UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

J.G.G., *et al.*, Plaintiffs-Petitioners, v. DONALD J. TRUMP, in his official capacity as President of the United States, *et al.*, Defendants-Respondents.	Civil Action No. 1:25-cv-00766

NOTICE INVOKING STATE SECRETS PRIVILEGE

The Executive Branch hereby notifies the Court that no further information will be provided in response to the Court's March 18, 2025 Minute Order based on the state secrets privilege and the concurrently filed declarations of the Secretary of State and the Secretary of Homeland Security.

This is a case about the President's plenary authority, derived from Article II and the mandate of the electorate, and reinforced by longstanding statute, to remove from the homeland designated terrorists participating in a state-sponsored invasion of, and predatory incursion into, the United States. The Court has all of the facts it needs to address the compliance issues before it. Further intrusions on the Executive Branch would present dangerous and wholly unwarranted separation-of-powers harms with respect to diplomatic and national security concerns that the Court lacks competence to address. Accordingly, the states secrets privilege forecloses further demands for details that have no place in this matter, and the government will address the Court's order to show cause tomorrow by demonstrating that there is no basis for the suggestion of non-compliance with any binding order.

I. Applicable Law

The President of the United States is a party to this lawsuit. President Trump is "the only person who alone composes a branch of government." *Trump v. Mazars USA, LLP*, 591 U.S. 848, 868 (2020).[1] Consequently, this Court owes President Trump "high respect." *Clinton v. Jones*, 520 U.S. 681, 707 (1997). That binding command on this Court ought to—but to this point has not—"inform the conduct of the entire proceeding, including the timing and scope of discovery." *Id.*

"[C]onstitutional confrontation between the two branches should be avoided whenever possible." *Cheney v. U. S. District Court for D.C.*, 542 U.S. 367, 389–90 (2004). "[T]he separation-of-powers doctrine requires that a branch not impair another in the performance of its constitutional duties." *Loving v. United States*, 517 U.S. 748, 757 (1996). "[J]udicial deference and restraint" are required to avoid undue interference with the Executive Branch. *Nixon v. Fitzgerald*, 457 U.S. 731, 753 (1982). This is necessary to avoid the current "collision course," in which a single district judge has unnecessarily put himself in an "awkward position" that includes "the difficult task of balancing the need for information in a judicial proceeding and the Executive's Article II prerogatives." *Cheney*, 542 U.S. at 389.

In this case, invocation of the "absolute" state secrets privilege prevents the Court from colliding with the Executive. *In re Sealed Case*, 494 F.3d 139, 144 (D.C. Cir. 2007); *Halkin v. Helms*, 690 F.2d 977, 990 (D.C. Cir. 1982) ("[T]he critical feature of the inquiry in evaluating the claim of privilege is not a balancing of ultimate interests at stake in the litigation."). "The state secrets privilege is a common law evidentiary rule that protects information from discovery when

[1] Unless otherwise noted, all quotation marks, citations, and alterations are omitted from case citations.

disclosure would be inimical to the national security." *In re United States*, 872 F.2d 472, 474 (D.C. Cir. 1989). The privilege may be formally invoked "by the head of the department which has control over the matter, after actual personal consideration by that officer." *United States v. Reynolds*, 345 U.S. 1, 7–8 (1953). The government need only establish that the requested information "poses a reasonable danger to secrets of state." *Halkin*, 690 F.2d at 990. The issue is whether the challenged disclosures "may harm" national security. *United States v. Zubaydah*, 595 U.S. 195, 205 (2022).

Judicial review of the invocation is limited, and the "degree of judicial scrutiny varies according to the importance of the information sought." *Burks v. Islamic Republic of Iran*, 2020 WL 13303322, at *8 (D.D.C. 2020). The Court "must" afford "great deference" to the Executive Branch. *Id.* at *9. This includes being "careful not to force a disclosure of the very thing the privilege is designed to protect." *Id.* "[T]he district court need not have complete knowledge of how disclosure would cause a specific security breach." *In re Sealed Case*, 494 F.3d at 144. Where there is only a "trivial showing of need" for the disclosures, and "the circumstances of the case point to a significant risk of serious harm if the information is disclosed, the trial judge should evaluate (and uphold) the privilege claim solely on the basis of the government's public representations, without an in camera examination of the documents." *Ellsberg v. Mitchell*, 709 F.2d 51, 59 n.38 (D.C. Cir. 1983).

II. Discussion

The information sought by the Court is subject to the state secrets privilege because disclosure would pose reasonable danger to national security and foreign affairs. Because there is no need for the requested disclosures, the Court must resolve the application based on the Cabinet-level declarations submitted with this motion.

A. The Court's Requested Disclosures Would Cause Unacceptable Danger

The state secrets privilege reflects the reality that it is the responsibility of the Executive Branch, "not that of the judiciary, to weigh the variety of complex and subtle factors in determining whether disclosure of information may lead to an unacceptable risk of compromising" the Nation's safety. *CIA v. Sims*, 471 U.S. 159, 180 (1985). President Trump's execution of his Article II authorities—which "are of unrivaled gravity and breadth" and include "managing matters related to terrorism . . . and immigration"—requires the "utmost discretion and sensitivity." *Trump v. United States*, 603 U.S. 593, 607, 610–11 (2024). As such, when the government invokes the state secrets privilege, "[n]o competing public or private interest can be advanced to compel disclosure." *Ellsberg*, 709 F.2d at 57.

The Secretary of State's declaration confirms that the removal of the Alien Enemies at issue, namely alien members of the designated foreign terrorist organization Tren de Aragua ("TdA"), were the product of "nonpublic, sensitive, and high stakes negotiation" with one or more foreign countries. Rubio Decl. ¶ 10. Disclosure of the information requested by the Court "could cause the foreign State's government to face internal or international pressure, making that foreign State and other foreign States less likely to work cooperatively with the United States in the future, both within and without the removal context." *Id.* Such disclosure would be viewed as a "breach of the trust on which our foreign relationships are based," and would "impair[] the foreign relations and diplomatic capabilities of the United States." *Id.* ¶¶ 10, 13. The end result would be to "erode the credibility of the United States' assurances that information will be maintained in confidence" and thereby "impede the ability of the United States to secure the cooperation of foreign authorities in critical operations." *Id.* ¶ 14. *See Zubaydah*, 595 U.S. at 208 (applying privilege to disclosures that "can diminish the extent to which the intelligence services of Countries A, B, C, D, etc., will

prove willing to cooperate with our own intelligence services in the future"); *Halkin*, 690 F.2d at 990 n.53 ("[T]he privilege extends to matters affecting diplomatic relations between nations."); *Ellsberg*, 709 F.2d at 59 (upholding privilege where disclosure "would disrupt diplomatic relations with foreign governments"); *In re United States*, 872 F.2d at 475 (recognizing that privilege protects "diplomatic security").

Moreover, the Secretary of Homeland Security has established that responding to the Court's inquiries would "directly compromise[] the safety of American officers, contractors, aliens, and the American public" by, for example, divulging "critical means and methods of law enforcement operations," "confirming alleged operational details [that] would cause significant harm to the national security of the United States," and "undermin[ing] the efficacy of American counterterrorism operations." Noem Decl. ¶ 10. Disclosure "would allow others to draw inferences and insight into how future, similar governmental operations will be conducted, and to use that information in a manner adverse to U.S. national security," thereby enabling "enemies of our national security … to stitch together an understanding of the means and methods used to thwart their unlawful and sometimes violent conduct." *Id.* *See, e.g.*, *Kareem v. Haspel*, 412 F. Supp. 3d 52 (D.D.C. 2019) ("Detailed statements underscore that disclosure of [the privileged] information . . . and the means, sources and methods of intelligence gathering in the context of this case would undermine the government's intelligence capabilities and compromise national security."), *vacated on other grounds*, 986 F.3d 859 (D.C. Cir. 2021); *see also Dep't of Navy v. Egan*, 484 U.S. 518, 530 (1988) (reasoning that courts must be particularly "reluctant to intrude upon the authority of the Executive in military and national security affairs").

"Courts are in no position to gauge what constitutes an acceptable margin of error for determinations that bear on national security," and that is "particularly true where the decisions

involve sensitive and inherently discretionary judgment calls." *Oryszak v. Sullivan*, 565 F. Supp. 2d 14, 19–20 (D.D.C. 2008), *aff'd*, 576 F.3d 522 (D.C. Cir. 2009). Similarly, the Court lacks competence to evaluate risks associated with the "mosaic effect," whereby "bits and pieces of data . . . may aid in piecing together bits of other information, even when the individual piece is not of obvious importance in itself." *Shapiro v. United States Dep't of Justice*, 2014 WL 12912625, at *1 (D.D.C. 2014); *see also Citizens United v. United States Dep't of State*, 460 F. Supp. 3d 12, 19 (D.D.C. 2020) ("[E]ven apparently innocuous information, such as non-sensitive information from ordinary private citizen may be withheld."). For example, confirming the exact time the flights departed, or their particular locations at some other time, would facilitate efforts to track those flights and future flights. *See* Noem Decl. ¶ 10. In turn, disclosing any information that assists in the tracking of the flights would both endanger the government personnel operating those flights and aid efforts by our adversaries to draw inferences about diplomatic negotiations and coordination relating to operations by the Executive Branch to remove terrorists and other criminal aliens from the country. *See id.* Simply put, the Court has no cause to compel disclosure of information that would undermine or impede future counterterrorism operations by the United States.

Finally, the fact that there are allegations and claims in the public domain regarding issues implicated by the Court's questions is not a basis for vitiating the privilege. *Accord* Rubio Decl. ¶ 15; Noem Decl. ¶ 10. Official confirmation of any of those allegations would pose a distinct threat to foreign relations and national security. *See Fitzgibbon v. CIA*, 911 F.2d 755, 766 (D.C. Cir. 1990) ("[T]he fact that information resides in the public domain does not eliminate the possibility that further disclosures can cause harm to intelligence sources, methods, and operations."). Specifically, "[c]onfirmation" of public claims by "an insider is different in kind

from speculation in the press." *Zubaydah*, 595 U.S. at 208. Thus, "information that has entered the public domain may nonetheless fall within the scope of the state secrets privilege." *Id.* at 207; *see also Halkin*, 690 F.2d at 994 ("We reject, as we have previously, the theory that because some information about the project ostensibly is now in the public domain, nothing about the project in which the appellants have expressed an interest can properly remain classified or otherwise privileged from disclosure."); *Edmonds v. U.S. Dep't of Justice*, 323 F. Supp. 2d 65, 76 (D.D.C. 2004) ("That privileged information has already been released to the press . . . does not alter the Court's conclusion"). Accordingly, the declarations submitted with this Notice establish a valid basis for invocation of the state secrets privilege—and also a dispositive one for ceasing any further inquiry.

B. There Is No Need For The Requested Disclosures

The "need" for the information at issue is only relevant to "help the court determine how deeply to probe the details of, and basis for, the Government's privilege claim." *Zubaydah*, 595 U.S. at 209–10; *see also Reynolds*, 345 U.S. at 11 ("[E]ven the most compelling necessity cannot overcome the claim of privilege."). Here, because "necessity is dubious," at most, "a formal claim of privilege . . . will have to prevail." *Id.*

The information sought by the Court is irrelevant to plaintiffs' claims and to the Executive Branch's compliance with the Court's operative order. The Court has already devoted more time to these inquiries than it did to evidence and argument on the issue of whether a class should be certified. In any event, the government has already confirmed that "two flights carrying aliens being removed under the AEA departed U.S. airspace before the Court's minute order of 7:25 PM EDT." Doc. 49-1. Further, the Government has not contested for purposes of these proceedings that the planes landed abroad, and that the aliens on board were deplaned, after the issuance of the

Court's minute order. To have proceeded otherwise and turned planes around mid-air without regard to important logistical constraints such as fuel availability or foreign airspace restrictions, especially on the legally infirm basis that the Court retained authority over aircraft operating outside the United States, would have implicated grave safety risks.

No more information is needed to resolve any legal issue in this case. Whether the planes carried one TdA terrorist or a thousand or whether the planes made one stop or ten simply has no bearing on any relevant legal issue. The need for additional information here is not merely "dubious," *Reynolds*, 345 U.S. at 11, or "trivial," *Ellsberg*, 709 F.2d at 59 n.38, it is non-existent. The Executive Branch violated no valid order through its actions, and the Court has all it needs to evaluate compliance. Accordingly, the Court's factual inquiry should end.

C. There Is No Need For *In Camera* Review

In light of the utter lack of "need" for the information the Court seeks, the Court must address the invocation of the state secrets privilege on the basis of the declarations and without *in camera* review of the information at issue.

In camera review is "not required as a matter of course in a claim of the state secrets privilege." *Northrop Corp. v. McDonnell Douglas Corp.*, 751 F.2d 395, 401 (D.C. Cir. 1984); *see also In re Agent Orange Product Liability Litigation*, 97 F.R.D. 427, 431 (E.D.N.Y. 1983) ("[*I*]*n camera* inspection is not routine in cases where the state secrets privilege is invoked."). The *Zubaydah* Court, as well as "*Reynolds* itself contemplated that . . . a claim of privilege could prevail without further examination by the court of the ostensibly privileged evidence." *Zubaydah*, 595 U.S. at 209; *see also Reynolds*, 345 U.S. at 10 ("[T]he court should not jeopardize the security which the privilege is meant to protect by insisting upon an examination of the evidence, even by the judge alone, in chambers.").

When the privilege involved is based on "concern" regarding "diplomatic secrets," "courts should not insist upon an examination of the evidence." *Comm. on Ways & Means, U.S. House of Representatives v. U.S. Dep't of the Treasury*, 575 F. Supp. 3d 53, 73 (D.D.C. 2021). "Courts are not required to play with fire and chance further disclosure—inadvertent, mistaken, or even intentional—that would defeat the very purpose for which the privilege exists." *Sterling v. Tenet*, 416 F.3d 338, 344 (4th Cir. 2005). The Supreme Court has "provide[d] that when a judge has satisfied himself that the dangers asserted by the government are substantial and real, he need not—*indeed, should not*—probe further." *Id.* at 345 (emphasis added). That is the appropriate course in this instance.

III. Conclusion

For the foregoing reasons, the government invokes the state secrets privilege and declines to further respond to the Court's March 18, 2025 Minute Order.

Respectfully Submitted,

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Petitioner,

v.

DONALD J. TRUMP, *et al.*,

Respondents.

Declaration Of Attorney General Pamela J. Bondi

No. 1:25-cv-766 (JEB)

DECLARATION OF ATTORNEY GENERAL PAMELA J. BONDI

I, Pamela J. Bondi, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the United States Attorney General and the head of the United States Department of Justice, an Executive Department of the United States. *See* 28 U.S.C. §§ 501, 503. As Attorney General, I advise the heads of other executive departments on questions of law. *See* 28 U.S.C. § 512.

2. The purpose of this Declaration is to protect the national security and foreign affairs interests of the United States by joining, in my official capacity, the formal assertions of the state secrets privilege over information requested by this Court in its Minute Order of March 18, 2025, made by the Secretary of State and the Secretary of Homeland Security.

3. The statements made herein are based on my personal knowledge, on information provided to me in my official capacity, including declarations made by the Secretary of State and the Secretary of Homeland Security, on reasonable inquiry, and on information obtained from Department of Justice employees.

4. Following the public issuance of the Presidential Proclamation, *Invocation of the Alien Enemies Act Regarding the Invasion of The United States by Tren De Aragua*, on March 15, 2025, the Department of Homeland Security successfully removed by aircraft a number of aliens subject to that Proclamation. Those removals were facilitated by Department of State negotiations with foreign countries.

5. In a March 18, 2025 Minute Order, this Court requested the following information regarding those removals: (1) what time the planes took off and from where; (2) what time the planes left U.S. airspace; (3) what time the planes landed, where they landed, and whether they made more than one stop; (4) what time aliens subject to the Proclamation were transferred out of U.S. custody; and (5) how many aliens were aboard the flights based on the Proclamation.

6. The Secretary of State and the Secretary of Homeland Security have each submitted a declaration asserting a formal claim of the state secrets privilege regarding disclosure of the information sought in the March 18, 2025 Minute Order. Those declarations reflect the studied and well-supported conclusion of each Secretary that disclosure of the information, even *ex parte* and *in camera*, would cause significant harm to the foreign relations and national security interests of the United States.

7. After considering all relevant information, including the declarations of the Secretary of State and the Secretary of Homeland Security, and following an independent legal review by Department of Justice personnel, I am satisfied that the assertions of the state secrets privilege by the Secretary of State and the Secretary of Homeland Security regarding information requested in the Court's March 18, 2025 Minute Order are adequately supported and warranted, and I join their assertion of the privilege.

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

Executed this 24th day of March 2025.

Pamela J. Bondi
Attorney General

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

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Respondents.

No. 1:25-cv-766 (JEB)

Declaration Of Marco Rubio

DECLARATION OF SECRETARY OF STATE MARCO RUBIO

I, Marco Rubio, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the Secretary of State of the United States and head of the United States Department of State, an Executive Department of the United States. *See* 22 U.S.C. § 2651. As Secretary of State, I am the President's chief foreign affairs advisor. I carry out the President's foreign policy through the State Department and the Foreign Service of the United States. *See* 22 U.S.C. § 2651a.

2. The statements made herein are based on my personal knowledge, on information provided to me in my official capacity, reasonable inquiry, and information obtained from various records, systems, databases, State Department employees, and information portals maintained and relied upon by the United States Government in the regular course of business, and on my evaluation of that information.

3. The purpose of this Declaration is to assert, in my capacity as Secretary of State and head of the Department of State, a formal claim of the state secrets privilege over

information requested by this Court in its Minute Order of March 18, 2025, in order to protect the foreign relations and national security interests of the United States. As explained in this declaration, disclosure of the information covered by my privilege assertion reasonably could be expected to cause significant harm to the foreign relation and national security interests of the United States. I have discussed with knowledgeable State Department employees the details of the information over which I am asserting privilege to ensure that the bases for the privilege assertions set forth in this Declaration are appropriate.

4. In the course of my official duties, I am aware that President Trump issued Executive Order 14157 regarding a process by which Tren de Aragua (TdA) and other transnational organizations and cartels may be "designated as Foreign Terrorist Organizations, consistent with section 219 of the INA (8 U.S.C. 1189), or Specially Designated Global Terrorists, consistent with IEEPA (50 U.S.C. 1702) and Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), as amended." *Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists* (Jan. 20, 2025). As President Trump recognized in doing so, TdA has engaged in "campaigns of violence and terror in the United States and internationally," such that it presents "an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." *Id.*

5. In the course of my official duties, I designated TdA as a Foreign Terrorist Organization and its members as Specially Designated Global Terrorists. *Specially Designated Global Terrorist 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*, 90 Fed. Reg. 10030 (Feb. 20, 2025); *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, 90 Fed. Reg. 10030 (Feb. 20, 2025)

6. In the course of my official duties, I am aware that President Trump has, pursuant to the Alien Enemies Act (50 U.S.C. § 21), "proclaimed that all 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." *Invocation of the Alien Enemies Act Regarding the Invasion of the United States be Tren de Aragua* (Mar. 14, 2025). President Trump directed "the apprehension, detention, and removal of all members of TdA who otherwise qualify as Alien Enemies under" his proclamation. *Id.*

7. In the course of my official duties, I am aware that the instant lawsuit has been filed regarding the removal of Venezuelan members of TdA pursuant to the Alien Enemies Act.

8. In the course of my official duties, I have been informed that this Court has ordered the Defendants in this action to disclose "the following details regarding each of the two flights leaving U.S. airspace before 7:25 p.m. on March 15, 2025: 1) What time did the plane take off from U.S. Soil and from where? 2) What time did it leave U.S. airspace? 3) What time did it land in which foreign country (including if it made more than one stop)? 4) What time were individuals subject solely to the Proclamation transferred out of U.S. custody? And 5) How many people were aboard solely on the basis of the Proclamation?" Minute Order of 3/18/2025.

9. After careful and actual personal consideration of this matter, I have concluded that the disclosure of this information could reasonably be expected to cause significant harm to

the foreign relations interests of the United States and, relatedly, the national security interests of the United States.

10. When the United seeks to remove individuals to a foreign country, the United States must negotiate the details of that removal with the foreign country. This requires nonpublic, sensitive, and high stakes negotiation with the foreign State, particularly where, as here, the aliens being removed have been deemed enemy aliens and members of a foreign terrorist organization. Those negotiations cover sensitive issues, including representations regarding the bases on which the individuals are being removed from the United States, which can impact the foreign State's willingness to accept the removed aliens and the procedures it will employ in doing so. Compelled disclosure of the number of aliens aboard any deportation flight—including the alleged deportation flights addressed in this Court's Minute Order—and the reasons any of those aliens were placed aboard the deportation flight, threatens significant harm to the United States' foreign affairs and national security interests. For example, if compelled disclosure of that information came to light, it could cause the foreign State's government to face internal or international pressure, making that foreign State and other foreign States less likely to work cooperatively with the United States in the future, both within and without the removal context. Disclosure of that information—to anyone—likewise is likely to be viewed as a breach of the trust on which our foreign relationships are based, leading to a less robust relationship in the future. And if a disclosure were to in any way undercut or, in the eyes of a foreign State (fairly or not) cast doubt on representations made in sensitive negotiations with the United States, that could likewise make that foreign State less likely to work cooperatively with the United States, both within and outside the removal context.

11. When the United States seeks to remove individuals to a foreign State, it likewise must negotiate the logistical details of that removal—a sensitive issue that can impact the willingness of that foreign State to accept removed aliens at all. Those sensitive details, which are negotiated outside of public view, include the destination of the deportation flight, as well as the time of departure and arrival at the destination, and the form and timing of the transfer of custody. Compelled disclosures of that information, or of information that would allow any third party to determine that information in whole or in part, would allow the national and international public to confirm that a particular flight was indeed a deportation flight—a fact which threatens the willingness of foreign States to accept removed aliens but only if done secretly, and which will more broadly threaten the willingness of foreign States to work with the United States on sensitive and confidential matters, both within and without the removal context. Again, the compelled disclosure—to anyone—of sensitive matters such as this is likely to be seen by foreign nations as a breach of trust that will damage our relationships with allies, negatively affecting the United States' foreign relations and national security. For these reasons, compelled disclosure of the following information would threaten significant harm to the United States' foreign affairs and national security interests: 1) the time that an alleged deportation flight took off from U.S. soil and from where; 2) the time an alleged deportation flight left U.S. airspace, 3) the time the alleged deportation flight landed in a foreign country; and 4) the location in which the alleged deportation flight landed.

12. Likewise, compelled disclosure of information that could reveal whether an alleged deportation flight touched down in a third country—neither the United States nor the foreign State to which removal is being made—would threaten significant harm to the United States' foreign affairs and national security interests. Whether a particular flight, carried out for

a specific purpose, may land in a third country can itself be a matter of sensitive diplomatic discussions and negotiations with the United States' partners and allies. Compelled disclosure of that sensitive information would likely be seen as a breach of trust, threatening the willingness of foreign States to negotiate and cooperate with the United States on confidential and sensitive matters, both within and without the removal context. Moreover, if a flight stopped-over in a foreign State that was unaware of the nature or purpose of the flight, the compelled disclosure of that information—or of other information that could effectively reveal that information—would, if it reached the public, threaten to directly damage the United States' relationship with that foreign State and would make that State and other foreign States less likely to work cooperatively with the United States in the future, both within and outside the removal context.

13. It is critical to bear in mind that removal operations can be (as they are here) counterterrorism operations. If foreign partners believed that any relevant details could be revealed to third parties, those foreign partners would be less likely to work with the United States in the future. That impairs the foreign relations and diplomatic capabilities of the United States and threatens significant harm to the national security of the United States.

14. If foreign States believed that the information sought in this Court's Minute Order—or similar information—could be revealed to third parties, simply because a lawsuit has been filed or a judge has asked for the information, it would erode the credibility of the United States' assurances that information will be maintained in confidence and thus impede the ability of the United States to secure the cooperation of foreign authorities in critical operations. Again, this threat to the United States' foreign affairs interests extends beyond the removal context that is the subject of this case.

15. Importantly, the compelled disclosure of this sensitive information would cause significant harm to the United States' foreign affairs interests even if some of the alleged details have made it into public sources through unofficial means. The disclosure of foreign affairs information only through official acknowledgment or confirmation is vital to the protection of the United States' ability to conduct foreign affairs. There is a difference between official acknowledgement and informal reports: Official disclosures or acknowledgements threaten the United States' national interests in a way that informal reports or statements do not, because informal statements leave an important element of doubt that provides an essential layer of protection and confidentiality. That protection would be lost if the United States were forced to confirm or deny the accuracy of unofficial disclosures or speculation. Thus, even if the public or the press believes certain information to be true, providing an official acknowledgement by confirming or denying specific details threatens the significant diplomatic and foreign relation harms discussed above.

16. Finally, for at least two reasons, the compelled disclosure of the information sought in this Court's Minute Order threatens the foreign relations and national security interests of the United States even if that information is provided ex parte and in camera. First, as noted above, the mere act of providing the information to the Court will itself likely be seen as a breach of trust—the sharing of sensitive, nonpublic information with a third party outside of the process of negotiating and executing the agreement between the two nations. Second, as a practical matter, the more widely information is shared, the greater the risk that the information will reach the public (even if unintentionally)—either directly or indirectly. Indeed, any order based on the sensitive information at issue here would unavoidably lead to public dissection and speculation as to the bases for the order, even if the underlying information is held under seal. And that increased public

dissection and speculation threatens the significant harm already discussed—reduced cooperation from the United States' international partners, both within and without the removal context.

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

Executed this 24th day of March 2025.

Marco Rubio
Secretary of State

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

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

Petitioner,

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DONALD J. TRUMP, *et al.*,

Respondents.

No. 1:25-cv-766 (JEB)

Declaration Of Kristi Noem

DECLARATION OF SECRETARY OF HOMELAND SECURITY KRISTI NOEM

I, Kristi Noem, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury as follows:

1. I am the United States Secretary of Homeland Security and the head of the United States Department of Homeland Security, an Executive Department of the United States. *See* 6 U.S.C. §§ 111(a), 112(a). As Secretary of Homeland Security, I am the President's chief advisor on public security.

2. The statements made herein are based on my personal knowledge, on information provided to me in my official capacity, reasonable inquiry, and information obtained from various records, systems, databases, Department of Homeland Security employees, and information portals maintained and relied upon by the Department of Homeland Security in the regular course of business, and on my evaluation of that information.

3. The purpose of this Declaration is to assert, in my capacity as United States Secretary of Homeland Security and head of the Department of Homeland Security, a formal claim of the state secrets privilege over information requested by this Court in its Minute Order of March

18, 2025, in order to protect the national security interests of the United States. Disclosure of the information covered by my privilege assertion reasonably could be expected to cause significant harm to the national security interests of the United States. I have discussed with knowledgeable employees of the Department of Homeland Security the details of the information over which I am asserting privilege to ensure that the bases for the assertions set forth in this Declaration are appropriate.

4. In the course of my official duties, I am aware that President Trump created a process by which Tren de Aragua (TdA) and other transnational organizations and cartels may be "designated as Foreign Terrorist Organizations, consistent with section 219 of the INA (8 U.S.C. 1189), or Specially Designated Global Terrorists, consistent with IEEPA (50 U.S.C. 1702) and Executive Order 13224 of September 23, 2001 (Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism), as amended." *Designating Cartels and Other Organizations as Foreign Terrorist Organizations and Specially Designated Global Terrorists* (Jan. 20, 2025). As President Trump recognized in doing so, TdA has engaged in "campaigns of violence and terror in the United States and internationally," such that it presents "an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States." *Id.*

5. In the course of my official duties, I am aware that the Department of State has designated TdA as a Foreign Terrorist Organization and its members as Specially Designated Global Terrorists. *Specially Designated Global Terrorist 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*, 90 Fed. Reg. 10030 (Feb. 20, 2025); *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, 90 Fed. Reg. 10030 (Feb. 20, 2025)

6. In the course of my official duties, I am aware that President Trump has, pursuant to the Alien Enemies Act (50 U.S.C. § 21), "proclaimed that all 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." *Proclamation 10903 of March 14, 2025, Invocation of the Alien Enemies Act Regarding the Invasion of the United States be Tren de Aragua*, 90 Fed. Reg. 13033, 13034 (Mar. 20, 2025N). President Trump directed "the apprehension, detention, and removal of all members of TdA who otherwise qualify as Alien Enemies under" his proclamation. *Id.*

7. In the course of my official duties, I am aware that the instant lawsuit has been filed regarding the removal of Venezuelan members of TdA pursuant to the Alien Enemies Act.

8. In the course of my official duties, I have been informed that this Court has ordered the Defendants in this action to disclose "the following details regarding each of the two flights leaving U.S. airspace before 7:25 p.m. on March 15, 2025: 1) What time did the plane take off from U.S. Soil and from where? 2) What time did it leave U.S. airspace? 3) What time did it land in which foreign country (including if it made more than one stop)? 4) What time were individuals subject solely to the Proclamation transferred out of U.S. custody? And 5) How many people were aboard solely on the basis of the Proclamation?" Minute Order of 3/18/2025.

9. After careful and actual personal consideration of this matter, I have concluded that the disclosure of this information could reasonably be expected to cause significant harm to the national security of the United States, in at least two ways.

10. *First*, disclosure of information about removal flights—including confirmation or denial of speculation, assumptions, or informal reports about removal flight plans—directly compromises the safety of American officers, contractors, aliens, and the American public.

A. Removal flight plans—including locations from which flights depart, the planes utilized, the paths they travel, where they land, and how long they take to accomplish any of those things—reflect critical means and methods of law enforcement operations.

B. Even where discussing a past operation, disclosing, denying, or confirming alleged operational details would cause significant harm to the national security of the United States by exposing the means and methods of ICE operations. Specific information about past governmental operations, such as the details regarding locations, paths, and timing of flights, would allow others to draw inferences and insight into how future, similar governmental operations will be conducted, and to use that information in a manner adverse to U.S. national security.

C. In addition to flight operations, the number of TdA members on a given removal flight is also information that, if disclosed, would expose ICE's means and methods, thus threatening significant harm to the national security of the United States. Revealing and/or confirming the number of TdA members involved would reveal key details about how the United States conducts these sorts of operations and would allow other aliens (members of TdA and otherwise) to draw inferences about how the Government prioritizes and uses its resources in immigration enforcement and counterterrorism operations. It may even lend TdA and other such organizations the ability to predict operational details to their benefit and to the risk of the ICE officers and contractors involved. That insight would inhibit future enforcement activity. Revealing or

confirming this information—i.e., identifying how many enemy aliens were removed on the basis of the Proclamation, versus under other authorities—also would likely allow our Nation's enemies to determine how the Government is utilizing these distinct sources of authority, which (combined with other information) could likely impair national security.

D. Removal operations involving TdA and similar groups are counterterrorism operations. Disclosing, confirming, or denying details of those operations would inform TdA and similar groups about the means and methods by which the United States plans and carries out operations against them. This would directly help such groups avoid capture. And it would directly undermine the efficacy of American counterterrorism operations.

E. Disclosure of the information sought in this Court's Minute Order would cause significant harm to the United States' national security even assuming some of that information has already entered public sources as a result of assumptions, speculation, public investigation, or informal statements. It is both true and well known that official acknowledgement of a fact may be damaging to national interests in a way that informal suggestions or speculation about that information is not. If the Government were to confirm or deny the information sought by this Court's Minute Order, there would arise a danger that enemies of our national security would be able to stitch together an understanding of the means and methods used to thwart their unlawful and sometimes violent conduct. Again, the result would be a risk of significant harm to the United States' national security interests, particularly in this case involving a gang and terrorist organization that has been determined to be a danger to the public peace and safety of the United States.

11. *Second*, disclosure of the information sought by this Court's March 18 Minute Order would also threaten significant harm to the United States' national security interests by making it less likely that foreign nations will work productively with the United States on sensitive matters relating to the United States' national security.

A. Protecting the national security of the United States often involves cooperation with foreign States, which can and do share information and otherwise assist and cooperate in matters beneficial to and protective of the United States' national security.

B. When the United seeks to remove individuals to a foreign country, the United States must negotiate the details of that removal with the foreign country. This requires nonpublic, sensitive, and high stakes negotiation with the foreign State, particularly where, as here, the aliens being removed have been deemed enemy aliens and members of a foreign terrorist organization. Those negotiations cover sensitive issues, including representations regarding the bases on which the individuals are being removed from the United States, which can impact the foreign State's willingness to accept the removed aliens and the procedures it will employ in doing so. The negotiations also cover the logistical details of that removal—including the destination of the deportation flight, as well as the time of departure and arrival at the destination, and the form and timing of the transfer of custody. All of these issues are sensitive matters that are negotiated with the receiving foreign State outside the public view. The mere fact of compelled disclosure of this information—to anyone—would likely be seen by the foreign State as a breach of trust, making it less likely that the foreign State and other foreign States will cooperate with the United States in the future on sensitive matters impacting its national security.

C. Similarly, if sensitive information covered by a compelled disclosure—for example, the number and nature of aliens removed to the foreign State—were to come to light—the receiving foreign State's government could face internal or international pressure making that foreign State and other foreign States less likely to work cooperatively in the future with the United States on matters affecting its national security.

D. Moreover, if a disclosure were to in any way undercut or, in the eyes of a foreign State (fairly or not) cast doubt on representations made by the United States during sensitive negotiations, that could likewise make that foreign State and other foreign States less likely to work cooperatively with the United States on matters affecting its national security.

E. Likewise, compelled disclosure of information that could reveal whether an alleged deportation flight touched down in a third country—neither the United States nor the foreign State to which removal is being made—would threaten significant harm to the national security of the United States. Whether a particular flight, carried out for a specific purpose, may land in a third country can itself be a matter of sensitive diplomatic discussions and negotiations with the United States' partners and allies. Compelled disclosure of that sensitive information would likely be seen as a breach of trust, threatening the willingness of foreign States to negotiate and cooperate with the United States on confidential and sensitive matters affecting its national security. Moreover, if a flight stopped-over in a foreign State that was unaware of the nature or purpose of the flight, the compelled disclosure of that information—or of other information that could effectively reveal that information—would, if it reached the public, threaten to directly damage the United States' relationship with that foreign

State and would make that State and other foreign States less likely to work cooperatively with the United States in the future on matters affecting the United States' national security.

F. It is critical to bear in mind that removal operations can be (as they are here) counterterrorism operations. If foreign partners believed that any relevant details could be revealed to third parties, those foreign partners would be less likely to work with the United States on counterterrorism operations in the future.

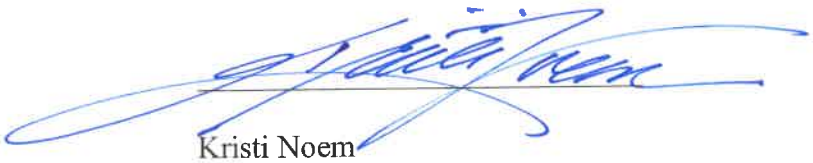
G. As discussed in Paragraph 10.E, *supra*, the compelled disclosure of the sensitive information sought by this Court's March 18 Minute Order would cause significant harm to the United States' national security interests even if some of the alleged details have made it into public sources through unofficial means. There is a difference between official acknowledgement and informal reports: Official disclosures or acknowledgements threaten the United States' national security interests in a way that informal reports or statements do not, because informal statements leave an important element of doubt that provides an essential layer of protection and confidentiality. That protection would be lost if the United States were forced to confirm or deny the accuracy of unofficial disclosures or speculation. Thus, even if the public or the press believes certain information to be true, providing an official acknowledgement by confirming or denying specific details threatens the national security harms discussed above.

12. Finally, for at least two reasons, the compelled disclosure of the information sought in this Court's Minute Order threatens significant harm to the national security of the United States even if that information is provided ex parte and in camera. First, as noted above, the mere act of

providing the information to the Court will itself likely be seen as a breach of trust—the sharing of sensitive, nonpublic information with a third party outside of the process of negotiating and executing the agreement between the two nations. Second, as a practical matter, the more widely information is shared, the greater the risk that the information will reach the public (even if unintentionally), directly or indirectly. Indeed, any order based on the sensitive information at issue here would unavoidably lead to public dissection and speculation as to the bases for the order, even if the underlying information is held under seal. And that increased public dissection and speculation threatens the significant national security harms already discussed: (1) direct threats to the United States' law enforcement operations (here, in the context of a counterterrorism operation); and (2) damage to the United States' ability to obtain cooperation from foreign States on matters affecting its national security.

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

Executed this 24th day of March 2025.



Kristi Noem
Secretary of Homeland Security