

**In the Supreme Court of the United States**

---

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES,  
ET AL., APPLICANTS

*v.*

J.G.G., ET AL.

---

**APPLICATION TO VACATE THE ORDERS ISSUED  
BY THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA  
AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY**

---

SARAH M. HARRIS  
*Acting Solicitor General  
Counsel of Record  
Department of Justice  
Washington, D.C. 20530-0001  
SupremeCtBriefs@usdoj.gov  
(202) 514-2217*

---

## TABLE OF CONTENTS

Statement.....	6
Argument .....	17
A.    The government is likely to succeed on the merits.....	17
1.    Judicial review under the AEA is limited to habeas petitions in the place of confinement .....	18
2.    At a minimum, the district court could not grant nationwide relief .....	25
3.    The courts below did not address the Proclamation’s lawfulness on the merits .....	31
4.    The orders are immediately appealable .....	33
B.    The other factors support relief from the district court’s orders.....	34
C.    This Court should grant an administrative stay .....	40
Conclusion.....	40

**PARTIES TO THE PROCEEDING**

Applicants (defendants-appellants below) are Donald J. Trump, in his official capacity as President of the United States; Pamela Bondi, Attorney General of the United States, in her official capacity; Kristi Noem, Secretary of the U.S. Department of Homeland Security, in her official capacity; United States Department of Homeland Security; Madison Sheahan, Acting Director and Senior Official Performing the Duties of the Director of U.S. Immigration and Customs Enforcement, in her official capacity; U.S. Immigration and Customs Enforcement; Marco Rubio, Secretary of State, in his official capacity; and the United States Department of State.

Respondents (plaintiffs-appellees below) are J.G.G.; G.F.F.; J.G.O; W.G.H.; and J.A.V.

**RELATED PROCEEDINGS**

United States District Court (D.D.C.):

*J.G.G. v. Trump*, No. 25-cv-766 (Mar. 15, 2025)

United States Court of Appeals (D.C. Cir.):

*J.G.G. v. Trump*, No. 25-5067 (Mar. 26, 2025)

*J.G.G. v. Trump*, No. 25-5068 (Mar. 26, 2025)

# In the Supreme Court of the United States

---

No. 24A

DONALD J. TRUMP, IN HIS OFFICIAL CAPACITY AS PRESIDENT OF THE UNITED STATES,  
ET AL., APPLICANTS

*v.*

J.G.G., ET AL.

---

**APPLICATION TO VACATE THE ORDERS ISSUED  
BY THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA  
AND REQUEST FOR AN IMMEDIATE ADMINISTRATIVE STAY**

---

Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Acting Solicitor General—on behalf of applicants President Donald J. Trump, et al.—respectfully files this application to vacate the orders issued by the U.S. District Court for the District of Columbia (App., *infra*, 147a-148a). In addition, the Acting Solicitor General respectfully requests an immediate administrative stay of the district court’s order pending the Court’s consideration of this application.

This case presents fundamental questions about who decides how to conduct sensitive national-security-related operations in this country—the President, through Article II, or the Judiciary, through TROs. The Constitution supplies a clear answer: the President. The republic cannot afford a different choice.

On February 6, 2025, the Secretary of State named Tren de Aragua (TdA) a designated foreign terrorist organization and a specially designated global terrorist group. 90 Fed. Reg. 10,030 (published Feb. 20, 2025). That designation reflected the

President’s recognition of the acute danger that TdA presents to our national security. The President has since determined that thousands of members of this designated foreign terrorist organization have illegally “infiltrated” the country, in furtherance of the Maduro regime’s “goal of destabilizing democratic nations, \* \* \* including the United States.” App., *infra*, 176a.

The President acted swiftly and tasked his Administration with neutralizing TdA. Upon finding that “TdA is undertaking hostile actions and conducting irregular warfare against the territory of the United States both directly and at the direction \* \* \* of the Maduro regime in Venezuela,” App., *infra*, 177a, the President invoked his Article II powers, coupled with his authority under the Alien Enemies Act (AEA), 50 U.S.C. 21 *et seq.*, which has long authorized summary removal of enemy aliens engaged in “invasions or predatory incursions” of U.S. territory. After making the requisite AEA findings, the President designated TdA members in the United States as “subject to immediate apprehension, detention, and removal.” App., *infra*, 177a.

To protect the country against TdA members engaged in a campaign of terror, murder, and kidnapping, aimed at destabilizing our country, the Administration detained designated TdA members identified through a rigorous process. The government prepared to immediately remove them by plane to El Salvador, which had agreed to detain these foreign terrorists after extensive negotiations. In the President’s judgment, swift removal of TdA members was imperative to prevent them from endangering personnel and detainees in U.S. detention facilities and continuing to infiltrate U.S. communities. The United States thus has an overwhelming interest in removing these foreign actors whom the President has identified as engaging in “irregular warfare” and “hostile actions against the United States.” App., *infra*, 176a.

Saturday March 15, 2025 thus marked the culmination of weeks of work by

President Trump and his Cabinet, who identified foreign enemies within our borders; invoked a longstanding statutory scheme to combat them; and then negotiated and planned a sensitive national-security operation, in conjunction with a foreign country, to remove them from the United States. As with many sensitive diplomatic and national-security operations, speed was of the essence. See App., *infra*, 160a-161a.

Yet even before the Proclamation's public issuance, the district court halted the imminent removal of five identified plaintiffs (respondents here) without even hearing from the government. App., *infra*, 147a. Hours later, the court enjoined all further removals under the Proclamation of TdA members after hurriedly certifying a putative class of "[a]ll noncitizens in U.S. custody who are subject to" the Proclamation "and its implementation." *Id.* at 148a. That order is forcing the United States to harbor individuals whom national-security officials have identified as members of a foreign terrorist organization bent upon grievously harming Americans. Those orders—which are likely to extend additional weeks—now jeopardize sensitive diplomatic negotiations and delicate national-security operations, which were designed to extirpate TdA's presence in our country before it gains a greater foothold. The government sought immediate relief from the D.C. Circuit, which took the extraordinary step of hearing argument within days and issuing 93 pages of opinions. *Id.* at 1a-93a.

A majority of the D.C. Circuit panel held that the district court's orders, though styled as temporary restraining orders (TROs), are appealable. App., *infra*, 7a-8a (Henderson, J., concurring); *id.* at 73a-75a (Walker, J., dissenting). That majority further agreed that the government faces "irretrievable injury" because the district court's orders enjoining further removals "risk 'scuttling delicate international negotiations'" during the critical juncture when the orders are in effect. *Id.* at 8a (Henderson, J., concurring); see *id.* at 76a (Walker, J., dissenting). Yet a different majority

of the Court nonetheless voted to deny relief. *Id.* at 28a-29a (Henderson, J., concurring); *id.* at 31a-32a (Millett, J., concurring).

That decision cries out for this Court’s intervention. Most fundamentally, respondents cannot obtain relief because they brought the wrong claims in the wrong court. They style their claims as exclusively arising under the Administrative Procedure Act (APA). But this Court has held that detentions and removals under the Alien Enemies Act are so bound up with critical national-security judgments that they are barely amenable to judicial review at all. *Ludecke v. Watkins*, 335 U.S. 160 (1948). Instead, aliens subject to the AEA can obtain only limited judicial review through habeas. Here, however, respondents not only abandoned their claims for habeas relief below, but also filed this suit in the District of Columbia—not the district of their confinement (the Southern District of Texas). Dismissal should have followed on this basis alone. Yet no majority of the D.C. Circuit resolved that question. Judge Walker’s dissent rightly recognized that AEA plaintiffs must seek habeas. App., *infra*, 79a-86a. Judge Millett’s concurrence incorrectly blessed APA claims. *Id.* at 63a-65a. But Judge Henderson’s concurrence—the deciding vote—inexplicably “*assume[d]*” jurisdiction, then refused to decide whether respondents could bring APA claims. *Id.* at 8a, 24a-25a.

On top of that, the district court improperly used class certification to effectively impose a backdoor nationwide injunction against the Proclamation. This Court has held that to certify a class under Federal Rule of Civil Procedure 23, courts must follow rigorous procedures and establish that an ascertainable class shares common issues capable of mass resolution. *E.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011). Yet the district court certified a circular class of “[a]ll noncitizens in U.S. custody” subject to the Proclamation without following any of the usual procedural or



substantive guardrails. App., *infra*, 148a. When it is easier to certify classes of designated foreign terrorists than a garden-variety class action over defective products, something has gone seriously awry. Yet no majority of the D.C. Circuit passed on the question. Judge Walker found it unnecessary after concluding respondents’ claims belong in habeas proceedings in Texas. *Id.* at 91a n.86. Judge Millett opined that a “swift class action” is necessary to preserve these aliens’ rights. *Id.* at 68a. But Judge Henderson’s tie-breaking concurrence declined to “pass on the class action ‘fit’ of the plaintiffs’ claims.” *Id.* at 28a, 29a n.9.

Even taking the district court’s mistaken view that courts have a broad role to play in interpreting the AEA on its own terms, its orders are unsupportable. The AEA requires the President to make two findings for designated enemy aliens to be summarily removable: here, that TdA members are involved in, threatening, or attempting an “invasion” or “predatory incursion,” and that TdA has “infiltrated,” and “acts at the direction” of a foreign nation or government. App., *infra*, 176a-177a. The President made both findings based on specific descriptions of TdA’s hostile activities and close entwinement with the Maduro regime in Venezuela. *Ibid.* Yet the courts below effectively nullified that determination without engaging with it.

Only this Court can stop rule-by-TRO from further upending the separation of powers—the sooner, the better. Here, the district court’s orders have rebuffed the President’s judgments as to how to protect the Nation against foreign terrorist organizations and risk debilitating effects for delicate foreign negotiations. More broadly, rule-by-TRO has become so commonplace among district courts that the Executive Branch’s basic functions are in peril. In the two months since Inauguration Day, district courts have issued more than 40 injunctions or TROs against the Executive Branch. Whereas “district courts issued 14 universal injunctions against the federal

government through the first three years of President Biden’s term,” they issued “15 universal injunctions (or temporary restraining orders) against the current Administration in February 2025 alone.” Appl. to Stay Injunction at 6, *Office of Personnel Mgmt. v. American Fed. of Gov’t Emps.* (No. 24A904). The Framers prized “[e]nergy in the executive” and “[d]ecision, activity, secrecy, and dispatch” as paramount qualities for “good government,” *The Federalist No. 70*, at 471, 472 (Alexander Hamilton) (Jacob E. Cooke ed., 1961)—not the energetic dispatch of injunctions to restrain the President from discharging his paramount duties to the Nation.

### STATEMENT

1. Tren de Aragua (TdA) is a transnational criminal organization that originated in Venezuela and has “conducted kidnappings, extorted businesses, bribed public officials, authorized its members to attack and kill U.S. law enforcement, and assassinated a Venezuelan opposition figure.” Office of the Spokesperson, Dep’t of State, *Designation of International Cartels* (Feb. 20, 2025). The President has found that TdA operates “both within and outside the United States,” and that its “extraordinarily violent” campaign of terror presents “an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.” Exec. Order No. 14,157, 90 Fed. Reg. 8439, 8439 (Jan. 29, 2025). On the first day of his term, the President declared a national emergency to respond to that threat. *Ibid.*

The threat is so acute that on February 6, 2025, the Secretary of State, in consultation with other Cabinet officers, designated TdA a “foreign terrorist organization.” 90 Fed. Reg. 10,030 (Feb. 20, 2025). The immigration laws authorize such a designation upon the Secretary’s finding that an organization is foreign, engages in “terrorist activity” or “terrorism” or “retains the capability and intent” to do so, and thereby “threatens the security of United States nationals or the national security of

the United States.” 8 U.S.C. 1189(a)(1), (d)(4); see *Holder v. Humanitarian Law Project*, 561 U.S. 1, 9 (2010).

Given that TdA poses a significant threat to national security, government officials at the White House and the Department of State have expended significant efforts engaging in delicate negotiations with foreign governments and representatives in order to remove TdA members from the United States as swiftly as possible. As the Senior Bureau Official within the State Department’s Bureau of Western Hemisphere Affairs has explained, high-level government officials—including the Secretary himself—spent weeks “negotiat[ing] at the highest levels with the Government of El Salvador and with Nicolas Maduro and his representatives in Venezuela” concerning those countries’ consent to the removal to Venezuela and El Salvador of Venezuelan nationals detained in the United States who are members of TdA. App., *infra*, 156a (Kozak Decl.). Following those “intensive and delicate negotiations,” the United States reached arrangements “with these foreign interlocutors to accept the removal of some number of Venezuelan members of TdA.” *Id.* at 157a.

2. On March 14, 2025, the President signed a proclamation, which was published on March 15, invoking his authorities under the Alien Enemies Act (AEA), 50 U.S.C. 21 *et seq.*, against members of TdA. See Proclamation No. 10,903 § 1 (Mar. 14, 2025), 90 Fed. Reg. 13,033 (Mar. 20, 2025) (Proclamation) (App., *infra*, 176a-179a). Originally enacted in 1798, the AEA grants the Executive broad power to remove enemy aliens from the United States. For instance, the first sentence of Section 21—the Act’s most significant source of authority—provides:

Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or

government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies.

50 U.S.C. 21. Section 21's second sentence elaborates on related powers:

The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.

*Ibid.* The Act's remaining provisions outline procedures for implementing the President's broad authority. Section 22 provides that "an alien who becomes liable as an enemy" but who "is not chargeable with actual hostility, or other crime against the public safety," may be afforded some time to settle his affairs before departing from the United States. 50 U.S.C. 22. Section 23 provides an optional process by which an alien enemy can be ordered removed by a federal court following a complaint, rather than directly by the President. 50 U.S.C. 23; see *Lockington v. Smith*, 15 F. Cas. 758, 761 (C.C.D. Pa. 1817) (Washington, J.) (the President can remove alien enemies under the Act without resorting to the Section 23 process). And Section 24 prescribes a role for marshals in implementing removal orders under the Act. 50 U.S.C. 24.

The President's March 14 Proclamation outlines his findings that TdA members meet the statutory criteria for removal under the Alien Enemies Act. The President found that TdA, which "commits brutal crimes" including murder and kidnapping, is "conducting irregular warfare and undertaking hostile actions against the United States." App., *infra*, 176a. The President further found that TdA has "engaged in and continues to engage in mass illegal migration to the United States" as a means of supporting Maduro's goal of "harming United States citizens, undermin-

ing public safety,” and “destabilizing” the United States. *Ibid.*; see INTERPOL Washington, *High Ranking Tren de Aragua Fugitive from Venezuela Arrested in Tennessee Thanks to Interpol Collaboration* (Dec. 3, 2024), <https://perma.cc/UD2K-EV69> (“Tren de Aragua has emerged as a significant threat to the United States as it infiltrates migration flows from Venezuela.”). Indeed, Maduro has welcomed the return to Venezuela of aliens who are TdA members. And the President found that TdA works with the Maduro-sponsored Cartel de los Soles to use “illegal narcotics as a weapon to ‘flood’ the United States.” App., *infra*, 176a.

The President additionally found that TdA and other criminal organizations have taken control over Venezuelan territory, resulting in a “hybrid criminal state.” App., *infra*, 176a. Moreover, TdA is “closely aligned with” Maduro’s regime in Venezuela, and indeed has “infiltrated” the regime’s “military and law enforcement apparatus.” *Ibid.* The resulting hybrid state, the President determined, “is perpetrating an invasion of and predatory incursion into the United States,” posing “a substantial danger” to the Nation. *Ibid.*

Based on those findings, the President 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” pursuant to 50 U.S.C. 21. App., *infra*, 177a. Further, “all such members of TdA are” “chargeable with actual hostility against the United States” and “are a danger to the public peace or safety of the United States.” *Ibid.*

The Proclamation adds that all such TdA members “are subject to immediate apprehension, detention, and removal.” App., *infra*, 177a. To that end, the President directed the Attorney General and the Secretary of Homeland Security to “apprehend,

restrain, secure, and remove every Alien Enemy described” above. *Id.* at 177a-178a. Any such TdA member found within the United States is “subject to summary apprehension.” *Id.* at 178a. Aliens apprehended under the Proclamation may be detained until their removal, then may be removed to “any such location as may be directed” by the enforcing officers. *Ibid.* TdA members remain deportable under other authorities, including under Title 8 as members of a foreign terrorist organization or otherwise. 8 U.S.C. 1182(b)(3)(B), 1227(a)(4)(B). But the Proclamation lets the President use a particularly expeditious, statutorily authorized removal method for individuals found to present serious national-security threats under specified circumstances.

4. On Saturday, March 15, respondents—five Venezuelan nationals detained at an immigration detention center in Texas—sued in the United States District Court for the District of Columbia to block the government from removing them under the Proclamation, before the Proclamation was even published. Compl. 1.

Several respondents asserted that they were not members of TdA and were wrongly designated as such, though only three of the five respondents initially pressed that argument. Compl. 3-5. Nonetheless, respondents moved to certify a class of “[a]ll noncitizens who were, are, or will be subject to the Alien Enemies Act Proclamation and/or its implementation.” Compl. 12. Captioned “PETITION FOR WRIT OF HABEAS CORPUS,” Compl. 1, respondents’ complaint asserted that implementing the Proclamation would violate “their right to habeas corpus” and asked for “a writ of habeas corpus.” Compl. 21. Respondents also sought relief under the APA, asking for an injunction barring enforcement of the Proclamation as contrary to the AEA, the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.*, and other authorities. Compl. 15-21. Respondents, finally, moved for a TRO “barring their summary removal under the AEA.” D. Ct. Doc. 3-2, at 2 (Mar. 15, 2025).

b. Hours after respondents filed their complaint, and without waiting to hear from the government, the district court granted respondents' motion for a TRO and ordered applicants not to "remove any of the individual Plaintiffs from the United States for 14 days absent further Order of the Court." App., *infra*, 147a (3/15/25 Second Minute Order). The government moved to stay the order and filed an appeal.

Later that day, and without waiting for a brief from the government, the district court held a hearing on respondents' motion for class certification. App., *infra*, 147a (3/15/25 Third Minute Order). At that hearing, the government's counsel explained that certification of a nationwide class was not appropriate because (among other reasons) respondents' claims sound in habeas and accordingly must be brought in the district (in Texas) in which they are confined. *Id.* at 165a; see *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). In response, the district court inquired whether respondents might want to dismiss their habeas claims. App., *infra*, 169a. Respondents' counsel explained that "if the Court felt like it needed us to dismiss the habeas [claim] in order to issue a classwide TRO, then we are prepared to do that." *Ibid.* The court granted respondents' "motion to dismiss their habeas count" without prejudice. *Ibid.* The court then stated without elaboration that "class certification is warranted under Federal Rule of Civil Procedure 23(a) and 23(b)(2)." *Ibid.*

Turning to the merits, the district court did not question TdA's designation as a foreign terrorist organization or the national-security harms that the President identified, including that TdA is "conducting irregular warfare and undertaking hostile actions against the United States." App., *infra*, 176a. The court nonetheless held that respondents are likely to succeed on their argument that the Act "does not provide a basis for the president's proclamation," under the court's view that the terms "invasion" and "predatory incursion" "really relate to hostile acts perpetrated by en-

emy nations and commensurate to war.” *Id.* at 174a. The court found that the balance of the equities favors respondents. *Ibid.*

The district court next addressed the implementation of its order. App., *infra*, 174a. Earlier in the hearing, respondents’ counsel had asserted that he believed that flights removing individuals pursuant to the President’s Proclamation were scheduled to take off during the hearing. *Id.* at 166a. Toward the end of the hearing, the court then stated that “any plane containing these folks that is going to take off or is in the air needs to be returned to the United States, but those people need to be returned to the United States,” including by “turning around a plane.” *Id.* at 174a.

c. Shortly after the hearing, the district court issued a minute order (1) provisionally certifying a class of “[a]ll noncitizens in U.S. custody who are subject to the \* \* \* Proclamation \* \* \* and its implementation”; (2) enjoining the Government “from removing members of such class (not otherwise subject to removal) pursuant to the Proclamation for 14 days or until further Order of the Court,” and (3) setting a briefing schedule for a Government motion to vacate the TRO. App., *infra*, 148a (3/15/25 Fourth Minute Order). The court’s written order did not direct the government to turn around planes. The court’s order limits removal only under the AEA; it does not affect the President’s authority under the Constitution or under other federal statutes. See *id.* at 26a-27a (opinion of Henderson, J.).

d. The government immediately appealed the court’s facial injunction of the Proclamation, and the court of appeals consolidated that appeal with the government’s appeal from the initial party-specific injunction. 3/15/25 C.A. Clerk’s Order.

On Sunday, March 16, the government filed an emergency motion for a stay pending appeal, and the court of appeals scheduled a hearing for March 24. See 3/16/25 Gov’t C.A. Emergency Mot. The same day, the government reported to the



district court that, “based on information from the Department of Homeland Security, \* \* \* some gang members subject to removal under the Proclamation had already been removed from United States territory under the Proclamation before the issuance of this Court’s second order.” D. Ct. Doc. 19, at 1 (Mar. 16, 2025). The government emphasized, though, that “[t]he five individual Plaintiffs [who] were the subject of the first TRO have not been removed” and remain in detention. *Ibid.* Respondents then accused the government of failing to comply with the court’s oral directives and written order. D. Ct. Doc. 21 (Mar. 17, 2025). The government responded that it had complied with the written order “since the relevant flights left U.S. airspace, and so their occupants were ‘removed,’ before the order issued,” and that the court’s “earlier oral statements were not independently enforceable as injunctions.” D. Ct. Doc. 28, at 1 (Mar. 18, 2025). That compliance dispute remains pending in the district court.

e. On March 17, the government moved in the district court to vacate the nationwide TRO. D. Ct. Doc. 26. On March 24, hours before argument in the D.C. Circuit was scheduled to begin, the district court issued a 37-page opinion denying the government’s motion to vacate the TRO and shifting some of its previous rationales. App., *infra*, 94a-130a; see *id.* at 131a. The court first held that it had jurisdiction over respondents’ APA claims, rejecting the government’s arguments that their challenge could be brought only in habeas in the district of confinement. *Id.* at 111a. The court now explained that respondents “are not limited to habeas relief,” because they challenge only their removal and “do not seek release from confinement.” *Ibid.*

Turning to the merits, the district court found that respondents are likely to prevail, but changed the grounds. At the oral hearing, the court had opined that the “proclamation is not legal under the AEA.” App., *infra*, 174a. In the written denial order, however, the court declined to settle whether “the Proclamation has a legal

basis” in light of the Act’s terms. *Id.* at 116a. Instead, the court found that respondents are likely to succeed on their claim that “summary deportation following close on the heels of the Government’s informing an alien that he is subject to the Proclamation—without giving him the opportunity to consider whether to voluntarily self-deport or challenge the basis for the order—is unlawful.” *Id.* at 123a. The court held that “all class members must be given the opportunity to challenge their classifications as alien enemies, if they wish to do so, before they may be lawfully removed from the United States pursuant to the proclamation.” *Id.* at 117a. The court rejected the government’s argument that “such judicial inquiry can take place only in a habeas court.” *Id.* at 120a. The court opined that there “may well also be independent restrictions on the Government’s ability to deport class members—at least to Salvadoran prisons,” *id.* at 124a, under the Foreign Affairs Reform and Restructuring Act of 1998, Pub. L. No. 105-277, Div. G, § 2242(b), 112 Stat. 2681-822, which effectuates implementation of Article 3 of the Convention Against Torture.

The district court further reasoned that respondents are likely to suffer irreparable harm in the Salvadoran detention facilities to which they anticipated being removed. App., *infra*, 129a-130a. By contrast, the court dismissed the government’s harms from the TRO as “vague foreign-policy and national-security concerns.” *Id.* at 129a. The court thus declined to vacate the initial TRO. *Id.* at 130a.

5. On March 26, the D.C. Circuit issued a 2-1 ruling denying a stay, with each judge writing separately. App., *infra*, 1a. A majority (Judges Henderson and Walker) agreed that the district court’s orders are appealable. *Id.* at 8a (Henderson, J., concurring); *id.* at 73a (Walker, J., dissenting). A majority further agreed that the government “risks irretrievable injury” because the district court’s orders enjoining further removals “risk ‘scuttling delicate international negotiations’” during a critical

juncture. *Id.* at 7a (Henderson, J., concurring) (citation omitted); see *id.* at 90a (Walker, J., dissenting). A different majority nonetheless voted to deny relief. *Id.* at 30a (Henderson, J., concurring); *id.* at 32a (Millet, J., concurring).

Judge Henderson voted to deny the stay. See App., *infra*, 2a-30a. She explained that the district court’s orders are appealable because they risk upending international negotiations and they run against the President. *Id.* at 7a (citation omitted); see *id.* at 5a-8a. But she determined that the government had not shown a likelihood of success on the merits. See *id.* at 9a-25a. She “assume[d]” that respondents could properly bring their claims under the APA rather than through habeas, *id.* at 10a (emphasis omitted); rejected the government’s reliance on the unreviewability of AEA questions, see *id.* at 11a-17a; and rejected parts of the government’s interpretations of the statutory terms “invasion” and “predatory incursion,” see *id.* at 17a-24a. Yet she reserved “whether TdA has conducted an ‘invasion or predatory incursion’ ‘against the territory of the United States’”; “whether TDA’s conduct is ‘perpetrated, attempted, or threatened *by a foreign nation or government*’”; or whether the INA provides “the ‘exclusive procedure’ for removal and thus eclipse[s] any contrary authority in the AEA.” *Id.* at 24a-25a (brackets, citations, and ellipsis omitted).

Judge Henderson also determined that the equities did not support granting a stay. App., *infra*, 25a-28a. Although she had stated in finding the orders appealable that they “threaten[] truly ‘irretrievable’ harm” by upending “‘delicate international negotiations,’” *id.* at 7a (citation omitted), she concluded in analyzing the equities that the government does not face irreparable harm, see *id.* at 25a-27a. Finally, she stated that “what the district court did here was *not* a universal injunction” and that the court instead “followed the Rules of Civil Procedure and certified a class,” but she refused to “pass on the class action ‘fit’ of the plaintiffs’ claims.” *Id.* at 28a, 29a n.9.

Judge Millett, too, voted to deny a stay. See App., *infra*, 31a-71a. In her view, the district court’s orders constitute unappealable TROs. See *id.* at 46a-53a. She rejected the government’s argument that most AEA questions are judicially unreviewable under Supreme Court precedent, see *id.* at 55a-62a, and reasoned that this suit could proceed through the APA, not habeas corpus, see *id.* at 62a-68a. Although she did not resolve the merits of respondents’ underlying claims, she stated that the Fifth Amendment’s Due Process Clause entitles aliens to notice and the opportunity for a hearing before their removal. See *id.* at 32a-34a. She also determined that the equities do not support granting a stay, see *id.* at 68a-70a, and opined that “[o]nly a swift class action[] could preserve [respondents’] legal rights.” *Id.* at 68a.

Judge Walker dissented. App., *infra*, 72a-93a. He concluded that the district court’s orders are appealable because they “affirmatively interfered with an ongoing, partially overseas, national-security operation.” *Id.* at 75a. He determined that the government is likely to succeed on the merits because respondents’ suit could properly be brought only through a habeas action in Texas, not through an APA action in the District of Columbia. See *id.* at 78a-91a. He viewed the equities as favoring a stay because the court’s orders jeopardize “the status of ‘intensive and delicate’ negotiations with El Salvador and the Maduro regime in Venezuela.” *Id.* at 90a.

6. The district court’s TROs are scheduled to expire on Saturday, March 29. See App., *infra*, 147a. The court invited respondents to move to convert the TROs into preliminary injunctions, see *id.* at 131a, but respondents declined and sought to supplement the record, see D. Ct. Doc. 61 (Mar. 26, 2025). At the court’s direction, respondents have now moved to extend the TROs by 14 days, D. Ct. Doc. 64 (Mar. 27, 2025), while the preliminary-injunction briefing continues. 3/26/25 Minute Order.

## ARGUMENT

Under Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Court may stay or vacate a district order’s interlocutory order granting emergency relief. See, e.g., *Trump v. International Refugee Assistance Project*, 582 U.S. 571 (2017) (per curiam); *Brewer v. Landrigan*, 562 U.S. 996 (2010); *Brunner v. Ohio Republican Party*, 555 U.S. 5, 6 (2008). An applicant must show (1) a likelihood of success on the merits, (2) a reasonable probability of obtaining certiorari, and (3) a likelihood of irreparable harm. See *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam). In “close cases,” “the Court will balance the equities and weigh the relative harms.” *Ibid.* Those factors strongly support relief here.<sup>1</sup>

### A. The Government Is Likely To Succeed On The Merits

The government is likely to prevail for multiple reasons. To begin, judicial review under the AEA is exceedingly limited and confined to habeas, the historical basis for individuals to challenge their custody. But respondents, at the district court’s urging, App., *infra*, 169a, have dropped their habeas claims, which in any event “must be brought where detainees are held”—for the five individual plaintiffs here, in the Southern District of Texas. *Id.* at 78a (Walker, J., dissenting). Even were the APA available, the court overstepped by certifying a sweeping, nationwide class of all aliens “in U.S. custody who are subject to” the Proclamation “and its implementation.” *Id.* at 148a. Finally, the courts below deemed the United States unlikely to succeed on the merits, yet refused to resolve dispositive merits questions, such as whether TdA—an undisputed foreign terrorist organization—is engaged in

---

<sup>1</sup> The government has applied to “vacate” rather than “stay” the district court’s order, though the practical effect of the relief is the same; the traditional stay standard should govern. See Appl. to Vacate Order at 11 n.4, *Bessent v. Dellinger*, 144 S. Ct. 338 (No. 24A790).

“predatory incursions” into the United States that trigger the AEA. See *id.* at 23a-24a, 116a. But it is a non sequitur to conclude that the government is unlikely to succeed on the merits while refusing to examine the merits. *Nken v. Holder*, 556 U.S. 418, 427 (2009) (“A reviewing court must bring considered judgment to bear on the matter before it” in evaluating the stay factors). By leaving the government’s dispositive merits arguments on the cutting-room floor, the court of appeals improperly discounted the government’s chances.

**1. Judicial review under the AEA is limited to habeas petitions in the place of confinement**

To begin, respondents brought the wrong claims to the wrong forum. The AEA buttresses the President’s Article II authorities over national security by expressly empowering him to remove alien enemies—a power that this Court has held is largely unreviewable. *Ludecke v. Watkins*, 335 U.S. 160, 165-166 (1948). The exception is for habeas claims challenging enemy-alien detention. The government agrees that a cause of action would be available to respondents. But because their “claims sound in habeas,” they must be brought where they are held, in Texas. App., *infra*, 78a (Walker, J., dissenting).

a. This Court has long recognized that the President’s broad national-security authority under the AEA is generally “not to be subjected to the scrutiny of courts.” *Ludecke*, 335 U.S. at 165. The Act grants the President an authority “as unlimited as the legislature could make it.” *Id.* at 164 (citation omitted). Drawing from the established English rule that “alien-enemies have no rights, no privileges, unless by the king’s special favour, during the time of war,” 1 William Blackstone, *Commentaries on the Laws of England* 361 (1765), the Act confers on the President the power to determine which alien enemies are subject to removal. 50 U.S.C. 21; see

*Citizens Protective League v. Clark*, 155 F.2d 290, 294 (D.C. Cir. 1946) (“Unreviewable power in the President” is “the essence of the Act.”); 1 Blackstone, *Commentaries* at 252 (aliens are “liable to be sent home whenever the king sees occasion”).<sup>2</sup>

The “very nature” of that sweeping authority “rejects the notion that courts may pass judgment upon the exercise of [the President’s] discretion.” *Ludecke*, 335 U.S. at 164. *Ludecke* thus declined to second-guess the President’s power to detain and remove a German alien enemy after World War II fighting ended, explaining that “judges have neither technical competence nor official responsibility” over such “matters of political judgment.” *Id.* at 170.

But the AEA does not foreclose all opportunity to test the legality of alien-enemy detention. Individuals may bring habeas claims. *Ludecke* thus acknowledged that “the question as to whether the person restrained is in fact an alien enemy fourteen years of age or older may” be “reviewed by the courts.” 335 U.S. at 171 n.17. Detainees may be able to obtain narrow review of “the construction and validity of the statute,” but not the merits of the President’s discretionary decision whether to detain or remove particular alien enemies. *Id.* at 171. Instead, review is limited to questions like “whether the detainee is an alien, and whether the detainee is among the ‘natives, citizens, denizens, or subjects of the hostile nation’ within the meaning of the Act.” Gerald L. Neuman, *Habeas Corpus, Executive Detention, and the Removal of Aliens*, 98 Colum. L. Rev. 961, 994 & n.196 (1998); see *Ludecke*, 335 U.S. at 171.

Such claims fall within the historical core of habeas. *Ludecke* itself was brought as a habeas action. 335 U.S. at 162-163. Indeed, “the few Alien Enemies Act

---

<sup>2</sup> An early American edition of Blackstone recognized the parallels and cited the AEA in a footnote appended to this passage. 2 *Blackstone’s Commentaries* 260 & n.28 (St. George Tucker ed., 1803).

cases on the books almost invariably arose through habeas petitions.” App., *infra*, 85a (Walker, J., dissenting). That is because the habeas writ historically existed to challenge the lawfulness of “all manner of detention by government officials.” *Department of Homeland Security v. Thuraissigiam*, 591 U.S. 103, 137 (2020).

The existence of a habeas remedy to challenge the alien-enemy determination forecloses respondents’ broader APA claims. Generally, claims at the historical core of habeas may be brought *only* in habeas. See App., *infra*, 87a (Walker, J., dissenting). Thus, the D.C. Circuit has long recognized in an analogous context that “the availability of a habeas remedy in another district oust[s] us of jurisdiction over an alien’s effort to pose a constitutional attack on his pending deportation by means of a suit for declaratory judgment.” *LoBue v. Christopher*, 82 F.3d 1081, 1082 (D.C. Cir. 1996); see *Kaminer v. Clark*, 177 F.2d 51, 52 (D.C. Cir. 1949) (“An action for declaratory judgment cannot be substituted for habeas corpus so as to give jurisdiction to a district other than that in which the applicant is confined or restrained.”). Moreover, APA review is available only for final agency action “for which there is no other adequate remedy in a court.” 5 U.S.C. 704. Habeas is an “adequate remedy” and therefore displaces APA review. See App., *infra*, 80a (Walker, J., dissenting); cf. *O’Banion v. Matevousian*, 835 Fed. Appx. 347, 350 (10th Cir. 2020) (holding that “habeas actions” provide an “adequate remedy” displacing APA review under Section 704).

b. Those principles foreclose respondents’ APA claims. Tellingly, they labeled their complaint a “petition for writ of habeas corpus” and asked the district court to “[g]rant a writ of habeas corpus” to prevent their removal under the AEA. Compl. 1. Though they abandoned their habeas claims to focus on putative APA remedies at the district court’s invitation, see App., *infra*, 169a, the court clarified that the basis for its order is to permit respondents to challenge their alien-enemy status.



See *id.* at 118a (“challenges to their factual designations as members of Tren de Aragua”). That is precisely the type of claim that must be brought in habeas. See *Ludecke*, 335 U.S. at 171 n.17; 5 U.S.C. 704.

Habeas claims, however, must be brought only in the district of detention—and that is not where respondents sued. See *Rumsfeld v. Padilla*, 542 U.S. 426, 435 (2004). Respondents should have brought habeas claims in the Southern District of Texas. Yet they filed in the District of Columbia. Respondents may not leverage the APA to attack the President’s exercise of authority under the Alien Enemies Act in a forum of their choosing. See *Ludecke*, 335 U.S. at 164. The APA is a particularly poor fit given that APA review extends only to “agency action” and not to action “of the President” like the Proclamation. *Franklin v. Massachusetts*, 505 U.S. 788, 796 (1992); see App., *infra*, 80a (Walker, J., dissenting).

c. The decisions below disregarded the problem. Indeed, no majority of D.C. Circuit panel rejected the habeas argument. Only Judge Millett concluded that respondents’ “claims are not habeas claims and do not sound in habeas.” App., *infra*, 63a. By contrast, Judge Walker, in dissent, opined that respondents’ claims sound in habeas and must be brought in Texas. *Id.* at 78a. But Judge Henderson—the deciding vote—merely “[a]ssum[ed] habeas relief is no longer sought,” then “*assume[d]*” that respondents’ APA claims “constitute claims they can assert thereunder.” *Id.* at 10a. That assumes away the decisive issue: the AEA does not let respondents re-fashion habeas claims into APA claims. Judge Henderson ducked that question, portraying the government as having “forfeited” this argument by raising it only in cursory fashion on a single page. *Ibid.* That is untrue. The government reiterated across pages of its briefing that respondents’ claims sound in habeas. See Gov’t C.A. Emergency Mot. 14, 20-21; Gov’t C.A. Reply 6-8, 15-16. By sidestepping this key problem,

the court of appeals left the government subject to an injunction that a majority of the panel did not even determine to be jurisdictionally proper.

Judge Millett and the district court’s counterarguments lack merit. They reasoned that habeas was not the proper path for review because respondents supposedly seek relief only from removal, not from detention. See App., *infra*, 62a-64a (Millett, J., concurring); see *id.* at 109a-110a (district court order). But the substance of a complaint dictates whether it sounds in habeas. See *Boudin v. Thomas*, 732 F.2d 1107, 1111 (2d Cir. 1984). And the substance of respondents’ complaint is a challenge to the Executive’s legal authority to issue the Proclamation under which they are currently being held. See Compl. 15-20. Such a challenge to the lawfulness of detention authority is a classic habeas claim; the “core” of habeas is as “a remedy for unlawful detention.” *Thuraissigiam*, 591 U.S. at 127 (citation omitted). Moreover, the line between detention and removal in the AEA context is a distinction without a difference, because under the statute and the Proclamation, detention is the immediate precursor to removal. 50 U.S.C. 21; App., *infra*, 177a.

Put otherwise, respondents’ claims sound in habeas because they aim at undermining the basis of their detention *under the Alien Enemies Act*. Respondents cannot claim otherwise by purporting to attack the collateral consequences of detention under the AEA and the President’s Proclamation (namely, their removal). In the state-prison context, a prisoner cannot evade the habeas statutes by bringing claims for other forms of relief (such as damages) that would “necessarily imply the invalidity of his conviction or sentence.” *Heck v. Humphrey*, 512 U.S. 477, 483 (1994). So too, a fugitive cannot prevent extradition through a suit for declaratory relief rather than a habeas action. See *LoBue*, 82 F.3d at 1083. The court in *LoBue* explained that habeas was the appropriate remedy even though the plaintiffs had “not formally

sought a release from custody,” because prevailing on their claims would immediately entitle them “to release or a new trial because of the issue preclusion effect of the judgment here.” *Ibid.* Here, because respondents are currently being detained pursuant to the AEA, a successful challenge to the lawfulness of their removability under the Act would necessarily imply the invalidity of the basis for their current detention.

Moreover, as Judge Walker explained below, habeas courts have long entertained claims analogous to respondents’. For example, there have been habeas claims challenging transfer between custodial authorities. Judge Walker, for example, highlighted *Kiyemba v. Obama*, 561 F.3d 509, 513 (2009), in which the D.C. Circuit described detainees’ request for an “order barring their transfer” to another jurisdiction’s authorities as a “proper claim for habeas relief.” See App., *infra*, 83a. Here, respondents’ request to block their “removal” largely focuses on their request not to be transferred to a foreign detention authority. See Compl. 4-6. Indeed, the district court appeared to recognize that respondents are ultimately concerned about their transfer of detention authority rather than their removal, because it concluded that respondents would be irreparably harmed by the conditions of detention facilities in El Salvador upon their removal, not by the removal itself. See App., *infra*, 127a-128a; *Nken*, 556 U.S. at 435. Respondents’ claim sounds in habeas.

Judge Millett and the district court erroneously concluded that this Court’s decisions in *Thuraissigiam* and *Munaf v. Geren*, 553 U.S. 674 (2008), foreclose those arguments. See App., *infra*, 64a, 109a. But *Thuraissigiam* and *Munaf* do not hold that habeas is unavailable whenever an individual purports to want to “stay in detention in the United States” rather than be removed. *Id.* at 64a (Millett, J., concurring). *Thuraissigiam* recognized that habeas was not traditionally available to obtain “authorization” for an asylum-seeking alien “to remain in a country other than his

own or to obtain administrative or judicial review leading to that result.” 591 U.S. at 120. Here, respondents’ suit could not grant them asylum or a path to remain in the United States; they challenge the lawfulness of an authority under which they are currently being detained. *Munaf* is even less apt. That case involved detainees who were being held by U.S. forces in Iraq until they could be transferred to Iraq’s custody so that Iraq could prosecute them for alleged violations of Iraqi law. This Court found that the lower courts had habeas jurisdiction, but because the plaintiffs’ efforts to block their transfer to Iraqi custody “would interfere with Iraq’s sovereign right to punish offenses against its laws committed within its borders,” their claims did “not state grounds upon which habeas relief may be granted.” 553 U.S. at 692 (internal quotation marks omitted). *Munaf* is thus inapposite.

The district court, separately erred by concluding in its follow-up order that habeas and APA relief for an Alien Enemies Act claim “may coexist.” App., *infra*, 108a (citation omitted). The APA provides otherwise, limiting judicial review under the statute to agency actions “for which there is no other adequate remedy in a court.” 5 U.S.C. 704; see pp. 20-21, *supra*. The district court relied on *Brownell v. Tom We Shung*, 352 U.S. 180 (1956), which held that an alien could choose to challenge an exclusion order under the APA or in habeas. 352 U.S. at 254. But *Brownell* did not involve a claim under the AEA, which broadly “preclude[s] judicial review” other than in habeas. *Ludecke*, 335 U.S. at 164 (citation omitted). And *Brownell* is an especially slim reed to grasp given that Congress soon overruled it by specifying that aliens “may obtain judicial review” of exclusion orders “by habeas corpus proceedings *and not otherwise*.” Pub. L. No. 87-301, § 5, 75 Stat. 653 (1961) (emphasis added). This Court’s short-lived and now-repudiated embrace of overlapping APA and habeas relief from exclusion in the 1950s in no way justifies the district court’s extraordinary

exercise of jurisdiction over claims that may be heard only in habeas and in Texas.

**2. At a minimum, the district court could not grant nationwide relief**

Even if the district court could review respondents' APA claims, it lacked authority to grant relief to a nationwide class of members of a foreign terrorist organization. The court provisionally certified a class of "[a]ll noncitizens in U.S. custody who are subject to the" Proclamation "and its implementation." App., *infra*, 148a. But that highly truncated class-certification determination was highly improper. The court certified a non-ascertainable class consisting of anyone in U.S. custody who might be subject to the Proclamation—based on allegations by putative class members who claim they do *not* belong to TdA and thus cannot possibly represent a class whose defining characteristic is being subject to a Proclamation directed at TdA members. By awarding relief to an amorphous nationwide class, the court effectively circumvented equitable limitations on universal relief in a sensitive national-security context. If nothing else, this Court should vacate the district court's order granting classwide relief and limit any surviving order to the named plaintiffs only.

a. Starting with procedure, the district court certified a class without conducting the "rigorous analysis" that Federal Rule of Civil Procedure 23 demands. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 351 (2011). The court provisionally certified a class from the bench, before the government could file a brief in opposition. See App., *infra*, 169a. The court offered only the conclusory statement that "class certification is warranted under Federal Rule of Civil Procedure 23(a) and 23(b)(2)." *Ibid.* The court never explained why the Rule 23(a) factors were satisfied, let alone in writing. See *ibid.* Nor did the court satisfy other procedural requirements of Rule 23, such as the requirement to define "the class claims, issues, or defenses," the re-

quirement to “appoint class counsel under Rule 23(g),” or the requirement to “direct appropriate notice to the class.” Fed. R. Civ. P. 23(c)(1)(B), (2).

Those requirements are indispensable: The modern class action already represents an “‘adventuresome’” “innovat[ion]” on traditional “equity practice.” *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 613, 617 (1997) (citation omitted); see *Trump v. Hawaii*, 585 U.S. 667, 718 (2018) (Thomas, J., concurring). And certified classes not only place pressure on defendants but also have the power to bind absent class members and preclude them from pressing their claims in further litigation. Indeed, due process requires “that the procedure adopted[] fairly insures the protection of the interests of absent parties who are to be bound by it.” *Hansberry v. Lee*, 311 U.S. 32, 42 (1940). Rule 23 is that procedure, and “courts must be mindful that the Rule as now composed sets the requirements they are bound to enforce.” *Amchem*, 521 U.S. at 620. Certifying classes without observing the procedural guardrails violates this Court’s instructions; runs the risk of serious errors in certification; and deprives the defendant and absent parties of a meaningful opportunity to object to classwide relief.

For example, in *East Texas Motor Freight Systems Inc. v. Rodriguez*, 431 U.S. 395 (1977), this Court reversed class certification where the court of appeals certified a class notwithstanding the plaintiffs’ failure to move for class certification, finding it “inescapably clear” that Rule 23’s prerequisites were not met. *Id.* at 403. As that case shows, glaring procedural errors often beget glaring substantive ones. Courts of appeals have vacated class-certification orders with far less serious procedural shortcomings and far fewer consequences for the Nation’s security than this case presents. Take *Chavez v. Plan Benefit Services, Inc.*, 957 F.3d 542, 545, 547, 550 (2020), where the Fifth Circuit held in the context of an ERISA class action that a class certification order that included “about five pages of substantive analysis” had failed “to demon-

strate a rigorous analysis” because it “analyzed Rule 23 superficially.” Or *Valentino v. Carter-Wallace, Inc.*, 97 F.3d 1227, 1234 (1996), where the Ninth Circuit vacated a certification order in a products-liability case that was “brief and conclusory” where “the record simply [did] not reflect any basis” to “conclude that some key requirements of Rule 23 have been satisfied.” If district courts may not certify classes based on thin Rule 23 analysis in the contexts of ERISA and products liability, then certifying a circular class of all detained aliens in the United States subject to a sensitive national-security proclamation based on even thinner analysis is beyond the pale.

In sum, “[e]xplanations are necessary; complex certification decisions cannot be made by judicial fiat.” *Priddy v. Health Care Serv. Corp.*, 870 F.3d 657, 661 (7th Cir. 2017). But judicial fiat aptly describes the court’s half-sentence analysis here. App., *infra*, 169a. Indeed, the court granted certification before even defining the class, underscoring its procedural error. See *ibid.* (“So I will certify a class, and the class will be—let’s talk about the definition.”). That makes this an easy case for vacatur of the court’s order of classwide relief.

b. The district court’s class-certification decision also exhibits basic substantive defects. Rule 23(a)’s interrelated requirements of commonality, typicality, and adequacy serve to “effectively ‘limit the class claims to those fairly encompassed by the named plaintiff’s claims.’” *Wal-Mart*, 564 U.S. at 349. In particular, “a class representative must be part of the class and ‘possess the same interest and suffer the same injury’ as the class members.” *Id.* at 348-349 (citation omitted).

But here, the district court certified a class of “all noncitizens in U.S. custody who are subject to the proclamation \* \* \* and its implementation.” App., *infra*, 174a. The Proclamation applies only to TdA members. *Id.* at 177a. But “all five named Plaintiffs” say they are *not* TdA members. *Id.* at 117a. Plaintiffs who disclaim mem-

bership in a class can hardly be its adequate representatives; “a class representative must be part of the class.” *General Tel. Co. v. Falcon*, 457 U.S. 147, 156 (1982) (citation omitted); see also *Amchem*, 521 U.S. at 625-626; *East Texas*, 431 U.S. at 407.

The class as defined also includes too much variation to satisfy the Rule 23(a) requirements. Individuals who claim they are not TdA members may be more interested in challenging the procedures used to designate them as such, whereas individuals who are TdA members might be more interested in challenging the President’s authority under the Alien Enemies Act. See *Amchem*, 521 U.S. at 626 (plaintiffs suffering illness from exposure to defendant’s products could not adequately represent plaintiffs only at risk of future illness). The class as defined also includes aliens already subject to detention and removal under *other* authorities, such as the INA. Cf. App., *infra*, 175a. Such aliens cannot claim to have suffered the same type of injury (if any) as aliens who are removable solely by virtue of the Proclamation.

The problems do not end there: Rule 23(b)(2) states that an injunctive class may be certified if injunctive relief “is appropriate respecting the class as a whole.” But whether an alien is a member of TdA; whether he has been given sufficient process; whether he is removable under a different provision of law; and other such questions necessarily are individualized determinations unsuitable for class treatment. Cf. App., *infra*, 80a n.34 (Walker, J., dissenting) (explaining that this “type of challenge is unique to each plaintiff, so it would seem that a class action is a poor vehicle”). As this Court has explained, Rule 23(b)(2) “does not authorize class certification when each individual class member would be entitled to a *different* injunction or declaratory judgment against the defendant.” *Wal-Mart*, 564 U.S. at 360. And while the availability of a so-called habeas class action remains an open question, see *Jennings v. Rodriguez*, 583 U.S. 281, 324 n.7 (2018) (Thomas, J., concurring in part and con-



curing in the judgment); App., *infra*, 91a & n.75 (Walker, J., dissenting), this case presents no opportunity to explore that question since respondents are *not* proceeding in habeas (even though they should be, see pp. 18-25, *supra*).

c. More generally, the grant of classwide relief here reflects a disturbing innovation in the widespread efforts of district judges to “govern \* \* \* the whole Nation from their courtrooms.” *Labrador v. Poe*, 144 S. Ct. 921, 926 (2024) (Gorsuch, J., concurring). The order here has effectively blocked the Executive from implementing the Proclamation against *anyone* currently in U.S. custody, throughout the entire Nation—and did so on the very day the Proclamation was published. As the government has explained elsewhere, see, e.g., Appl. for Partial Stay at 15-28, 32-35, *Trump v. CASA, Inc.* (No. 24A884), universal injunctions that extend to non-parties exceed “the power of Article III courts,” conflict with “longstanding limits on equitable relief,” and impose a severe “toll on the federal court system.” *Hawaii*, 585 U.S. at 713 (Thomas, J., concurring); see *Department of State v. AIDS Vaccine Advocacy Coalition*, 145 S. Ct. 753, 756 (2025) (Alito, J., dissenting).

Although as a formal matter the injunctive relief here extends only to parties—namely, class members, cf. *Smith v. Bayer Corp.*, 564 U.S. 299, 313 (2011)—the deficient class-certification analysis makes this a universal injunction by another name. As Justice Gorsuch observed in a related context, universal relief has the effect of making “class-action procedures \* \* \* essentially irrelevant in administrative litigation. Why bother jumping through those hoops when a single plaintiff can secure a remedy that rules the world?” *United States v. Texas*, 599 U.S. 670, 699 (2023) (concurring opinion). Here, the district court went a step further by eliminating the hoops entirely. This Court should not allow over-easy class certification on demand to become the new blueprint for evading equitable and Article III limitations on universal

injunctions. And the backdoor universal injunction is all the more troubling here because its aim is to hamstring the President in responding to a significant national-security threat—an impermissible intrusion on the President’s Article II powers.

d. Ironically, the district court’s class-certification analysis also does respondents no favors. To avoid a dispositive venue flaw, the court convinced respondents’ counsel to abandon the habeas count in their complaint. See App., *infra*, 169a. Even were respondents and the court correct that respondents’ claims need not have been brought in habeas, the class treatment here means that absent class members will be bound by any judgment (for better or worse) and might well be precluded from pursuing individualized habeas relief over their detention and removal. Absent class members’ rights of action are generally not “extinguishable” that way unless the members “receive notice plus an opportunity to be heard and participate in the litigation,” or to remove themselves from the class. *Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 847 (1999) (citation omitted). True, the court purported to dismiss the habeas count “without prejudice at this point,” App., *infra*, 169a, but that count obviously arises from the same transaction, and involves a common nucleus of operative facts, as the non-habeas counts, and thus might well be preclusive in any future litigation. Cf. *Lucky Brand Dungarees, Inc. v. Marcel Fashions Grp., Inc.*, 590 U.S. 405, 412 (2020). At a minimum, the risk of such preclusion, and concomitant prejudice to the rights of absent class members, underscores the importance of following the rigorous Rule 23 procedures and the court’s glaring error in failing to do so.

e. A majority of the court of appeals did not reach these objections, even though the government raised them below. See C.A. Gov’t Emergency Mot. 10, 20-21; C.A. Gov’t Reply 15-17. Judge Henderson, most troublingly, seems to have viewed class certification as avoiding impermissible universal relief. See App., *infra*, 28a.

She stated that the district court “followed the Rules of Civil Procedure” in provisionally certifying the class, yet she then declined to pass on whether the class itself is appropriate. *Id.* at 28, 29 n.9. Judge Millett bypassed the propriety of the class certification, except to observe that “[o]nly a swift class action could preserve [respondents’] legal rights.” *Id.* at 68a. Judge Walker did not need to reach the issue because of his determinations about habeas jurisdiction, but expressed doubts that respondents’ individualized claims could be addressed in a class action and about the propriety of habeas class actions generally. *Id.* at 80a n.34, 91a n.75. But the blatant defects in certifying a putative class of anyone in U.S. custody subject to the Proclamation should alone warrant vacatur of nationwide, classwide relief.

**3. The courts below did not address the Proclamation’s lawfulness on the merits**

Even were the lower courts correct that broader judicial review via the APA were legally permissible, but see pp. 18-25, *supra*, their failure to engage with the critical statutory inquiry dooms their reasoning. Again, the AEA requires the President to make specific findings to trigger his authority to summarily detain and remove enemy aliens, namely that there is “any invasion or predatory incursion” being “perpetrated, attempted, or threatened” by “any foreign nation or government.” As the Act contemplates, the President found (1) that TdA is both tied to the Maduro regime and itself has gained control over parts of Venezuelan territory, and (2) that it has engaged in an “invasion” or “predatory incursion” into our country. As a majority of the D.C. Circuit agreed, those findings—if reviewable at all—receive “the requisite deference due the President’s national security judgments.” App., *infra*, 25a (Henderson, J., concurring); see also *id.* at 90a, 92a (Walker, J., dissenting).

Even if courts could look behind the President’s determinations, the President

has properly identified a “predatory incursion” that has been “perpetrated”—*i.e.*, an entry into the United States for purposes contrary to the interests or laws of the United States. See, *e.g.*, *Amaya v. Stanolind Oil & Gas Co.*, 62 F. Supp. 181, 189-190 (S.D. Tex. 1945) (noting use of the phrase to describe raids in Texas during hostilities with Mexico in the 1840s that fell short of “invasion”). That fits TdA’s described conduct to a T: “TdA is undertaking hostile actions and conducting irregular warfare against the territory of the United States both directly and at the direction, clandestine or otherwise, of the Maduro regime in Venezuela.” App., *infra*, 177a.<sup>3</sup>

So too, the President properly found that TdA has “infiltrated” and “acts at the direction” of a foreign nation or government. App., *infra*, 176a-177a. The President has broad discretion in making such determinations. See *Hawaii*, 585 U.S. at 686 (“questionable” whether President’s finding subject to any review). The President has determined that TdA bears close, intimate connections with the Maduro regime, and TdA’s infiltration of key elements of the Venezuelan state, including military and law enforcement, bring it within the AEA’s scope. The Maduro regime coordinates with and relies on TdA to “harm[] United States citizens” and “destabilize democratic nations, \* \* \* including the United States.” App., *infra*, 176a. The result is a “hybrid criminal state.” *Ibid.* The President acted well within his authority in deeming TdA a de facto arm of the Maduro regime.

Yet the lower courts sidestepped those arguments. The district court’s initial TRO did not offer reasoned analysis of the lawfulness of the Proclamation. App.,

---

<sup>3</sup> The Proclamation also properly determined that TdA’s actions constitute an invasion under the AEA. When the statute was drafted, “invasion” was used to mean a “hostile entrance,” 1 John Ash, *The New and Complete Dictionary of the English Language* (1775), and the Proclamation properly establishes the existence of such a hostile entrance here many times over.

*infra*, 147a. The court subsequently expressed “confiden[ce] that it can—and therefore must, at the appropriate time—construe the terms ‘nation,’ ‘government,’ ‘invasion,’ and ‘predatory incursion.’” *Id.* at 115a. But it had already entered sweeping relief before undertaking any such construction.

The D.C. Circuit likewise avoided outcome-determinative questions. Judge Henderson’s tie-breaking concurrence explained that courts maintain authority “to interpret the AEA’s predicate acts—a declared war, invasion or predatory incursion—or whether such conditions exist,” then offered views on what an “invasion” or “predatory incursion” might entail. App., *infra*, 13a-24a. But she then declined to “pass on whether TdA has conducted an ‘invasion or predatory incursion’ ‘against the territory of the United States.’” *Id.* at 24a-25a (quoting 50 U.S.C. 21). She likewise “offer[ed] no view on whether TdA’s conduct is ‘perpetrated, attempted, or threatened . . . by a[] foreign nation or government.’” *Id.* at 25a (quoting 50 U.S.C. 21). But if those “issues not decided” had gone in the government’s favor, that would have swung the likelihood-of-success calculus the government’s way. Respondents attack the Proclamation as unlawful because the AEA’s “preconditions”—*i.e.*, a predatory incursion into the United States by a foreign nation or government—“have not been met.” Compl. 15-16. Respondents raised no other objections under Section 21 of the AEA.

#### 4. The orders are immediately appealable

As a majority of the D.C. Circuit panel recognized, the district court’s orders were appealable despite being labeled as TROs, not preliminary injunctions. App., *infra*, 7a (Henderson, J., concurring); *id.* at 75a (Walker, J., dissenting). The “label attached to an order is not dispositive.” *Abbott v. Perez*, 585 U.S. 579, 594 (2018). Instead, “where an order has the ‘practical effect’ of granting or denying an injunction, it should be treated as such for purposes of appellate jurisdiction.” *Ibid.* (citation

omitted). Otherwise, a district court could “shield its orders from appellate review merely by designating them as temporary restraining orders, rather than as preliminary injunctions.” *Sampson v. Murray*, 415 U.S. 61, 86-87 (1974).

The orders in this case are appealable injunctions because they have the practical effect of enjoining the implementation of the President’s Proclamation, and they threaten “serious and perhaps irreparable harm if not immediately reviewed.” *Abbott*, 585 U.S. at 594. As Judge Henderson recognized, the government has asserted an irreparable injury, because the orders risk “scuttling delicate international negotiations” and may “forever stymie” those negotiations if they remain in place. App., *infra*, 7a-8a. Judge Walker agreed that the court’s orders are appealable because they “affirmatively interfered with an ongoing, partially overseas, national-security operation.” *Id.* at 75a. Judge Millett disagreed, reasoning that the government can still remove individuals under other authorities and may still be delayed in removing particular individuals based on habeas proceedings. *Id.* at 50a-51a. But courts cannot second-guess the Executive’s judgment about national-security risks that way.<sup>4</sup>

#### **B. The Other Factors Support Relief From The District Court’s Orders**

In deciding whether to grant emergency relief, this Court also considers whether the underlying issues warrant review, whether the applicant likely faces irreparable harm, and, in close cases, the balance of equities. See *Hollingsworth*, 558 U.S. at 190. Those factors support relief here.

1. The questions raised by this case plainly warrant this Court’s review.

---

<sup>4</sup> Judge Millett also faulted the government for failing to first request a stay from the district court, App., *infra*, 53a-54a, but as Judge Walker explained, there was no need to do so given “the exigent circumstances that made it ‘impracticable’ to move first in the district court,” *id.* at 77a; see Fed. R. App. P. 8(a)(1)(A). Anyway, moving for a stay in the district court would have been futile; the government litigated vacatur of the orders at the district court’s invitation. App., *infra*, 148a-150a.

See *Does 1-3 v. Mills*, 142 S. Ct. 17, 18 (2021) (Barrett, J., concurring) (identifying certworthiness as a stay factor). This is self-evidently no ordinary case. The D.C. Circuit took the unusual step of holding expedited argument nine days after receiving the government’s stay application, then issued 93 pages of opinions two days later. This case raises paramount questions about the President’s constitutional and statutory authority to protect the Nation against elements of a designated foreign terrorist organization that the President has determined has been “conducting irregular warfare and undertaking hostile actions against the United States,” as well as the extent of judicial review of decisions to remove those individuals. App., *infra*, 176a. Such national-security questions are quintessential issues warranting this Court’s attention. See, e.g., *Hawaii*, 585 U.S. at 682.

2. The district court’s orders irreparably harm the United States’ conduct of foreign policy. Indeed, a majority of the D.C. Circuit panel—Judges Walker and Henderson—agreed that the court’s orders “threaten[] truly ‘irretrievable’ harm” to foreign relations, App., *infra*, 7a (citation omitted); see *id.* at 76a, even as Judge Henderson omitted that from the irreparable-harm calculus, *id.* at 26a. “U.S. government officials from the White House and the Department of State”—including the Secretary of State himself—“have negotiated at the highest levels with the Government of El Salvador and with Nicolas Maduro and his representatives in Venezuela in recent weeks for those countries to consent to the removal” of TdA members to those countries. *Id.* at 156a (Kozak Decl.). After “intensive and delicate negotiations,” the United States reached arrangements with El Salvador and the Maduro regime “to accept the removal of some number of Venezuelan members of TdA.” *Id.* at 157a.

“The foreign policy of the United States would suffer harm if the removal of individuals associated with TdA were prevented.” App., *infra*, 157a. “The orders risk

the possibility that those foreign actors will change their minds about allowing the United States to remove Tren de Aragua members to their countries.” *Id.* at 90a (Walker, J., dissenting); see *id.* at 7a (Henderson, J., concurring); *id.* at 157a (discussing risk that “foreign interlocutors might change their minds regarding their willingness to accept” TdA members). “Even if they don’t change their minds, [the district courts’ orders] giv[e] them leverage to negotiate for better terms.” *Id.* at 90a (Walker, J., dissenting); see *id.* at 157a (Kozak Decl.) (foreign actors might “seek to leverage” the prevention of TdA members’ removals). “These harms could arise even in the short term.” *Id.* at 90a (Walker, J., dissenting) (quoting Kozak Decl.).

The district court’s orders also cause serious and irreparable harm by blocking the removal of TdA members from the United States based on the Proclamation. The President has determined that TdA’s “campaigns of violence and terror in the United States and internationally” “present an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States.” Exec. Order No. 14,157, 90 Fed. Reg. at 8439. And the Secretary of State has designated TdA as a foreign terrorist organization. See pp. 6-7, *supra*. The government always has a strong interest in the “prompt” execution of removal, *Nken*, 556 U.S. at 436; that interest is “heightened” when “the alien is particularly dangerous,” *ibid.*; and it reaches its apex when the aliens belong to a designated foreign terrorist organization.

The record in this case reinforces that point. TdA members in the United States have engaged in criminal activities such as “homicide,” “human trafficking,” “extortion of human smuggling victims,” “burglaries,” “narcotics violations,” “weapons violations,” and “bank fraud.” App., *infra*, 159a-160a (Cerna Decl.). ICE databases show that many individuals who have already been removed under the Proclamation had allegedly committed “extremely serious crimes” in the United States, in-



cluding murder and “indecent assault” against “a fourteen-year-old.” *Id.* at 161a. Others are “under investigation by Venezuelan authorities for the crimes of aggravated homicide, qualified kidnapping, and illegal carrying of weapons of war”; “under investigation in Venezuela for murder \* \* \* against a victim whose corpse was found inside a suitcase on a dirt road”; and wanted for “kidnapping and rape,” “kidnapping for ransom,” and “child abduction.” *Id.* at 162a-163a. The district court’s orders impede the removal of other, similarly dangerous aliens covered by the Proclamation.

“It [i]s critical to remove TdA members subject to the Proclamation quickly,” rather than continuing to detain them in ICE facilities. App., *infra*, 160a (Cerna Decl.). In Venezuela, TdA “was able to grow its numbers from the steady prison population and build its criminal enterprise through the extortion of inmates.” *Ibid.* TdA also has “authorized its members to attack and kill U.S. law enforcement.” *Designation of International Cartels*. “Keeping [TdA members] in ICE custody” poses “a grave risk to ICE personnel,” to “other, nonviolent detainees,” and to the country. App., *infra*, 160a-161a (Cerna Decl.). “Holding hundreds of members of a designated Foreign Terrorist Organization, where there is an immediate mechanism to remove them, would be irresponsible.” *Id.* at 161a.

Judge Millett instead dismissed the government’s “asserted injury [a]s actually just a dispute over which procedural vehicle is best”—“individual habeas petitions in Texas” or “this class APA case in Washington D.C.” App., *infra*, 69a. But the district court’s orders irreparably injure the government by obstructing the removal of members of a designated foreign terrorist organization from the United States. The fact that the district court lacked authority to issue those intrusive orders makes it more, not less, appropriate to grant emergency relief.

Judge Millett also viewed the orders as “creat[ing] no risk to the public” be-

cause “[t]he Executive remains free to take TdA members off the streets and keep them in detention.” App., *infra*, 69a. But as explained, TdA has authorized its members to kill U.S. law-enforcement agents, and an ICE official has explained that detaining rather than removing TdA members would pose a grave risk to ICE personnel and to other detainees, particularly as TdA recruits members while in detention. See p. 37, *supra*. Courts should not second-guess those expert judgments. Finally, Judge Millett questioned “whether any of the [respondents] are, in fact, members of TdA.” App., *infra*, 69a. But “[a]gency personnel [have] carefully vetted each individual alien to ensure they were in fact members of TdA.” *Id.* at 160a (Cerna Decl.) see *ibid.* (discussing the types of evidence that agency officials considered).

3. Vacating the TROs would not cause irreparable harm to respondents. Judge Millett and the district court paint the government as wrongly denying respondents any process via summary removals. See App., *infra*, 40a (Millett, J., concurring); *id.* at 123a (Boasberg, J.). But expedited removals happen under Title 8 within hours of border crossings. 8 U.S.C. 1225(b)(1); see also 42 U.S.C. 265 (public-health expulsions). Aliens are often not entitled to drawn-out procedures to attack immediate removals. See *Thuraissigiam*, 591 U.S. 140-141.

Regardless, the government agrees that respondents *are* permitted judicial review under the AEA—but only through habeas. Respondents “conceded at oral argument [in the D.C. Circuit] that they can seek all the relief in Texas that they have sought in the District of Columbia.” App., *infra*, 92a (Walker, J., dissenting). “So requiring them to sue in Texas does not impose on them irreparable harm”—habeas remains available. *Ibid.* “And whatever public interest exists for [respondents] to have their day in court, they can have that day in court where the rules of habeas require them to bring their suit—in Texas.” *Ibid.* Respondents have simply refused

to bring habeas suits in Texas, and even dismissed their habeas claims at the district court's invitation, apparently to enable themselves to pursue a nationwide class action that facially challenges the Proclamation. *Id.* at 169a. Indeed, one alien subject to the AEA has sought habeas relief in Texas and has had his removal stayed pending a hearing on his claim. 3/14/25 Minute Order, *Zacarias Matos v. Venegas*, No. 25-cv-57 (S.D. Tex.). Nor can respondents brandish imminent removal as enough to tip the scales. "Although removal is a serious burden for many aliens, it is not categorically irreparable." *Nken*, 556 U.S. at 435. Indeed, this Court has found it "plain that the burden of removal alone" does not constitute "irreparable injury." *Ibid.*

Citing extra-record evidence, Judge Millett stated that "the removals under the AEA thus far have been not to [respondents'] home countries, but directly into a Salvadoran jail reported to have a notorious reputation for human rights abuses." App., *infra*, 70a. In appropriate cases, the United States will request confirmation that a country will comply with its international law obligations, including those under the Convention Against Torture. That the United States is unable to divulge sensitive negotiations with El Salvador in the context of how that country will detain dangerous foreign terrorists is no reason for judges to infer that human rights are being jettisoned. Quite the contrary, penalizing the United States for failing to reveal representations by a foreign government regarding how removed TdA members may be treated puts the government to the untenable choice of potentially losing its foreign partners' trust or having courts treat the removals as unconscionable. Anyway, the district court's order is indifferent to *where* respondents are removed, be it El Salvador, their home countries, or elsewhere. Aliens who the President identified as members of a foreign terrorist organization cannot be removed anywhere based on the Proclamation, and must remain here no matter the ensuing risks to public safety.

Finally, Judge Millett expressed concern that, “the *moment* the district court TROs are lifted,” the government would “*immediately* resume removal flights” before respondents have an opportunity “to file a [petition for] a writ of habeas corpus.” App., *infra*, 70a. But respondents have already had almost two weeks in which to file habeas petitions in Texas. Having opted against the path the law provides, respondents cannot demand that their removal be enjoined until they pursue habeas anew.

**C. This Court Should Grant An Administrative Stay**

At a minimum, the Acting Solicitor General respectfully requests that this Court grant an administrative stay while it considers the government’s submission. The district court’s flawed orders threaten the government’s sensitive negotiations with foreign powers. And as long as the orders remain in force, the United States is unable to rely on the Proclamation to remove dangerous affiliates with a foreign terrorist organization—even if the United States receives indications that particular TdA members are about to take destabilizing or infiltrating actions. And the court’s orders are likely to be extended by another two weeks, based on respondents’ recent submissions to the district court. In these circumstances, an administrative stay is warranted while this Court assesses the government’s entitlement to vacatur.

**CONCLUSION**

This Court should vacate the district court’s orders. In addition, the Acting Solicitor General respectfully requests an immediate administrative stay of the district court’s orders pending the Court’s consideration of this application.

Respectfully submitted.

SARAH M. HARRIS  
*Acting Solicitor General*

MARCH 2025