act.

The Human Rights Committee has also elaborated those human rights obligations of the state “would not be satisfied with laws or decisions providing for collective or mass expulsions.”<sup>115</sup> To the extent that the Alien Enemies Act enables mass expulsions and removals without due process, it contravenes US obligations under the ICCPR.

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<sup>113</sup> Human Rights Committee, “Nature of the General Legal Obligation on States Parties to the Covenant,” General Comment No. 31, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), <http://hrlibrary.umn.edu/gencomm/hrcom31.html> (accessed April 10, 2025), para. 15.

<sup>114</sup> ICCPR, art. 13.

<sup>115</sup> UN Human Rights Committee, CCPR General Comment No. 15: The Position of Aliens Under the Covenant, (1986), <https://www.refworld.org/legal/general/hrc/1986/en/38724> (accessed April 10, 2025), para. 10

## Non-Discrimination

The International Convention on the Elimination of Racial Discrimination, which the US is party to, defines “racial discrimination” as encompassing:

[A]ny distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin, which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, and cultural or any other field of public life.<sup>116</sup>

ICERD does afford states wide latitude to draw distinctions between citizens and noncitizens and to decide their own approaches to nationality, citizenship, and naturalization. However, the Convention specifies these should not “discriminate against any particular nationality.”<sup>117</sup>

The Committee on the Elimination of Racial Discrimination is the UN Treaty Body charged with interpreting the Convention’s provisions. In its General Comment 30, the committee clarifies that:

[L]aws concerning deportation or other forms of removal of non-citizens from the jurisdiction of the State party do not discriminate in purpose or effect among non-citizens on the basis [of] ... national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies.<sup>118</sup>

The Committee also urges states to refrain from mass expulsions that do not take into account the individual circumstances of every impacted person, and to avoid expulsions that entail a disproportionate interference with the right to family life.<sup>119</sup>

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<sup>116</sup> ICERD, art. 1(1).

<sup>117</sup> Ibid., art. 1(2) and 1(3).

<sup>118</sup> UN Committee on the Elimination of Racial Discrimination (CERD), General Comment 30 on Discrimination Against Non-Citizens, (2004), <https://www.refworld.org/legal/general/cerd/2004/en/39027> (accessed April 10, 2025), para. 25.

<sup>119</sup> Ibid., paras. 26 and 28.

The discretion the act affords the president to define a class of “enemy aliens” based solely on their nationality is at odds with ICERD’s prohibition of discrimination on the basis of national origin. And indeed, the act has historically been used this way. In addition, the act does not on its face require any assessment of individual circumstances beyond the government’s finding that a particular individual belongs to a class of alien enemies defined by the executive.

## Geneva Conventions and International Humanitarian Law

International humanitarian law—the laws of war—governs the conduct of armed hostilities with a view to ensuring the protection of civilians and captured enemy combatants. This legal framework has existed in some form for thousands of years, but its modern version is set out in the Geneva Conventions of 1949, alongside other treaties and customary international law. The United States ratified the 1949 Geneva Conventions in 1955.

Unlike international human rights law, international humanitarian law applies only in specific circumstances, notably during an international or non-international armed conflict or a belligerent occupation. International humanitarian law is not relevant to the Trump administration’s efforts to detain and remove Venezuelan nationals under the Alien Enemies Act because the United States is not now engaged in an armed conflict with Venezuela or Venezuelan nationals that bears any relationship to those actions. However, given that the act has previously been used exclusively during periods of international armed conflict, it is worth considering whether the act is generally compatible with current international humanitarian law.

During periods of international armed conflict—conflicts between two or more states—the Geneva Conventions govern the treatment of civilians who are nationals of a hostile foreign power and living within the territory of a party to the conflict.

The Fourth Geneva Convention allows states to subject people who are nationals of a hostile foreign power to internment or assigned residence during periods of international armed conflict, but “only if the security of the Detaining Power makes it absolutely necessary.”<sup>120</sup> According to the authoritative Commentary of the International Committee of the Red Cross,

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<sup>120</sup> Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), adopted August 12, 1949, 75 U.N.T.S. 287, entered into force October 21, 1950, art. 42.

this should be understood to mean that only “absolute necessity, based on the requirements of state security, can justify recourse to [internment or assigned residence], and only then if security cannot be safeguarded by other, less severe means.”<sup>121</sup>

Furthermore, the Geneva Conventions do not permit the detention *en masse* of all nationals of the hostile foreign power and “the mere fact that a person is a subject of an enemy Power cannot be considered as threatening to the security of the country where he is living.”<sup>122</sup> Rather, states must make individualized determinations that justify a particular person’s detention.<sup>123</sup> States must also ensure any person who is interned or placed in assigned residence is entitled to have that decision reconsidered “as soon as possible by an appropriate court or administrative board designated by the Detaining Power for that purpose.”<sup>124</sup>

The 1798 Act does not align with these requirements. It does not require any sort of individualized determination that the internment of a particular “enemy alien” is strictly necessary. It does not require internment be justified by reasons that go beyond the mere fact of a person’s nationality. Nor does it require that “enemy aliens” detained under the act have any right to see the necessity of their continued confinement reconsidered. This broad misalignment with modern international humanitarian law is unsurprising, given that the act was enacted long before the adoption of the Geneva Conventions. The Geneva Conventions framework governing this context was developed in a deliberate effort to break with abusive past practices where “[a]ll too often the mere fact of being an enemy subject was regarded as justifying internment.”<sup>125</sup>

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<sup>121</sup> International Committee of the Red Cross (ICRC), Convention (IV) relative to the Protection of Civilian Persons in Time of War. Geneva, 12 August 1949., Commentary of 1958, Article 42 - Non-repatriated persons V. Ground for internment or assigned residence, Voluntary internment, 1958, <https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-42/commentary/1958> (accessed April 18, 2024) (hereafter Commentary on Article 42).

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Fourth Geneva Convention, art. 43.

<sup>125</sup> ICRC, Commentary on Article 42.

# Trump Administration's Use of the Alien Enemies Act

## March 2025 Executive Order

The Trump Administration's use of the Alien Enemies Act offers a stark illustration of why the statute's incompatibility with international human rights law continues to be relevant in practical and human terms. The administration has used the act to summarily expel more than 130 Venezuelan nationals, labeling them "alien enemies" without any sort of due process, and sending them to face a term of indefinite, arbitrary incarceration in El Salvador, in a facility where they face serious risk of torture and ill-treatment. These actions violate the entire range of US obligations under international human rights law discussed in the preceding chapter.

On March 14, 2025, President Trump issued an executive order asserting that Tren de Aragua (TdA), a Venezuelan organized crime group, is part of a "hybrid criminal state that is perpetrating an invasion of and predatory incursion into the United States."<sup>126</sup> He further declared:

[A]ll Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies.<sup>127</sup>

The Trump administration has used this order as a basis to deprive individuals that it labels as "alien enemies" of due process, detaining them and subjecting them to summary removal. On March 29, White house Deputy Chief of Staff, Stephen Miller, wrote on X:

If every foreign trespasser gets to have their own federal trial prior to removal then there is no liberation. There is no restoration. The invasion

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<sup>126</sup> White House, Presidential Actions, "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua," March 15, 2025, <https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/> (accessed April 21, 2025) (Note that the order was posted online on March 15 but its text states that it was signed by the President on March 14).

<sup>127</sup> Ibid.

will be made complete. Article 4 Section 4 [of the US Constitution] requires the president to halt any invasion and no district court can override that mandate. For the Constitution is the supreme law of the land. The invading armies and foreign trespassers will be expelled. The cartels will be smashed. Liberation will be achieved.<sup>128</sup>

The order authorized the attorney general and the secretary of homeland security “to take all necessary actions under the Alien Enemies Act to effectuate this proclamation, consistent with applicable law.”<sup>129</sup>

On this basis, the administration embarked upon a program of enforced disappearance and summary removals. Worse still, the Venezuelans removed under the Alien Enemies Act were then transferred to arbitrary, and potentially indefinite, detention in a notorious Salvadoran prison.<sup>130</sup>

On March 15, the US government transferred detainees, deporting 261 people to a maximum security prison in El Salvador, including 238 Venezuelans, and 23 Salvadorans allegedly affiliated with the MS-13 violent criminal group.<sup>131</sup> The White House told the media that 137 of the Venezuelan nationals transferred to El Salvador were deported under the Alien Enemies Act authority.<sup>132</sup> Available evidence indicates the Venezuelans deported

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<sup>128</sup> X post, @StephenM, March 29, 2025, <https://x.com/stephenm/status/1906024686674133371> (accessed April 10, 2025).

<sup>129</sup> Ibid.

<sup>130</sup> In a separate legal action under a different authority, the US government sent Salvadoran men who it says are members of MS-13 to CECOT. Since then, it has admitted that one of the Salvadoran men, Kilmar Abrego Garcia, was deported in “error” but argues that it cannot do anything to correct the error and return him back. Although the Supreme Court ruled 9-0 that the government should “facilitate” his return to the United States and asked the district court to clarify its order, the Trump administration has maintained that it “won” the appeal and that courts cannot manage its foreign policy relationship with El Salvador. Akshaya Kumar, “One Man’s Ordeal Triggers Test of US Constitution,” commentary, Human Rights Watch dispatch, April 18, 2025, <https://www.hrw.org/news/2025/04/18/one-mans-ordeal-triggers-test-us-constitution>.

<sup>131</sup> Deportees were sent to El Salvador after the Trump administration agreed to pay \$6 million for 300 alleged members to be imprisoned there for a year. Marc Caputo, “Exclusive: How the White House ignored a judge’s order to turn back deportation flights,” *Axios*, March 16, 2025, <https://www.axios.com/2025/03/16/trump-white-house-defy-judge-deport-venezuelans> (accessed April 10, 2025).

<sup>132</sup> Nicole Brown Chau, “Trump’s use of the Alien Enemies Act of 1798 is under scrutiny. Here’s what to know,” *CBS News*, updated April 8, 2025, <https://www.cbsnews.com/news/trump-alien-enemies-act-of-1798-history/> (accessed April 10, 2025).



under the act and their attorneys were unaware that they had been labeled as alien enemies under the terms of the act.<sup>133</sup>

There were eight women on the March 15 flights who were returned to the United States because El Salvador refused to accept them in its Center for Confinement of Terrorism prison (known as CECOT, for its name in Spanish), which only accommodates men.<sup>134</sup>

According to court filings, the government believed in March that it has at least 86 other Venezuelans already in detention who it characterizes as members of TdA, which would make them subject to removal as “enemy aliens,” and that it has identified 172 possible targets who were at liberty.<sup>135</sup> In mid-April, the US government provided 177 Venezuelans being held in Texas with “notice” that they were “alien enemies” under the terms of the act and subject to “apprehension and removal.”<sup>136</sup> The notice, which was provided in writing in English, mentioned that the detainees could make a phone call but did not refer to an ability to file a habeas petition to seek judicial review.<sup>137</sup>

The administration has not produced any meaningful evidence to substantiate the assertion that any of these individuals are associated with Tren de Aragua. Court records indicate that the Trump administration used a flawed checklist, titled “Alien Enemy Validation Guide,” to ascertain alien enemy status, guiding ICE officers to tally points for different categories of alleged TdA membership characteristics, including items like

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<sup>133</sup> Plaintiffs’ Motion for Preliminary Injunction in *J.G.G., v. Trump*, 1:25-cv-00766-JEB (D.D.C., filed March 28, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.67.1.pdf> (accessed April 10, 2025).

<sup>134</sup> Bart Janson, “Venezuelan women deported under Alien Enemies Act were returned to US, lawyers say,” *USA Today*, March 24, 2025, <https://www.usatoday.com/story/news/politics/2025/03/24/venezuelan-deportation-flights-salvador-women-rejected/82642086007/> (accessed April 11, 2025).

<sup>135</sup> Declaration of Robert L. Cerna in *J.G.G., v. Trump*, 1:25-cv-00766 (JEB) (D.D.C., filed March 18, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.28.1\\_1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.28.1_1.pdf) (accessed April 10, 2025).

<sup>136</sup> X post, @camiloreports, April 18, 2025, <https://x.com/camiloreports/status/1913296258619351161/photo/1> (accessed April 23, 2025).

<sup>137</sup> A legal challenge based on that notice led to the Supreme Court issuing an extraordinary midnight restraining order against the removal of members of the “putative class” of alien enemies being held in the northern district of Texas. *A.A.R.P. v. Trump*, US Supreme Court, 604 US \_\_\_\_ (2025), April 19, 2025, [https://www.supremecourt.gov/opinions/24pdf/24a1007\\_22p3.pdf](https://www.supremecourt.gov/opinions/24pdf/24a1007_22p3.pdf) (accessed April 23, 2025). See also Petitioners-Plaintiffs’ Renewed Emergency Application for Temporary Restraining Order Case, *AARP v. Trump*, N.D. Tex. No. :25-cv-00059-H (N.D. Tex., filed April 18, 2025), <https://www.aclu.org/cases/aarp-v-trump?document=Renewed-TRO-Application> (accessed April 23, 2025).

tattoos and guidance about “high end urban streetwear,” to identify which Venezuelans they believe were part of Tren de Aragua.<sup>138</sup>

The US government has referred to tattoos and hand gestures, among other criteria, as used in determining membership in TdA. An expert on the group wrote in a sworn declaration that neither are “credible” ways to identify members of TdA and the “government’s reliance on tattoos appears to result from an incorrect conflation of gang practices in Central America and Venezuela.”<sup>139</sup>

Lawyers for some of the Venezuelans deported on March 15 have provided evidence that strongly contradicts the Trump administration’s blanket classification of individuals as members of Tren de Aragua. Many had active conventional immigration proceedings pending against them, including asylum claims, some with pending hearings previously scheduled for just days after their deportation.<sup>140</sup> Others had temporary protected status in the United States, in recognition of the risks of return back to Venezuela.<sup>141</sup> One of the plaintiffs in the ongoing litigation in Colorado asserts that not only is he not a member of the Tren de Aragua, but also that he was a victim of the group while in Venezuela and the group had murdered members of his family.<sup>142</sup>

Past invocations of the act entailed a registration procedure (during World War I) or appearance before a volunteer-run hearing board (during World War II),<sup>143</sup> but the Trump

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<sup>138</sup> Declaration of Oscar Sarabia Roman and attached exhibits, Exhibit S, *J.G.G. v Trump*, 1:25-cv-00766-JEB (filed March 28, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.67.21.pdf> (accessed April 23, 2025).

<sup>139</sup> Declaration of Rebecca Hanson, Assistant Professor of Sociology and Criminology at the University of Florida, Exhibit A, *J.G.G. v. Trump*, 1:25-cv-00766-JEB (filed March 28, 2025), <https://www.courtlistener.com/docket/69741724/67/3/jgg-v-trump/> (accessed April 11, 2025).

<sup>140</sup> Trevor Hughes, “Trump shipped them to El Salvador. Their families say their only crime was a tattoo,” *USA Today*, March 21, 2025, <https://www.usatoday.com/story/news/nation/2025/03/21/venezuelan-immigrants-deportations-gang-member-evidence/82570298007/> (accessed April 11, 2025).

<sup>141</sup> Human Rights Watch interviews with families of Venezuelans held in CECOT conducted in March-April 2025.

<sup>142</sup> Class Petition For Writ Of Habeas Corpus And Class Complaint For Declaratory And Injunctive Relief, *D.B.U. et al. v Trump*, 1:25-cv-01163-CNS (filed April 12, 2025), <https://www.courthousenews.com/wp-content/uploads/2025/04/dbu-v-donald-trump-complaint-us-district-of-denver.pdf> (accessed April 21, 2025) (“R.M.M. fled Venezuela because the Tren De Aragua gang murdered his wife’s father and uncle, and he fears that Tren De Aragua will also murder him, his wife, or his children. R.M.M. also protested against the Maduro regime and has been harmed by groups aligned with the regime.”).

<sup>143</sup> Harris, “Alien Enemy Hearing Board.” See also Department of Justice statement announcing the instatement of the Enemy Alien Hearing Boards, December 20, 1941, <https://digitalcollections.lib.washington.edu/digital/collection/pioneerlife/id/17306> (accessed April 11, 2025).

administration rushed deportations without even that minimal degree of individualized procedure.

## Enforced Disappearance

A distinguishing feature of the US government's March 2025 invocation of the 1798 Act is that instead of detaining those designated as "alien enemies" within the United States or repatriating them to their country of origin,<sup>144</sup> these detainees have so far been placed in a notorious maximum-security prison in El Salvador. In that facility, notorious for its inhumane conditions, the detainees are being held incommunicado, indefinitely, and without any apparent legal basis under Salvadoran law.<sup>145</sup> The US government has refused to disclose the terms of its agreement with El Salvador, even in the context of court proceedings.<sup>146</sup>

Human Rights Watch has so far interviewed 40 relatives of people apparently removed to El Salvador.<sup>147</sup> All family members interviewed said US immigration authorities initially told their relatives, who were in immigration detention, that they would be sent back to Venezuela.<sup>148</sup> None of the detainees were told they would be sent to El Salvador, the relatives said.<sup>149</sup>

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<sup>144</sup> For Human Rights Watch research on deportations during first Trump administration, see Human Rights Watch, "The Deported," 2017, <https://www.hrw.org/blog-feed/the-deported>.

<sup>145</sup> Human Rights Watch, "US/El Salvador: Venezuelan Deportees Forcibly Disappeared," Human Rights Watch news release, April 11, 2025, <https://www.hrw.org/news/2025/04/11/us/el-salvador-venezuelan-deportees-forcibly-disappeared>.

<sup>146</sup> Response to Plaintiffs' Motion for Additional Relief, *Abrego Garcia v. Noem*, Civil No.: 8:25-cv-00951-PX, April 13, 2025, <https://storage.courtlistener.com/recap/gov.uscourts.mdd.578815/gov.uscourts.mdd.578815.65.o.pdf> (accessed April 16, 2025) ("Plaintiffs' request for 'documents . . . reflect[ing] the terms of any agreement, arrangement or understanding regarding the Government's use of 6 CECOT to house US deportees,' calls for the immediate production of classified documents, as well as documents that Defendants may elect to assert are subject to the protections of attorney-client privilege and the State Secrets privilege. It would be inappropriate for this Court to hastily order production of these sensitive documents, particularly where Defendants are continuing to regularly update the Court here."). Public reporting of the terms of the agreement with El Salvador are included in Matthew Lee and Regina Garcia Cano, "US prepares to deport about 300 alleged gang members to El Salvador," *Associated Press*, March 15, 2025, <https://apnews.com/article/trump-deportations-salvador-tren-aragua-64e72142a171ea57c869c3b35eeecce7> (accessed April 23, 2025) ("The Republic of El Salvador confirms it will house these individuals for one (1) year, pending the United States' decision on their long term disposition," wrote El Salvador's ministry of foreign affairs in a memo obtained by The Associated Press.).

<sup>147</sup> Human Rights Watch, "US/El Salvador: Venezuelan Deportees Forcibly Disappeared."

<sup>148</sup> *Ibid.*

<sup>149</sup> *Ibid.*

The government of El Salvador published a video<sup>150</sup> showing the faces of some of them, but neither government published a list of the people who were sent to and detained at CECOT, nor explained the legal basis, if any, for their detention there.

ICE maintains an Online Detainee Locator System (ODLS), which lawyers and relatives use to find people held during immigration proceedings.<sup>151</sup> In early April 2025, Human Rights Watch cross-referenced the case numbers of some of the deportees and confirmed they had been removed from the system.<sup>152</sup> ICE indicates on its website, most recently updated on April 7, 2025, that “the ODLS only has information for detained aliens who are currently in ICE custody or who were released from ICE custody within the last 60 days.”<sup>153</sup> This seems to indicate that the names of the Venezuelans Human Rights Watch interviewed were deleted sooner than is standard ICE practice.

Some relatives told Human Rights Watch that when they called US detention centers or ICE offices to ask about their relatives’ whereabouts, officials told them that they could not provide any information, that their family members no longer appeared in the locator system, or that their whereabouts were unknown.<sup>154</sup> In a few cases, officials informed them that their relatives had been removed from the United States, but did not say where they had been sent.<sup>155</sup>

On March 20, CBS News obtained and published an internal US government list of names, without identification numbers, of people sent to El Salvador.<sup>156</sup> Neither Salvadoran nor US authorities have confirmed the authenticity of the list, although Human Rights Watch found all the names of the people whose cases we have documented on the list.<sup>157</sup>

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<sup>150</sup> X post, @nayibbukele, March 16, 2025, <https://x.com/nayibbukele/status/1901245427216978290> (accessed April 23, 2025).

<sup>151</sup> US Immigration and Customs Enforcement maintains an Online Detainee Locator System, available online at <https://locator.ice.gov/odls/#/search>.

<sup>152</sup> Human Rights Watch, “US/El Salvador: Venezuelan Deportees Forcibly Disappeared.”

<sup>153</sup> Immigration and Customs Enforcement, Attorney Information Resources, updated: April 7, 2025, <https://www.ice.gov/detain/attorney-information-resources> (accessed April 21, 2025).

<sup>154</sup> Human Rights Watch, “US/El Salvador: Venezuelan Deportees Forcibly Disappeared.”

<sup>155</sup> Ibid.

<sup>156</sup> See Camilo Montoya-Galvez and Annabelle Hanflig, “Here are the names of the Venezuelans deported by the US to El Salvador,” *CBS News*, March 20, 2025, <https://www.cbsnews.com/news/venezuelans-deported-el-salvador-names/> (accessed April 22, 2025) (hereinafter “CBS News List”).

<sup>157</sup> Human Rights Watch, “US/El Salvador: Venezuelan Deportees Forcibly Disappeared.”

Many of the relatives interviewed by Human Rights Watch said they are unfamiliar with the legal system in El Salvador and do not know which authorities they should contact to obtain information about their relatives.<sup>158</sup> The interviewees said that they believed their family members are in El Salvador because of compelling scraps of information they have been able to piece together.<sup>159</sup> A Salvadoran lawyer representing several of the detainees told Human Rights Watch he has not been allowed to meet or speak with his clients.<sup>160</sup>

Under international law, an enforced disappearance occurs when authorities deprive a person of their liberty and then refuse to disclose that person's fate or whereabouts. This violation is especially serious because it places people outside the protection of the law, making further abuses likely.<sup>161</sup> The UN Working Group on Enforced or Involuntary Disappearances has explained that there is no required length of time for the deprivation of liberty or the failure to disclose information to amount to an enforced disappearance.<sup>162</sup> Similarly, the UN Committee on Enforced Disappearances, which monitors compliance with and issues authoritative interpretations of the International Convention for the Protection of All Persons from Enforced Disappearance, has concluded that all cases of deprivation of liberty followed by refusal to acknowledge deprivation of liberty or concealment of a person's fate or whereabouts are enforced disappearances, "regardless of the duration of the said deprivation of liberty or concealment."<sup>163</sup> In the context of migration, the Committee on Enforced Disappearances has observed:

To prevent migrants from becoming victims of enforced disappearance in the context of immigration detention, they must always be able, from the outset of their detention and regardless of its duration, to communicate

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<sup>158</sup> Ibid.

<sup>159</sup> Ibid.

<sup>160</sup> Ibid.

<sup>161</sup> The Human Rights Committee has observed that "while the Covenant does not explicitly use the term 'enforced disappearance' in any of its articles, enforced disappearance constitutes a unique and integrated series of acts that represent continuing violation of various rights recognized in that treaty." Human Rights Committee, *Dhakal v. Nepal*, Communication No. 2185/2012, U.N. Doc. CCPR/C/119/D/2185/2012 (2017) <https://juris.ohchr.org/casedetails/2265/en-US> (accessed April 23, 2025), para. 11.5.

<sup>162</sup> Human Rights Council, Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. A/HRC/39/46 (July 30, 2018) <https://docs.un.org/A/HRC/39/46> (accessed April 23, 2025), para. 143. See also Working Group on Enforced or Involuntary Disappearances, General Comment on the Definition of Enforced Disappearance, [https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/disappearance\\_gc.pdf](https://www.ohchr.org/sites/default/files/Documents/Issues/Disappearances/disappearance_gc.pdf) (accessed April 23, 2025), para. 8.

<sup>163</sup> *Yrusta v. Argentina*, Communication No. 1/2013, Committee on Enforced Disappearances, U.N. Doc. CED/C/10/D/1/2013 (April 12, 2016), para. 10.3.

with their relatives, consular authorities, legal representatives or any other person whom they could inform about their fate or whereabouts.<sup>164</sup>

This standard was not met with the March 15 transfers.

Family members of people subject to enforced disappearance are also victims entitled to remedy. In an early resolution, the UN General Assembly noted “the anguish and sorrow which such circumstances cause to the relatives of disappeared persons, especially to spouses, children and parents.”<sup>165</sup> The Human Rights Committee,<sup>166</sup> the Working Group on Enforced or Involuntary Disappearances,<sup>167</sup> and the Inter-American Court on Human Rights,<sup>168</sup> among other authorities, regularly consider a disappeared person’s family members as survivors of human rights violations who are entitled to remedies. The working group has emphasized, for example, that children are victims of enforced disappearance when “their mother, father, legal guardian or other relative is subjected to enforced disappearance.”<sup>169</sup>

## Risks of Torture, Ill-Treatment, and Arbitrary Detention

The transfer of Venezuelans to CECOT in El Salvador violates the principle of nonrefoulement under international law given widely documented conditions in El Salvador’s penitentiary system.<sup>170</sup> Human Rights Watch, Amnesty International, and

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<sup>164</sup> Committee on Enforced Disappearances, General Comment No. 1 on Enforced Disappearance in the Context of Migration, U.N. Doc. CED/C/GC/1 (October 26, 2023), <https://docs.un.org/CED/C/10/D/1/2013> (accessed April 23, 2025), para. 16.

<sup>165</sup> UN General Assembly, Disappeared persons, Res. 33/173 (December 20, 1978), <https://digitallibrary.un.org/record/1734?v=pdf> (accessed April 23, 2025).

<sup>166</sup> See for example, *María del Carmen Almeida de Quinteros v. Uruguay*, Views, Human Rights Committee, Communication No. 107/1981 (July 21, 1983), in *Selected Decisions of the Human Rights Committee Under the Optional Protocol*, vol. 2, U.N. Doc. CCPR/C/OP/2, U.N. Sales No. E.89.XIV.1 (March 1990), [https://www.ohchr.org/sites/default/files/Documents/Publications/SelDec\\_2\\_en.pdf](https://www.ohchr.org/sites/default/files/Documents/Publications/SelDec_2_en.pdf) (accessed September 30, 2024), para. 14, p. 142.

<sup>167</sup> Commission on Human Rights, Report of the Working Group on Enforced or Involuntary Disappearances, U.N. Doc. E/CN.4/1990/13 (January 24, 1990), <https://docs.un.org/en/E/CN.4/1990/13> (accessed April 23, 2025), para. 339.

<sup>168</sup> *Anzualdo Castro v. Peru*, Inter-Am. Ct. H.R. (ser. C) No. 202, (September 22, 2009), [https://www.worldcourts.com/iacthr/eng/decisions/2009.09.22\\_Anzualdo\\_Castro\\_v\\_Peru.htm](https://www.worldcourts.com/iacthr/eng/decisions/2009.09.22_Anzualdo_Castro_v_Peru.htm) (accessed April 23, 2025), para. 118.

<sup>169</sup> Working Group on Enforced or Involuntary Disappearances, General Comment on Children and Enforced Disappearances, UN Doc. A/HRC/WGEID/98/1 (2013), <https://docs.un.org/en/A/HRC/WGEID/98/1> (accessed April 23, 2025), para. 2.

<sup>170</sup> United Nations Committee against Torture, Concluding observations on the third periodic report of El Salvador, UN Doc. CAT/C/SLV/CO/3 (2002), <https://digitallibrary.un.org/record/4002255> (accessed April 22, 2025), para. 22, (“It is concerned at reports of failure to execute release orders, the lack of strict separation of untried prisoners and convicted prisoners and

Cristosal have documented torture and other abuse against prisoners in El Salvador's penal centers.<sup>171</sup> Cristosal and Amnesty International have described the use of torture as "systematic."

The Trump administration asserts it is complying with obligations under CAT, claiming without evidence that they would not have sent detainees to El Salvador if there was a risk of torture.<sup>172</sup> However, the government has refused to reveal the terms of the agreement with El Salvador, which would clarify if it has any written guarantees about the conduct and treatment that will be afforded to those housed in CECOT at the US government's request.<sup>173</sup> Even the existence of such guarantees would not constitute a reasonable basis for removing people to be detained indefinitely and arbitrarily in CECOT.

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the ill-treatment of persons deprived of their liberty"). See also Lutz Oette, "Degradation as salvation: Reflections on El Salvador's punitive prison model," *Torture*, vol. 34(1) (2024), p. 143-147, <https://tidsskrift.dk/torture-journal/article/view/144071> (accessed April 23, 2025).

<sup>171</sup> Juanita Goebertus, "Human Rights Watch declaration on prison conditions in El Salvador for the J.G.G. v. Trump case," Human Rights Watch statement, March 20, 2025, <https://www.hrw.org/news/2025/03/20/human-rights-watch-declaration-prison-conditions-el-salvador-jgg-v-trump-case>; Amnesty International, "El Salvador: Policies, practices, and abusive, arbitrary legislation violate human rights and threaten civic space," December 5, 2023, <https://www.amnesty.org/en/latest/news/2023/12/el-salvador-policies-practices-legislation-violate-human-rights/> (accessed April 11, 2025); "El Silencio no es opción: Investigación sobre las practicas de tortura, muerte, y justicia fallida el el regimen de excepción," *Cristosal*, July 2024, <https://cristosal.org/ES/presentacion-informe-el-silencio-no-es-opcion/> (accessed April 11, 2025) ("July 2024 report from Cristosal—compiled from 3,643 reports of abuses or rights violations, 110 interviews, case-by-case analyses of 7,742 detainees' experiences—concluded that "torture has become a state policy, with cruel and inhuman treatment regularly practices in prisons and places of detention.").

<sup>172</sup> Application to Vacate the Injunction Issued by the United States District Court for the District of Maryland and Request for an Immediate Administrative Stay, *Kilmar Armanado Abrego Garcia v. Noem*, No. 24AX (filed April 7, 2025), [https://www.supremecourt.gov/DocketPDF/24/24A949/354843/20250407103341248\\_Kristi%20Noem%20application.pdf](https://www.supremecourt.gov/DocketPDF/24/24A949/354843/20250407103341248_Kristi%20Noem%20application.pdf) (accessed April 23, 2025); But photos and videos published by El Salvador's government show detainees heads being shaved and the use of combination cuffs as a restraint, simultaneously restricting the movement of their limbs and forcing them to bend. X post, @nayibbukele, March 16, 2025, <https://x.com/nayibbukele/status/1901245427216978290> (accessed April 21, 2025). See also Philip Holsinger, "What the Venezuelans Deported to El Salvador Experienced," *Time*, March 21, 2025, <https://time.com/7269604/el-salvador-photos-venezuelan-detainees/> (accessed April 21, 2025); UN Special Rapporteur on Torture and Other Cruel, Inhuman, Degrading Treatment and Punishment, Alice Edwards, has identified these types of restraints as potentially facilitating torture and mistreatment. She warns, "if the connecting chain is too short it could force the detainee to stoop, which may be humiliating or degrading." Alice Jill Edwards, Annex 2, Report of the UN Special Rapporteur on Torture, and Other Cruel, Inhuman and Degrading Treatment or Punishment, A/78/324, <https://www.ohchr.org/sites/default/files/documents/issues/torture/sr/annex-ii-document-august-2023-18-09-23.pdf#page=5> (accessed April 23, 2025), p. 5.

<sup>173</sup> Response To Plaintiffs' Motion For Additional Relief, *Abrego Garcia v Noem*, Civil No.: 8:25-cv-00951- PX. (Plaintiffs' request for 'documents . . . reflect[ing] the terms of any agreement, arrangement or understanding regarding the Government's use of CECOT to house US deportees,' ECF 62 at 4, calls for the immediate production of classified documents, as well as documents that Defendants may elect to assert are subject to the protections of attorney-client privilege and the State Secrets privilege. It would be inappropriate for this Court to hastily order production of these sensitive documents, particularly where Defendants are continuing to regularly update the Court here.").

The Trump administration makes no pretense of believing that the Venezuelans it has sent to be imprisoned in CECOT will be released after completing some lawful, finite term of incarceration. US Secretary of Homeland Security Kristi Noem has said: “We’re confident that people that are [imprisoned in El Salvador] should be there, and they should stay there for the rest of their lives.”<sup>174</sup> Lawyers and family members of the Venezuelans told Human Rights Watch they have had no contact with the men since they arrived.<sup>175</sup>

While Human Rights Watch has not visited CECOT, it has reviewed media coverage of the prison and documented abuses in other prisons in El Salvador, including Izalco, La Esperanza (Mariona), and Santa Ana prisons.<sup>176</sup> This includes cases of torture, ill-treatment, incommunicado detention, severe violations of due process, and inhumane conditions, such as lack of access to adequate healthcare and food.<sup>177</sup> Many of those incarcerated at CECOT have not been sentenced to a term of incarceration there and the Salvadoran government has offered no clarity as to when, if ever, particular detainees might one day be released. In fact, authorities in El Salvador have in some cases stated that people held in CECOT will never be released—a policy that could possibly be the fate of the deported Venezuelans as well.<sup>178</sup>

Kilmar Abrego Garcia was moved from CECOT to another El Salvador prison facility in early April 2025<sup>179</sup> but Human Rights Watch is not aware of any cases where individuals detained in CECOT have been released since the facility opened in 2023.<sup>180</sup>

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<sup>174</sup> Brittany Gibson, “Migrant detainees should be in El Salvador prison ‘for the rest of their lives,’ Noem says,” *Axios*, April 9, 2025, <https://www.axios.com/2025/04/09/kristi-noem-migrants-trump-ice-prison> (accessed April 23, 2025).

<sup>175</sup> Human Rights Watch interviews with family members of Venezuelans suspected to be detained in CECOT

<sup>176</sup> Goebertus, “Human Rights Watch declaration on prison conditions in El Salvador for the J.G.G. v. Trump case.” See also Declaration of Dr. Sarah C. Bishop, Risks for Non-Salvadoran Actors Facing Third Country Removal to El Salvador, Exhibit C, 1:25-cv-00766-JEB (March 19, 2025), [https://www.supremecourt.gov/DocketPDF/24/24A931/354494/20250401120252598\\_24A931%20Response%20Appx%202.pdf](https://www.supremecourt.gov/DocketPDF/24/24A931/354494/20250401120252598_24A931%20Response%20Appx%202.pdf) (accessed April 23, 2025).

<sup>177</sup> *Ibid.*

<sup>178</sup> “‘Como Gabinete de Seguridad nos encargaremos de que ninguno de los que entre al CECOT salga caminando nunca’: Ministro Gustavo Villatoro,” Ministerio de Justicia y Seguridad Pública, February 6, 2023, <https://www.seguridad.gob.sv/como-gabinete-de-seguridad-nos-encargaremos-de-que-ninguno-de-los-que-entre-al-cecot-salga-caminando-nunca-ministro-gustavo-villatoro/> (accessed April 11, 2025) (“‘Nosotros como Gabinete de Seguridad nos vamos a encargar de que las penas sean suficientemente altas para que ninguno de los que entre al CECOT salga caminando nunca, únicamente podrán salir en un ataúd’, afirmó.”).

<sup>179</sup> Kumar, “One Man’s Ordeal Triggers Test of US Constitution.”

<sup>180</sup> Goebertus, “Human Rights Watch declaration on prison conditions in El Salvador for the J.G.G. v. Trump case.”



## Court Challenges

The administration's use of the act in circumstances so unlike those that gave rise to its use by prior administrations invites scrutiny, as does the flimsy factual case advanced by the administration to justify its invocation of the act. In his order, the president asserts that Tren de Aragua is a "hybrid criminal state" that acts under the direction of Venezuela's government, while also noting that US authorities have designated it a "foreign terrorist organization" and "global terrorist group."<sup>181</sup> The Executive Order states, without evidence, that "thousands of (TdA) members ... are conducting irregular warfare and undertaking hostile actions against the United States."<sup>182</sup> It claims these actions are taken as a part of the "Maduro regime's goal of destabilizing democratic nations in the Americas, including the United States."<sup>183</sup>

These assertions may well be entirely pretextual, a fabricated justification for invoking the Alien Enemies Act's authority.<sup>184</sup> One troubling question all of this presents, is whether the act entails meaningful limits on and allows for any judicial scrutiny of a president's determination that the United States is facing a situation that allows for the use of its sweeping powers.

When considering the first of several challenges to removals undertaken pursuant to the president's March Executive Order, Judge James Boasberg, chief judge of the district court

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<sup>181</sup> Foreign Terrorist Organization Designations of Tren de Aragua, Mara Salvatrucha, Cartel de Sinaloa, Cartel de Jalisco Nueva Generacion, Carteles Unidos, Cartel del Noreste, Cartel del Golfo, and La Nueva Familia Michoacana, Executive Order. 90 Fed. Reg. 10,030 (February 20, 2025), <https://www.federalregister.gov/documents/2025/02/20/2025-02873/foreign-terrorist-organization-designations-of-tren-de-aragua-mara-salvatrucha-cartel-de-sinaloa> (accessed April 10, 2025).

<sup>182</sup> White House, Presidential Actions, "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua," (note that while the order was posted online on March 15, its text indicates it was signed by the president on March 14).

<sup>183</sup> White House, Presidential Actions, "Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua." (Note that while the order was posted online on March 15, its text indicates it was signed by the president on March 14). Alternatively, the government argues, similarly without evidence, that "TdA also operates as a de facto government in the areas [within Venezuela] in which it operates." These claims are not substantiated by assessments from the US intelligence community or experts on TdA.

<sup>184</sup> Even the government's own intelligence estimates suggest otherwise. John Hudson and Warren P. Strobel, "US intelligence contradicts Trump's justification for mass deportations," *Washington Post*, April 17, 2025, <https://www.washingtonpost.com/national-security/2025/04/17/us-intelligence-tren-de-aragua-deportations-trump/> (accessed April 18, 2025) ("The National Intelligence Council, drawing on the acumen of the United States' 18 intelligence agencies, determined in a secret assessment early this month that the Venezuelan government is not directing an invasion of the United States by the prison gang Tren de Aragua, a judgment that contradicts President Donald Trump's public statements, according to people familiar with the matter. The determination is the US government's most comprehensive assessment to date undercutting Trump's rationale" for invoking the act.).

for the District of Columbia, noted that the case would turn partly on how the courts weigh an argument that the Alien Enemies Act does not “provide a basis for the president's proclamation given that the terms invasion, predatory incursion really relate to hostile acts perpetrated by any nation and commensurate to war.”<sup>185</sup> He also opined that the administration’s attempt to use the act under the present circumstances is “troublesome and problematic.”<sup>186</sup>

Worried about irreversible consequences, civil society groups filed a legal challenge to the act’s invocation on behalf of five Venezuelan nationals.<sup>187</sup> These groups successfully secured a temporary restraining order from a district court to block deportations of the named plaintiffs under the act and also obtained a nationwide temporary restraining order which was in effect until April 7.<sup>188</sup> In issuing that temporary relief, the district court specifically ordered the government to turn around any deportation flights that were midair so no individual’s rights were compromised irreparably while the court weighed challenges to the act’s application.<sup>189</sup> The government did not order the flights to turn around, a

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<sup>185</sup> Motion Hearing Held via Zoom Before the Honorable James E. Boasberg United States District Chief Judge, *J.G.G. v. Trump*, 1:25-cv-00766-JEB (March 15, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.20.o\\_4.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.20.o_4.pdf) (accessed April 23, 2025).

<sup>186</sup> Ximena Bustillo and Jasmine Garsd, “Judge Boasberg voices skepticism over use of Alien Enemies Act deportations,” *NPR*, March 21, 2025, <https://www.npr.org/2025/03/21/nx-s1-5335532/trump-judge-alien-enemies-act> (accessed April 23, 2025).

<sup>187</sup> American Civil Liberties Union, Democracy Forward, and ACLU of the District of Columbia, “ACLU and Democracy Forward Sue Trump Administration Over Expected Invocation of Alien Enemies Act,” *ACLU*, March 15, 2025, <https://www.acludc.org/en/press-releases/aclu-and-democracy-forward-sue-trump-administration-over-expected-invocation-alien> (accessed April 11, 2025).

<sup>188</sup> Since then, plaintiffs have secured district wide restraining orders from judges in the southern district of Texas, western district of Pennsylvania, southern district of New York, Colorado, and Nevada in April. Temporary Restraining Order, *J.A.V. v. Trump*, No. 25-cv-72, (S.D. Tex. filed April 11, 2025), <https://www.courtlistener.com/docket/69862833/34/jav-v-trump/> (accessed April 23, 2025) (enjoining respondents from removing the named petitioners and “any person that Respondents have previously claimed is subject to removal under the Proclamation” from the Southern District of Texas); Order of the Court enjoining removal of petitioner, *A.S.R. v Trump*, No 3:25-cv-00113-SLH, (W.D. Pa. filed April 15, 2025) <https://clearinghouse.net/doc/158771/> (accessed April 23, 2025); Amended Temporary Restraining Order, *G.F.F. v. Trump*, No. 25-cv-2886, S.D.N.Y. (filed April 11, 2025), <https://www.courtlistener.com/docket/69857769/35/gff-v-trump/> (accessed April 23, 2025) (enjoining respondents from removing “all noncitizens in federal, state, or local custody in the Southern District of New York who are, were, or will be subject to the March 2025 Presidential Proclamation” from the Southern District of New York); Court’s Minute Order, *D.B.U. v. Trump*, 25-cv-01163-CNS (filed April 14, 2025), <https://www.documentcloud.org/documents/25897164-dbucloradoclariyo41425/>; Order Granting Preliminary Injunction, *Viloria Aviles v. Trump*, No 2:25-cv-00611 D.Nev (filed April 17, 2025) <https://storage.courtlistener.com/recap/gov.uscourts.nvd.174020/gov.uscourts.nvd.174020.14.o.pdf> (accessed April 23, 2025).

<sup>189</sup> X post, @camiloreports, March 15, 2025, <https://x.com/camiloreports/status/1901044515407876567> (accessed April 11, 2025).

decision which has since spiraled into contempt proceedings<sup>190</sup> and vicious rhetorical attacks on the judiciary. It has also quite possibly set the stage for a disastrous clash between the executive and the judiciary.<sup>191</sup>

The government protested the initial restraining order, saying in relevant part:

[D]elayed removal may be removal denied. Removal operations entail delicate international negotiations, and those operations, once halted, have the significant potential of never resuming.<sup>192</sup>

Outside of court, the Trump administration publicly engaged in a campaign to discredit the district court judge<sup>193</sup> who issued the temporary restraining order. Some Republican members of Congress introduced measures calling for the judge's impeachment.<sup>194</sup> The president himself referred to the judge as a:

Radical Left lunatic of a Judge, a troublemaker and an agitator who was sadly appointed by Barack Hussein Obama.... The Judge like many of the Crooked Judges I am forced to appear before should be impeached.<sup>195</sup>

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<sup>190</sup> Emergency Motion For A Stay Pending Appeal Or, In The Alternative, A Writ Of Mandamus, *J.G.G. v Trump*, No. 25-5124, April 17, 2025, <https://storage.courtlistener.com/recap/gov.uscourts.cadc.41957/gov.uscourts.cadc.41957.01208731409.1.pdf> (accessed April 23, 2025) ("The district court's contempt order initiates further *constitutional* collision.").

<sup>191</sup> In their dissent in *A.A.R.P. v Trump*, 604 US \_\_2025, Justices Alito and Thomas write: "Both the Executive and the Judiciary have an obligation to follow the law. The Executive must proceed under the terms of our order in *Trump v. J. G. G.*, 604 U. S. \_\_ (2025) (per curiam), and this Court should follow established procedures".

<sup>192</sup> Emergency Motion for a Stay Pending Appeal, *J.G.G., v. Trump*, 1:25-cv-00766 (D.D.C., filed March 16, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.cadc.41844/gov.uscourts.cadc.41844.01208720432.0\\_1.pdf](https://storage.courtlistener.com/recap/gov.uscourts.cadc.41844/gov.uscourts.cadc.41844.01208720432.0_1.pdf) (accessed April 10, 2025).

<sup>193</sup> Judge Boasberg was originally appointed by President George W. Bush and subsequently elevated by Obama.

<sup>194</sup> H.Res. 229, Impeaching James E. Boasberg, United States District Court Chief Judge for the District of Columbia, for high crimes and misdemeanors, 119th Congress (2025-2026), <https://www.congress.gov/bill/119th-congress/house-resolution/229/text> (accessed April 19, 2025); "Congressman Biggs Introduces Resolution to Remove Judge Boasberg for Failure to Comply with Good Behavior Clause," *Congressman Andy Biggs*, March 31, 2025, <https://biggs.house.gov/media/press-releases/congressman-biggs-introduces-resolution-remove-judge-boasberg-failure-comply> (accessed April 19, 2025). See also Asher Boiskin and Henry Liu, "Federal Judge James Boasberg '85 LAW '90 faces political firestorm over deportation ruling," *Yale News*, March 28, 2025, <https://yaledailynews.com/blog/2025/03/28/federal-judge-james-boasberg-85-law-90-faces-political-firestorm-over-deportation-ruling/> (accessed April 11, 2025).

<sup>195</sup> Truth Social post, Donald Trump, March 18, 2025, <https://truthsocial.com/@realDonaldTrump/posts/114183576937425149> (accessed April 11, 2025).

These rhetorical attacks led to a rare rebuke of the president by Supreme Court Chief Justice John Roberts.<sup>196</sup>

In April 2025, the US Supreme Court lifted the nationwide temporary restraining order imposed by the district court, determining that “[c]hallenges to removal under the AEA, a statute that ‘largely precludes judicial review’ ... must be filed in the district of confinement.”<sup>197</sup> In an unusual move, 10 days later the Supreme Court stepped in once again<sup>198</sup> to bar the government from removing any detainees from the northern district of Texas on April 19 based on claims<sup>199</sup> that additional deportation flights were imminent.<sup>200</sup>

It also held that:

AEA detainees must receive notice after the date of this order that they are removable under the Act. The notice must be afforded within a reasonable time and in such manner as will allow them to actually seek habeas relief in the proper venue before removal occurs ... today’s order and *per curiam* affirm that the detainees subject to removal orders under the AEA are entitled to notice and an opportunity to challenge their removal.<sup>201</sup>

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<sup>196</sup> Chris Megerian, Lindsay Whitehurst, and Mark Sherman, “Roberts rejects Trump’s call for impeaching judge who ruled against his deportation plans,” *AP News*, March 18, 2025, <https://apnews.com/article/donald-trump-federal-judges-impeachment-29da1153a9f82106748098a6606fec39> (accessed April 11, 2025).

<sup>197</sup> *Ibid.*

<sup>198</sup> This contrasts with the fifth circuit, which denied the appeal from the district court saying that it lacked jurisdiction. *A.A.R.P. v Trump*, No: 25-10534, April 18, 2025, (5<sup>th</sup> Circuit, 2025) (“We do not doubt the diligence and ability of the respected district judge in this case to act expeditiously when circumstances warrant. Petitioners insist that they tried to proceed before the district court in the first instance, and that the district court simply “refus[ed] to act.” But the district court’s order today indicates that Petitioners gave the court only 42 minutes to act--and did not give Respondents an opportunity to respond.”).

<sup>199</sup> Reply In Support Of Emergency Application For An Emergency Injunction Or Writ Of Mandamus, Stay Of Removal, And Request For An Immediate Administrative Injunction in *A.A.R.P. v Trump*, 604 US \_\_\_\_ (2025) No. 24A1007, US Supreme Court, April 21, 2025, [https://www.supremecourt.gov/DocketPDF/24/24A1007/356074/20250421045953494\\_2025.04.21%20AARP%20SCOTUS%20Reply\\_Final%20pdfa.pdf](https://www.supremecourt.gov/DocketPDF/24/24A1007/356074/20250421045953494_2025.04.21%20AARP%20SCOTUS%20Reply_Final%20pdfa.pdf) (accessed April 21, 2025) (“The information was not a false alarm. As it turned out, individuals were loaded onto buses that left the Texas facility around 5:35 p.m. CDT, only later to be turned around, presumably because of Applicants’ filing in this Court.”).

<sup>200</sup> US Supreme Court, Order in Pending Case, *A.A.R.P. v Trump*, 604 US \_\_\_\_ (2025), No. 24A1007, April 19, 2025, [https://www.supremecourt.gov/orders/courtorders/041925zr\\_c18e.pdf](https://www.supremecourt.gov/orders/courtorders/041925zr_c18e.pdf) (accessed April 21, 2025).

<sup>201</sup> *J.G.G., v. Trump*, No. 24A931, 604 U. S. \_\_\_\_ (2025) (April 7, 2025), [https://www.supremecourt.gov/opinions/24pdf/24a931\\_2c83.pdf](https://www.supremecourt.gov/opinions/24pdf/24a931_2c83.pdf) (accessed April 11, 2025), p. 3.

Writing for the partial dissent, Sotomayor, Kagan, Jackson, and Comey Barrett concluded the “(g)overnment’s conduct in this litigation poses an extraordinary threat to the rule of law.”<sup>202</sup> They conclude:

The implication of the Government’s position is that not only noncitizens but also United States citizens could be taken off the streets, forced onto planes, and confined to foreign prisons with no opportunity for redress if judicial review is denied unlawfully before removal. History is no stranger to such lawless regimes, but this Nation’s system of laws is designed to prevent, not enable, their rise.<sup>203</sup>

Practically, the speed with which the government is seeking to remove individuals designated as “alien enemies” to a foreign jurisdiction makes the idea that habeas is an adequate remedy deeply problematic. In a hearing in the Southern District of Texas on April 11, the government said they had not ruled out the possibility that individuals will receive “no more than 24 hours’ notice.”<sup>204</sup> In oral argument before a district court Judge the government confirmed its plan to use 24 hours as the period between receipt of notice and removal action.<sup>205</sup>

At the time of writing, legal challenges to the Trump administration’s invocation of the Alien Enemies Act have yet to reach any final determination on the merits of core issues.<sup>206</sup>

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<sup>202</sup> Sotomayor, J., Dissenting, *J.G.G. v. Trump*, No. 24A931, 604 U. S. 604 U. S. \_\_\_\_ (2025) (April 7, 2025), [https://www.supremecourt.gov/opinions/24pdf/24a931\\_2c83.pdf](https://www.supremecourt.gov/opinions/24pdf/24a931_2c83.pdf) (accessed April 11, 2025), p. 17.

<sup>203</sup> *Ibid.*

<sup>204</sup> *G.F.F. v. Trump*, No. 25-cv-2886 (S.D.N.Y. April 8, 2025).

<sup>205</sup> Human Rights Watch notes on file, Proceedings before Chief Judge James E. Boasberg held on April 18, 2025, *J.G.G. v. Trump*, 1:25-cv-00766, April 18, 2025. See also Reply In Support Of Emergency Application For An Emergency Injunction Or Writ Of Mandamus, Stay Of Removal, And Request For An Immediate Administrative Injunction, *A.A.R.P. and W.M.M. v Trump*, No. 24A1007, (“Whatever due process may require in this context, it does not allow removing a person to a possible life sentence without trial, in a prison known for torture and other abuse, a mere 24 hours after providing an English-only notice form (not provided to any attorney) that gives no information about the person’s right to seek judicial review, much less the process or timeline for doing so.”).

<sup>206</sup> Those cases include *G.F.F. & J.G.O. v. Trump*, No. 25-cv-2886 (S.D.N.Y. April 8, 2025); *J.A.V. v. Trump*, No. 25-cv-72 (S.D. Tex. April 8, 2025); *D.B.U. v. Trump*, No. 25-cv-1163 (D. Colo. April 12, 2025); *A.S.R. v. Trump*, No. 25-cv-133 (W.D. Pa. April 15, 2025); *Viloria-Aviles v. Trump*, No. 25-cv611 (D. Nev. April 3, 2025); *A.A.R.P. v. Trump*, No. 25-cv-59 (N.D. Tex. April 16, 2025); *Gutierrez-Contreras v. Trump*, No. 25-cv-911 (C.D. Cal. April 14, 2025); *Quintanilla Portillo v. Trump*, No. 25-cv-1240 (D. Md. April 15, 2025).

## Profiles of Venezuelans Designated as “Alien Enemies”

As noted above, the White House acknowledges that 137 of the 238 Venezuelans transferred to El Salvador were deported under the terms of the Alien Enemies Act.<sup>207</sup> However, it has not released any further information on those individuals.

A review of available information about the 238 Venezuelans transferred to El Salvador by CBS News 60 Minutes found no “[US] criminal records for 75% of the Venezuelans - 179 men- now sitting in prison.”<sup>208</sup> The 60 Minutes analysis did not distinguish between the 137 individuals the government claims it deported under the act and those deported and transferred to CECOT under other authorities.

In a sworn declaration by Robert Cerna, a top official at the US Immigration Customs and Enforcement field office in Harlingen, Texas, the government conceded that “many” of those Venezuelan men targeted for deportation under the Alien Enemies Act do not have criminal records in the United States.<sup>209</sup> Cerna’s declaration asserts:

The lack of a criminal record does not indicate they pose a limited threat. The lack of specific information about each individual actually highlights the risk they pose. It demonstrates that they are terrorists with regard to whom we lack a complete profile.<sup>210</sup>

The stories of some of these men are described below.

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<sup>207</sup> Nicole Brown Chau, “Trump’s use of the Alien Enemies Act of 1798 is under scrutiny. Here’s what to know,” *CBS News*, updated April 8, 2025, <https://www.cbsnews.com/news/trump-alien-enemies-act-of-1798-history/> (accessed April 10, 2025). See also Marianne LeVine, et al., “White House official says 137 immigrants deported under Alien Enemies Act,” *Washington Post*, March 16, 2025, <https://www.washingtonpost.com/immigration/2025/03/16/alien-enemies-act-venezuela-el-salvador-prison/> (accessed April 11, 2025).

<sup>208</sup> Cecilia Vega, “US sent 238 migrants to Salvadoran mega-prison; documents indicate most have no apparent criminal records,” *CBS News*, April 6, 2025, <https://www.cbsnews.com/news/what-records-show-about-migrants-sent-to-salvadoran-prison-60-minutes-transcript/> (accessed April 11, 2025). See also analysis by Bloomberg which reports an even higher percentage where they couldn’t find a criminal record. “About 90% of Migrants Deported to El Salvador Had No US Criminal Record,” *Bloomberg*, April 9, 2025, <https://www.bloomberg.com/news/articles/2025-04-09/about-90-of-migrants-sent-to-salvador-lacked-us-criminal-record?embedded-checkout=true> (accessed April 19, 2025)

<sup>209</sup> Declaration of Robert L. Cerna, *J.G.G., v. Trump*, 1:25-cv-00766 (JEB) (D.D.C., filed March 17, 2025), <https://www.documentcloud.org/documents/25591745-erna-march-17-declaration/> (accessed April 11, 2025), para. 9.

<sup>210</sup> *Ibid.*

## Andry Jose Hernandez Romeo

Andry Jose Hernandez Romero, a Venezuelan LGBT asylum seeker, was included in the group of individuals deported to El Salvador.<sup>211</sup> His lawyer asserts the government flagged him based on crown tattoos on his wrists with the words Mom and Dad under them.<sup>212</sup> Hernandez Romero, who had previously been a makeup artist for the government owned television channel in Venezuela, had an active asylum claim pending in US courts for persecution based on his sexual orientation, gender identity, and his political views.<sup>213</sup> One of his lawyers, who has not been able to contact him since March 14, reports that she recognized him in photos published by TIME magazine depicting men in CECOT.<sup>214</sup>

## Frengel José Reyes Mota

A 24-year-old construction worker from Ciudad Ojeda, Zulia state, Frengel José Reyes Mota fled Venezuela in November 2023 with his wife and 10-year-old adopted son, seeking safety and economic stability in the United States. His wife told Human Rights Watch that growing insecurity and economic hardship in their hometown were the primary reasons for his departure.<sup>215</sup> Human Rights Watch believes he is among the men transferred to CECOT on March 15, 2025.<sup>216</sup>

On February 4, 2025, Reyes Mota attended a scheduled check-in with US Immigration and Customs Enforcement (ICE) and was detained. According to interviews with his family, ICE officers told his wife that Reyes Mota was being held under new Trump administration policies and accused him of being linked to the Tren de Aragua organization.<sup>217</sup> His wife said officials provided no evidence for this claim and that Reyes Mota has no tattoos or criminal record in either Venezuela or the United States.<sup>218</sup>

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<sup>211</sup> Andry Jose Hernandez Romeo's name is found on the CBS News List as Andry Hernandez Romeo.

<sup>212</sup> Declaration of Paulina Reyes, Declaration H, *J.G.G., v. Trump*, 1:25-cv-00766-JEB, (filed March 28, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.67.10.pdf> (accessed April 21, 2025). See also X post, @L-Toczykowski, March 15, 2025, [https://x.com/L\\_toczykowski/status/1901113420822581321](https://x.com/L_toczykowski/status/1901113420822581321) (accessed April 11, 2025).

<sup>213</sup> Ibid.

<sup>214</sup> X Post, @L-Toczykowski, April 16, 2025, [https://x.com/L\\_toczykowski/status/1912528934350299321?s=46](https://x.com/L_toczykowski/status/1912528934350299321?s=46) (accessed April 23, 2025).

<sup>215</sup> Human Rights Watch phone interview with Liyanara Sanchez Sanchez, March 26, 2025.

<sup>216</sup> Frengel José Reyes Mota's name appears on the CBS News List as Frengel Reyes Mota.

<sup>217</sup> Human Rights Watch phone interview with Liyanara Sanchez Sanchez, March 26, 2025.

<sup>218</sup> Ibid.

ICE officials transferred Reyes Mota to Krome detention center in Miami, where he described poor detention conditions, including inadequate food and verbal mistreatment. Despite having a court date for his asylum case on March 24, 2025, he was deported to El Salvador. His wife last spoke with him on March 15, when he told her he had been notified of his imminent deportation to Venezuela. After losing contact with him and failing to locate his name in ICE's system, his wife found him listed among those deported, according to a report by CBS News.<sup>219</sup>

At Reyes Mota's scheduled asylum hearing on March 24, his attorney argued that his client had been wrongfully deported. The judge confirmed no deportation order had been issued against Reyes Mota. US government representatives presented an I-213 form as the basis for their allegations, claiming he "may be associated with the Tren de Aragua."

According to his lawyer, the form contained numerous errors, including confusion with another individual's name and inconsistent identification numbers.<sup>220</sup> To Human Rights Watch's knowledge, the government did not present any supporting evidence.

## Jerce Egbunik Reyes Barrios

Human Rights Watch researchers spoke to the family of a Venezuelan soccer player, Jerce Egbunik Reyes Barrios, who it believes is among the men detained at CECOT.<sup>221</sup> Reyes Barrios case was pending an asylum determination.<sup>222</sup> According to a declaration filed by his lawyer, Reyes Barrios had applied for withholding from removal and protection under CAT and was supposed to have a hearing on his claims on April 17, 2025.<sup>223</sup>

Reyes Barrios has a tattoo depicting a crown sitting atop a soccer ball, enclosed in a rosary, similar to the logo for Real Madrid, a popular Spanish professional football team.<sup>224</sup> According to family members interviewed by Human Rights Watch this is one of five tattoos

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<sup>219</sup> Ibid.

<sup>220</sup> Attorney's document, Human Rights Watch files.

<sup>221</sup> Jerce Egbunik Reyes Barrios name appears on the CBS News List.

<sup>222</sup> Declaration of Linette Tobin, Exhibit D, *J.G.G., v. Trump*, 1:25-cv-00766-JEB (filed March 19, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.44.5\\_5.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.44.5_5.pdf) (accessed April 22, 2025) (Hereinafter "Linette Tobin declaration").

<sup>223</sup> Ibid.

<sup>224</sup> Human Rights Watch phone interview with Ayarí Pedroza, March 26, 2025.



he has.<sup>225</sup> The government also alleges that an image found of Reyes Barrios on social media showed him making a hand gesture associated with TdA.<sup>226</sup> The image in question appears to show him saying “I Love You” in sign language.<sup>227</sup> In a sworn declaration to the court, his lawyer confirms that while detained he was moved out of maximum security after she had provided US authorities with police clearance from Venezuela indicating no criminal record, multiple employment letters, a declaration by the tattoo artist who had rendered the tattoo, as well as an explanation of his hand gesture.<sup>228</sup>

According to a declaration by his lawyer, Barrios had marched in protests against the Maduro regime in February and March 2024 and been tortured by Venezuelan government officials prior to seeking asylum in the United States.<sup>229</sup> Human Rights Watch reviewed certificates from both Colombia and Venezuela confirming Reyes Barrios has no criminal record in either country.

## Luis Carlos José Marcano Silva

Luis Carlos José Marcano Silva, a 26-year old barber originally from Nueva Esparta, Margarita Island, who used to play baseball for his state’s team in Venezuela, appears to be one of the Venezuelans arbitrarily detained and forcibly disappeared to CECOT.<sup>230</sup> In her sworn declaration, his mother confirmed that neither his family members in the United States nor herself had been contacted by the US government to inform them of Marcano Silva’s whereabouts. However, the family told Human Rights Watch that they found his name on an informal list published in the media, leading them to believe that he was transferred to CECOT.<sup>231</sup>

According to a sworn declaration filed with the court by his mother, Marcano Silva made a timely asylum and CAT withholding claim to US officials after surrendering himself at the

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<sup>225</sup> Linette Tobin declaration.

<sup>226</sup> Ibid.

<sup>227</sup> Ibid.

<sup>228</sup> Linette Tobin declaration, para. 9.

<sup>229</sup> Ibid.

<sup>230</sup> Like many others, the name Luis Carlos José Marcano Silva appears in the list published by media. See CBS News list.

<sup>231</sup> Human Rights Watch phone interview with Adelys del Valle Silva Ortega, March 27, 2025.

border, along with his family, upon arrival in the United States.<sup>232</sup> Marcano Silva's mother reports that her son was a victim of "political persecution in Venezuela. He experienced threats of death and physical violence by political opponents."<sup>233</sup>

In an interview with his mother, Human Rights Watch researchers learned Marcano Silva presented himself at the ICE office for a routine check-in on February 5 and was detained.<sup>234</sup> An immigration officer told him the government believed he was linked to Tren de Aragua. Marcano Silva's mother reports that he does not understand English beyond the basics, so a translator was provided, and her son was told he was being accused based on his tattoos.<sup>235</sup>

On March 14, Marcano Silva called his mother to wish her a happy birthday. She reports he did not say much, but she could tell he was very sad.<sup>236</sup> Later, his wife called to say he had called her earlier and told her he had been informed he would be deported to Venezuela that day. The impact of Marcano Silva's enforced disappearance on his family is clear in his mother's sworn statement, which adds:

I fear that my son is experiencing mistreatment at CECOT because I have seen videos and reports about CECOT, and it is not a place my son belongs. I have struggled to eat and sleep properly since my son was taken. No mother should have to live through this.<sup>237</sup>

In her interview with Human Rights Watch researchers, she shared that she had not been able to identify him in the videos that have surfaced.<sup>238</sup> She stressed: "we cannot even confirm his location on the ICE Detainee Locator because he no longer appears there." On

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<sup>232</sup> Sworn Declaration of AVSO, Exhibit O, in *J.G.G. v. Trump*, 1:25-cv-00766-JEB (filed March 28, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.67.17.pdf> (accessed April 23, 2025).

<sup>233</sup> Ibid.

<sup>234</sup> Human Rights Watch phone interview with Adelys del Valle Silva Ortega, March 27, 2025.

<sup>235</sup> Ibid.

<sup>236</sup> Ibid.

<sup>237</sup> Sworn Declaration of AVSO, Exhibit O, in *J.G.G. v. Trump*, 1:25-cv-00766-JEB.

<sup>238</sup> Human Rights Watch phone interview with Adelys del Valle Silva Ortega, March 27, 2025.

March 19, his mother attended a rally along with other Venezuelans in their hometown to seek Marciano Silva's release.<sup>239</sup> She told the crowd: "having a tattoo is not a crime."<sup>240</sup>

## Maikel Enrique Moreno Ramírez

Human Rights Watch research indicates that a 20-year old Venezuelan man, Maikel Enrique Moreno Ramírez, appears to be among those accused of membership in TdA and transferred to El Salvador.<sup>241</sup> According to his father, Moreno Ramírez, a barber with no criminal record and no tattoos, was arrested when attending an immigration check-in with ICE in Las Vegas in September 2024.<sup>242</sup> His mother was informed in October 2024 that he would be released if he could pay an \$8,000 bond, however his family was unable to produce that much money.<sup>243</sup> His father told Human Rights Watch researchers that while in custody, US authorities "kept pressuring him to sign a document stating he was a member of the criminal group, and that by signing it, he would be deported to Venezuela."<sup>244</sup>

Moreno Ramírez told his father that the government provided translators, but that those translators were the ones telling him the document stated he was a member of Tren de Aragua.<sup>245</sup> According to Moreno Ramírez's father, he never signed any paperwork. While in detention in Texas, the third detention facility he was held in, his father reports that Moreno Ramírez made a video along with other detainees where they gave testimony about the poor conditions and mistreatment. According to his father he appears fifth in the video.<sup>246</sup>

On Friday, March 14, he called his father to say he was happy because they told him deportations to Venezuela had already been approved.<sup>247</sup> However, he never made it to

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<sup>239</sup> Instagram post, @margaritadigitalradio1, March 19, 2025, [https://www.instagram.com/reel/DHZHUD7xsJu/?utm\\_source=ig\\_embed&utm\\_campaign=loading](https://www.instagram.com/reel/DHZHUD7xsJu/?utm_source=ig_embed&utm_campaign=loading) (accessed April 23, 2025).

<sup>240</sup> Instagram post, @diazinforma, March 19, 2025, <https://www.instagram.com/reel/DHZ6T5Euy1Q/> (accessed April 23, 2025).

<sup>241</sup> Like many others Maikel Enrique Moreno Ramirez's name appears in the list published by media. See CBS News List.

<sup>242</sup> Human Rights Watch phone interview with Osvaldo Enrique Moreno Rodríguez, March 27, 2025.

<sup>243</sup> Ibid.

<sup>244</sup> Ibid.

<sup>245</sup> Ibid.

<sup>246</sup> Ibid.; Video on Human Rights Watch files.

<sup>247</sup> Ibid.

Venezuela, instead it appears he, like 136 other young Venezuelan men rounded up as “alien enemies,” are in CECOT.

## Neri Alvarado Borges

Neri Alvarado Borges, a Venezuelan man who worked in a bakery and had a tattoo about autism awareness, was among the group transferred to El Salvador.<sup>248</sup> According to a report in *Mother Jones*, when his manager from the bakery visited him in immigration detention, Alvarado reportedly shared that the ICE agents had told him he had been identified due to his tattoos, and that they were “finding and questioning everyone who has tattoos.”<sup>249</sup> After learning of his transfer to El Salvador, people in Alvarado’s hometown launched a campaign on his behalf spotlighting his role as a swimming coach for neurodiverse children.<sup>250</sup>

## Roger Eduardo Molina Acevedo

Human Rights Watch researchers interviewed the family of a refugee who had been conditionally approved for resettlement following extensive vetting, but was detained and eventually removed to El Salvador.<sup>251</sup> Following multiple rounds of interviews and vetting, Roger Eduardo Molina Acevedo, a 29-year-old from Aragua state, Venezuela, was informed in January 2025 that he had been granted refugee status and his resettlement to the United States was confirmed.<sup>252</sup>

Molina Acevedo received plane tickets and a hotel reservation for his arrival and was detained upon arrival in the United States, despite having been approved by the US

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<sup>248</sup> Neri Alvarado Borges name is found on the list published by CBS News. See *CBS News List*

<sup>249</sup> Noah Lanard and Isabela Dias, “You’re Here Because of Your Tattoos,” *Mother Jones*, March 26, 2025, <https://www.motherjones.com/politics/2025/03/trump-el-salvador-venezuela-deportation-prison-cecot-bukele/> (accessed April 11, 2025).

<sup>250</sup> X post, @wrcoachtu87, March 28, 2025, <https://x.com/wrcoachtu87/status/1905737109048263163> (accessed April 11, 2025).

<sup>251</sup> Human Rights Watch phone interviews with Noel Enrique Guape, March 25, 2025, and Daniela Del Carmen Nuñez Palma, March 25, 2025. See also Verónica Egui Brito, “Despite refugee status in the US, young Venezuelan was deported to Salvadoran prison,” *Miami Herald*, March 21, 2025, <https://www.miamiherald.com/news/local/immigration/article302464134.html> (accessed April 11, 2025).

<sup>252</sup> Documents in Human Rights Watch files.

government for admission as a refugee through the United Nations Safe Mobility Office program.<sup>253</sup>

On January 8, 2025, Molina Acevedo traveled to the United States, with Dallas as his final destination and with a layover in Houston. Upon arrival in Houston, immigration officials detained him, reportedly due to his tattoos, which included a pine forest on his arm, a crown on his chest, a palm tree, a soccer ball, and an infinity symbol with the word “family.” His partner, who was with him during the journey, confirmed they presented all necessary documentation proving his refugee status. However, Molina Acevedo remained in detention and was transferred through four different detention centers before being sent to El Salvador.<sup>254</sup>

## WGH<sup>255</sup>

One of the five Venezuelan plaintiffs bringing forward the legal challenge to the March use of the act was an asylum seeker who himself expressed a fear of persecution by Tren de Aragua.<sup>256</sup> On March 7, 2025, ICE filed a Form I-213 stating that W.G.H. “has been identified as a Tren de Aragua gang associate.”<sup>257</sup> However, WGH’s lawyer filed a sworn declaration indicating she was “never told by DHS officials or any detention officials of the basis for attempting to remove W.G.H.”<sup>258</sup> She added: “I have never been provided any notice that he was designated under the Alien Enemies Act.”<sup>259</sup>

The bitter irony of WGH’s case is that although the US government accuses him of being a member of the violent criminal group, in reality, his asylum claim was based on the fact

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<sup>253</sup> Human Rights Watch phone interviews with Noel Enrique Guape, March 25, 2025, and Daniela Del Carmen Nuñez Palma, March 25, 2025.

<sup>254</sup> Ibid.

<sup>255</sup> W.G.H. is a pseudonym being used for this individual in the context of ongoing litigation.

<sup>256</sup> Class Action Complaint and Petition for Writ of Habeas Corpus, *J.G.G. v. Trump*, 1:25-cv-00766-JEB (filed March 15, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.1.o\\_3.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.1.o_3.pdf) (accessed April 22, 2025).

<sup>257</sup> Ibid.

<sup>258</sup> Supplemental Declaration of Molly Lauterback, Exhibit F, *J.G.G. v. Trump*, No. 1:25-cv-00766-JEB (filed March 28, 2025), <https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.67.8.pdf> (accessed April 23, 2025).

<sup>259</sup> Ibid.

that he reportedly was extorted and threatened by multiple criminal groups in Venezuela, including Tren de Aragua.<sup>260</sup> In a declaration to the court, WGH stated:

I am extremely afraid to be returned to Venezuela. I fled Venezuela and requested asylum in the United States because I was being extorted and threatened by multiple criminal groups including Tren de Aragua.”<sup>261</sup>

WGH, due to the ongoing litigation, was not among the group transferred to El Salvador. He and his two other named plaintiffs in the litigation were returned to a US detention center in Texas pursuant to the District of Columbia district court’s temporary restraining order.<sup>262</sup> WGH is being held in El Valle detention center in Texas alongside plaintiffs J.G.G. and J.A.V.<sup>263</sup> Pursuant to another district court order, the government is prevented from removing him from the district without the court’s permission.<sup>264</sup>

## Yolfran Alejandro Escobar Falcón

Yolfran Alejandro Escobar Falcón, 25, from Valencia, is another asylum seeker whose tattoos led to him being identified as part of Tren de Aragua.<sup>265</sup> His case was documented by Human Rights Watch researchers. Escobar was detained as he left his job at a laundromat and transferred to a detention center in Pennsylvania.<sup>266</sup> According to his family, he has no criminal record in Venezuela or the United States, but was told by a judge that he was flagged as being a member of TdA.<sup>267</sup>

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<sup>260</sup> Class Petition for Writ of Habeas Corpus and Class Complaint for Declaratory and Injunctive Relief, in *J.A.V. v. Trump*, 1:25-cv-00072 (S.D. Tex, filed April 9, 2025) <https://www.aclu.org/cases/jav-v-trump?document=HABEAS-PETITION> (accessed April 22, 2025).

<sup>261</sup> Declaration of W.G.H., *J.G.G. v. Trump*, 1:25-cv-00766-JEB (filed March 15, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.3.6\\_2.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.3.6_2.pdf) (accessed April 23, 2025).

<sup>262</sup> Declaration Of Oscar Sarabia Roman, Exhibit N, *J.G.G. v. Trump*, 1:25-cv-00766-JEB, (filed March 19, 2025), [https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.44.15\\_8.pdf](https://storage.courtlistener.com/recap/gov.uscourts.dcd.278436/gov.uscourts.dcd.278436.44.15_8.pdf) (accessed April 22, 2025) (“W.G.H. reported to his wife that he was on the bus of detainees who were transported to the airport on March 15, 2025. ICE officers pulled him off of the flight and brought him back to El Valle Detention Center.”).

<sup>263</sup> Temporary Restraining Order, *J.A.V. v. Trump*, 1:25-cv-00072 (S.D. Tex, filed April 9, 2025) <https://www.aclu.org/cases/jav-v-trump?document=TRO-ORDER> (accessed April 22, 2025).

<sup>264</sup> *Ibid.*

<sup>265</sup> Like others suspected to be transferred to CECOT on March 15, Yolfran Alejandro Escobar Falcon’s name is found on the CBS News List. He is listed as Yolfran Escobar Falcon.

<sup>266</sup> Human Rights Watch phone interview with María Alejandra Falcón Mendoza, March 26, 2025.

<sup>267</sup> *Ibid.*

His family said his tattoos include his daughter's name and a ship's wheel with the date he and his wife got together to commemorate their relationship. While in detention in the United States, Escobar was able to communicate occasionally with loved ones and described poor conditions, including severe overcrowding, limited access to showers and hygiene, inadequate food, and not being able to sleep at night because the guards constantly hit the metal part of the cell door very loudly, waking him up.<sup>268</sup> Additionally, every three or four hours, the guards entered the cell to call the roll, check his identification wristband, or take him out of the cell to clean.<sup>269</sup>

Escobar last spoke with his family on March 15, when he said he had been informed of his impending deportation to Venezuela.<sup>270</sup> After that call, his family lost contact with him. Days later, they found his name on a CBS News list and identified him in a photo published online showing individuals transferred to El Salvador.<sup>271</sup>

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<sup>268</sup> Ibid.

<sup>269</sup> Ibid.

<sup>270</sup> Ibid.

<sup>271</sup> Ibid.

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# United States: Repeal the Alien Enemies Act

## A Human Rights Argument

In March 2025, the Trump administration invoked an archaic 1798 statute to forcibly disappear 137 Venezuelan nationals and summarily deport them to El Salvador, where they have been indefinitely jailed in a notorious maximum-security prison. That statute, An Act Respecting Alien Enemies of July 6, 1798 (“Alien Enemies Act”), purports to grant the president sweeping powers to detain, expel, and otherwise control people on US soil who are nationals of any foreign power deemed hostile. Prior to 2025, it had only been used three times and never outside the context of a war declared by the US Congress.

*United States: Repeal the Alien Enemies Act* examines the Act, and the Trump administration’s use of the Act, against the large body of international human rights law and laws of war jurisprudence that has developed since the law was last applied during the WWII era, much of which has been incorporated into US domestic law. The report also provides details on the cases of several Venezuelans wrongfully deported to El Salvador using the Act as justification. It concludes that President Trump’s actions violate international human rights law binding on the US and finds the Alien Enemies Act itself inherently incompatible with those obligations.

Human Rights Watch calls on the US Congress to repeal the Act. It calls on UN experts and concerned foreign governments to raise concerns about the use of the Act publicly, and to press the Trump administration to reverse its harmful actions under the Act.



*Demonstrators in New York City protest outside the Permanent Mission of El Salvador to the United Nations on April 24, 2025, demanding the release of Venezuelan detainees deported by the Trump administration and jailed in El Salvador’s Terrorism Confinement Center or CECOT prison.*

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