May 1, 2025

# United States: Repeal the Alien Enemies Act

## A Human Rights Argument


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

# Summary

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

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the 1798 Act itself is inherently incompatible with the United States' international legal obligations and should be repealed outright.

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

The Alien Enemies Act was conceived as a wartime authority that allows the president of the United States to order the government apprehend, restrain, secure, and remove "natives, citizens, denizens, or subjects" of a "hostile nation or government." During a period of "declared war" or "invasion or predatory incursion," the 1798 Act allows the president to

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

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

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

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

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1798 Law Incompatible with Human Rights, Refugee Law

## Recommendations

## To the President of the United States

- Issue an Executive Order rescinding the proclamation of March 14, 2025, invoking the Alien Enemies Act

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

## To the US Congress

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

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

- Condemn human rights violations associated with March-April 2025 use of the Alien

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

## To the UN Working Group on Enforced Disappearances

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

## To the UN Working Group on Arbitrary Detention

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

## To the Committee on the Elimination of Racial Discrimination

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

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

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

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

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

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

## Methodology

Temporary Protected Status conferred under US law, refugee status, and other documents (like Social Security cards, work permits, and screenshots from the ICE detainee locator system showing their places of detention and how they later appeared to be removed from the system). Researchers also reviewed screenshots from the immigration court website showing pending hearing dates, among other things.

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

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

## Background

has "perpetrated, attempted or threatened" to carry out an "invasion or predatory incursion of US territory.[8]

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

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

The 2024 Republican Party platform, which President Trump campaigned on, previewed use of the Alien Enemies Act.[14] The platform did not mention anything like the "invasion or predatory incursion" described as the criteria for using the Alien Enemies Act.[15]

Instead, it centers the ostensible goal of "ending the scourge of illegal gang violence," which is best understood as a law enforcement or a policing activity, as follows:[16]

> We will also invoke the Alien Enemies Act to remove all known or

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

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

> You say immigration courts adjudicate in minutes. Sometimes. How many minutes? And how much background work is necessary before an immigration hearing? And add the times for appeals, first administratively and then judicially. Add asylum claimants, TPS revocations, and any number of other ways the left has used to game the immigration system over the last decade.[20]

In evaluating the administration's executive orders since coming into office, National Immigration Forum, a Washington D.C. based non-profit organization focused on immigration policy, described them as "the most formal framework for mass deportation proposed to date," citing the declaration of a national emergency at the border, the directive to use military forces to secure "complete operational control" over the southern border,

those seeking asylum.[25]

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

## Past Uses of the Alien Enemies Act

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

A review of that history follows, including an overview of how courts have approached

class the president had identified.

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

## War of 1812

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

In *Lockington v. Smith*, a British resident of Philadelphia was detained after he did not comply with requirements that he relocate further inland.[38] The Pennsylvania Supreme Court agreed to hear his *habeas* petition but ruled against him on the merits.[39] *Lockington* has since been cited mainly in support of the principle that a court order is not a mandatory prerequisite to the detention of an alien under the 1798 Act.[40] More generally, the *Lockington* court clearly believed that the act afforded great deference to the president:

> It is never to be forgotten, that the main object of the law is, to provide for the safety of the country, from enemies who are suffered to remain within it.... The president being best acquainted with the danger to be

detention complied with Madison's own orders under the act.[42] The court ordered the detainee released because he was not given a chance to relocate on his own accord, which President Madison's 1813 order required.[43]

In *United States v. Laverty*, a federal district court ruled against the government when it attempted to detain individuals who had been born in Great Britain but resided in the newly purchased Louisiana territory.[44] Deciding all "bone fide inhabitants" of the territory of Orleans had been naturalized en masse when Louisiana became a state, the courts forced the release of those men, deeming them to have become US citizens.[45] This type of inquiry, which narrowly focuses on whether the individuals in question can prove a citizenship or nationality other than that of the "enemy" country, became the signature question that judges weighed in on when considering challenges to detentions under the act in later periods.

## World War I

The Alien Enemies Act was utilized for the second time during the First World War, on the same day Congress declared war in 1917.[46] President Wilson imposed a requirement that Germans, Austro-Hungarians, Turks, and Bulgarians age 14 or older be entered into a registry, photographed, fingerprinted, and, in some cases, detained.[47] Enemy "aliens" who failed to comply with rules established by the executive were subjected to detention. In 1918, Congress amended the Alien Enemies Act, which originally only covered males over the age of 14, to include women.[48] As a result of this change, these rules were also extended to women born in the United States who had married German men.[49]

In all, at least 6,000 noncitizens, most of them German nationals, were detained,[50] and

question of whether a person detained under the act was in fact an "alien enemy," but these rulings also offer some insight into contemporary courts' understanding of the breadth and nature of executive authority under the statute.

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

The proceedings in *Ex parte Gilroy* involved a habeas petition brought on behalf of a man named Walter Alexander, arguing Alexander had been wrongly detained as a German national pursuant to the 1798 Act when he was in reality a naturalized US citizen.[57] A federal district court decided in favor of the petitioner and ordered Alexander released after finding that he was, in fact, a US citizen and not an alien.[58] Still, the *Ex parte Gilroy* court did reaffirm the view that no court hearing is required to carry out a detention pursuant to a proclamation issued under the Alien Enemies Act:

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

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

> [T]he President, or the officers through whom he acted, is the exclusive judge of whether Graber was such an alien enemy as for the safety of the United States should be restrained as provided by law. It is no answer that such a power may be abused, for there is no power which is not susceptible to abuse.[64]

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

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

## World War II

The Alien Enemies Act was invoked for the third time during World War II and resulted in the detention of approximately 31,000 people of German, Italian, and Japanese nationality for the duration of the war.[66] Like Wilson, President Roosevelt's proclamation imposed a series of restrictions on "alien enemies," including being in possession of a camera

German nationality.[72] This lead to the absurd situation of Jewish detainees being interned alongside Axis sympathizers, who took advantage of the close quarters to abuse and taunt them.[73] This historical anecdote points to the risks of blanket treatment of individuals based on their nominal citizenship or place of origin.

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

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

The US Supreme Court considered its first challenge to government actions under the Alien Enemies Act in 1948, 150 years after it was first adopted.[78] In *Ludecke v. Watkins*, a German national detained under the act during World War II challenged the continued legality of his confinement.[79] The case considered the petitioners argument that his internment under the act was no longer lawful because armed hostilities with Germany had come on an end. The court held that very narrow question of whether and when the war with Germany was over to be a "non-justiciable one," subject to the determination by other branches of government.[80]

the internment of nearly 70,000 American born citizens of Japanese heritage.[84] The Supreme Court of that era did not block the abusive policy,[85] upholding it as legal in *Korematsu v. US*.[86]

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

He added that the ruling "affords this Court the opportunity to make express what is already obvious: *Korematsu* was gravely wrong the day it was decided, has been overruled in the court of history, and to be clear 'has no place in law under the Constitution.'"[88]

## Analysis of the Alien Enemies Act under International Law

In evaluating the Alien Enemies Act against the standards enshrined in the US Constitution, the Brennan Center for Justice at New York University School of Law[89] and the American

deficiencies have paved the way for violations of international human rights law, including obligations that have been incorporated into US law.

The US has ratified several international human rights treaties and is obliged to protect the rights those frameworks codify. The US ratified the International Covenant on Civil and Political Rights (ICCPR), which enumerates a broad range of human rights and guarantees, in 1992.[91] The US has not ratified the 1951 Refugee Convention,[92] but is a party to its 1967 Protocol,[93] which codifies many important rights related to the status of refugees. The U.S. ratified the Convention Against Torture (CAT) in 1994, [94] and the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD) in 1994.[95] Some human rights obligations are also enshrined as principles of customary international law.

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

International human rights law does allow states some room to impose restrictions on the exercise of certain rights, under very limited circumstances.[98] In truly exceptional circumstances, the ICCPR permits states to declare a state of emergency and on that basis, to derogate—or suspend—some, but not all, of their human rights obligations for a limited period of time. This is permissible only in the face of an emergency that "threatens the life of the nation" and *not* merely an emergency that represents some less existential kind of menace.[99]

The Alien Enemies Act's broad, outdated framework does not align with the carefully

prohibit the expulsion of refugees, except on grounds of national security or public order.[100] The instruments also require "due process of law," unless compelling national security reasons dictate otherwise. National security exceptions to this guarantee would still require a specific individualized determination. A blanket characterization would be insufficient.

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

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

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

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

> [T]he article 2 obligation requiring that States Parties respect and ensure the Covenant rights for all persons in their territory and all persons under their control entails an obligation not to extradite, deport, expel or

frameworks that have sought to align with US international legal obligations.

US immigration law's withholding-of-removal provisions implement the 1967 Refugee Protocol by entitling noncitizens to a hearing if they express a fear of persecution or torture in their country of origin. In addition, the Refugee Act of 1980 provides for the right to seek asylum. In a 2022 ruling, the DC Circuit court highlighted these protections in its consideration of a separate deportation program, stating clearly that the executive has the "the power to expel" but only to "to … any place where the[y] will not be persecuted [or tortured]."[106] US law also codifies the broader prohibition on returning foreign nationals to countries where they are likely to be subjected to torture.[107]

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

## Arbitrary Detention and Due Process

International human rights law prohibits arbitrary detention. The ICCPR requires the US to ensure any deprivation of liberty takes place on "grounds and procedures established by law."[108]

Unlawful detention is inherently arbitrary. In addition, as emphasized by the Human Rights

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

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

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

The Alien Enemies Act is in no way cognizant of these modern legal frameworks or of US obligations under international law to respect them. It authorizes a regime of administrative detention of exactly the sort that the Human Rights Committee warns against and incorporates no explicit protections against arbitrary detention prohibited by international law. If the exercise of presidential authority under the act does have any meaningful protections against the arbitrary detention of people lawfully designated as alien enemies, it will require new judicial precedent to elaborate them.

The Human Rights Committee notes, "the enjoyment of the rights recognized under the

> competent authority.[114]

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

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

## Non-Discrimination

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

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

> effect among non-citizens on the basis [of] ... national origin, and that non-citizens have equal access to effective remedies, including the right to challenge expulsion orders, and are allowed effectively to pursue such remedies.[118]

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

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

## Geneva Conventions and International Humanitarian Law

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

Unlike international human rights law, international humanitarian law applies only in specific

power and living within the territory of a party to the conflict.

The Fourth Geneva Convention allows states to subject people who are nationals of a hostile foreign power to internment or assigned residence during periods of international armed conflict, but "only if the security of the Detaining Power makes it absolutely necessary."[120] According to the authoritative Commentary of the International Committee of the Red Cross, this should be understood to mean that only "absolute necessity, based on the requirements of state security, can justify recourse to [internment or assigned residence], and only then if security cannot be safeguarded by other, less severe means."[121]

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

The 1798 Act does not align with these requirements. It does not require any sort of individualized determination that the internment of a particular "enemy alien" is strictly necessary. It does not require internment be justified by reasons that go beyond the mere fact of a person's nationality. Nor does it require that "enemy aliens" detained under the act have any right to see the necessity of their continued confinement reconsidered.

This broad misalignment with modern international humanitarian law is unsurprising, given that the act was enacted long before the adoption of the Geneva Conventions.

# Trump Administration's Use of the Alien Enemies Act

## March 2025 Executive Order

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

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

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

The Trump administration has used this order as a basis to deprive individuals that it labels

The order authorized the attorney general and the secretary of homeland security "to take all necessary actions under the Alien Enemies Act to effectuate this proclamation, consistent with applicable law."[129]

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

On March 15, the US government transferred detainees, deporting 261 people to a maximum security prison in El Salvador, including 238 Venezuelans, and 23 Salvadorans allegedly affiliated with the MS-13 violent criminal group.[131] The White House told the media that 137 of the Venezuelan nationals transferred to El Salvador were deported under the Alien Enemies Act authority.[132] Available evidence indicates the Venezuelans deported under the act and their attorneys were unaware that they had been labeled as alien enemies under the terms of the act.[133]

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

According to court filings, the government believed in March that it has at least 86 other Venezuelans already in detention who it characterizes as members of TdA, which would make them subject to removal as "enemy aliens," and that it has identified 172 possible targets who were at liberty.[135] In mid-April, the US government provided 177 Venezuelans being held in Texas with "notice" that they were "alien enemies" under the terms of the act and subject to

Aragua.[138]

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

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

Past invocations of the act entailed a registration procedure (during World War I) or appearance before a volunteer-run hearing board (during World War II),[143] but the Trump administration rushed deportations without even that minimal degree of individualized procedure.

## Enforced Disappearance

A distinguishing feature of the US government's March 2025 invocation of the 1798 Act is

their relatives, who were in immigration detention, that they would be sent back to Venezuela.[148] None of the detainees were told they would be sent to El Salvador, the relatives said.[149]

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

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

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

On March 20, CBS News obtained and published an internal US government list of names, without identification numbers, of people sent to El Salvador.[156] Neither Salvadoran nor US authorities have confirmed the authenticity of the list, although Human Rights Watch found

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

> To prevent migrants from becoming victims of enforced disappearance in the context of immigration detention, they must always be able, from the outset of their detention and regardless of its duration, to communicate with their relatives, consular authorities, legal representatives or any other person whom they could inform about their fate or whereabouts.[164]

This standard was not met with the March 15 transfers.

Family members of people subject to enforced disappearance are also victims entitled to remedy. In an early resolution, the UN General Assembly noted "the anguish and sorrow which such circumstances cause to the relatives of disappeared persons, especially to spouses, children and parents."[165] The Human Rights Committee,[166] the Working Group on Enforced or Involuntary Disappearances,[167] and the Inter-American Court on Human Rights [168] among other authorities, regularly consider a disappeared person's family

Salvador's penitentiary system.[170] Human Rights Watch, Amnesty International, and Cristosal have documented torture and other abuse against prisoners in El Salvador's penal centers.[171] Cristosal and Amnesty International have described the use of torture as "systematic."

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

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

While Human Rights Watch has not visited CECOT, it has reviewed media coverage of the prison and documented abuses in other prisons in El Salvador, including Izalco, La Esperanza (Mariona), and Santa Ana prisons.[176] This includes cases of torture, ill-treatment, incommunicado detention, severe violations of due process, and inhumane conditions, such as lack of access to adequate healthcare and food. [177] Many of those incarcerated at CECOT have not been sentenced to a term of incarceration there and the Salvadoran government has offered no clarity as to when, if ever, particular detainees might one day be released. In fact,

administration to justify its invocation of the act. In his order, the president asserts that Tren de Aragua is a "hybrid criminal state" that acts under the direction of Venezuela's government, while also noting that US authorities have designated it a "foreign terrorist organization" and "global terrorist group."[181] The Executive Order states, without evidence, that "thousands of (TdA) members ... are conducting irregular warfare and undertaking hostile actions against the United States."[182] It claims these actions are taken as a part of the "Maduro regime's goal of destabilizing democratic nations in the Americas, including the United States."[183]

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

When considering the first of several challenges to removals undertaken pursuant to the president's March Executive Order, Judge James Boasberg, chief judge of the district court for the District of Columbia, noted that the case would turn partly on how the courts weigh an argument that the Alien Enemies Act does not "provide a basis for the president's proclamation given that the terms invasion, predatory incursion really relate to hostile acts perpetrated by any nation and commensurate to war."[185] He also opined that the administration's attempt to use the act under the present circumstances is "troublesome and problematic."[186]

Worried about irreversible consequences, civil society groups filed a legal challenge to the act's invocation on behalf of five Venezuelan nationals.[187] These groups successfully secured a temporary restraining order from a district court to block deportations of the named

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

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

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

These rhetorical attacks led to a rare rebuke of the president by Supreme Court Chief Justice John Roberts.[196]

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

It also held that:

> AEA detainees must receive notice after the date of this order that they

law."[202] They conclude:

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

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

At the time of writing, legal challenges to the Trump administration's invocation of the Alien Enemies Act have yet to reach any final determination on the merits of core issues.[206]

## Profiles of Venezuelans Designated as "Alien Enemies"

men- now sitting in prison."[208] The 60 Minutes analysis did not distinguish between the 137 individuals the government claims it deported under the act and those deported and transferred to CECOT under other authorities.

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

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

The stories of some of these men are described below.

## Andry Jose Hernandez Romeo

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

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

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

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

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

## Jerce Egbunik Reyes Barrios

showed him making a hand gesture associated with TdA.[226] The image in question appears to show him saying "I Love You" in sign language.[227] In a sworn declaration to the court, his lawyer confirms that while detained he was moved out of maximum security after she had provided US authorities with police clearance from Venezuela indicating no criminal record, multiple employment letters, a declaration by the tattoo artist who had rendered the tattoo, as well as an explanation of his hand gesture.[228]

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

## Luis Carlos José Marcano Silva

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

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

called her earlier and told her he had been informed he would be deported to Venezuela that day. The impact of Marcano Silva's enforced disappearance on his family is clear in his mother's sworn statement, which adds:

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

In her interview with Human Rights Watch researchers, she shared that she had not been able to identify him in the videos that have surfaced.[238] She stressed: "we cannot even confirm his location on the ICE Detainee Locator because he no longer appears there." On March 19, his mother attended a rally along with other Venezuelans in their hometown to seek Marcano Silva's release.[239] She told the crowd: "having a tattoo is not a crime."[240]

## Maikel Enrique Moreno Ramírez

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

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

## Neri Alvarado Borges

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

## Roger Eduardo Molina Acevedo

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

Molina Acevedo received plane tickets and a hotel reservation for his arrival and was detained upon arrival in the United States, despite having been approved by the US government for admission as a refugee through the United Nations Safe Mobility Office program.[253]

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

The bitter irony of WGH's case is that although the US government accuses him of being a member of the violent criminal group, in reality, his asylum claim was based on the fact that he reportedly was extorted and threatened by multiple criminal groups in Venezuela, including Tren de Aragua.[260] In a declaration to the court, WGH stated:

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

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

## Yolfran Alejandro Escobar Falcón

United States, Escobar was able to communicate occasionally with loved ones and described poor conditions, including severe overcrowding, limited access to showers and hygiene, inadequate food, and not being able to sleep at night because the guards constantly hit the metal part of the cell door very loudly, waking him up.[268] Additionally, every three or four hours, the guards entered the cell to call the roll, check his identification wristband, or take him out of the cell to clean.[269]

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

## Acknowledgments

This report was researched and written by Akshaya Kumar, crisis advocacy director at Human Rights Watch. Chris Albin-Lackey, senior legal advisor, contributed significantly to the legal analysis and review. Research interviews were conducted by Nathalye Cotrino, senior researcher in the Americas division.

The report was edited by Joe Saunders, deputy program director; Tanya Greene, director, and Alison Leal Parker, deputy director, of the US Program; Juan Pappier, deputy director of the Americas Division; Bill Frelick, director, and Nadia Hardman, researcher, both in the Refugees and Migrants Rights Division

Region / Country

United States, Immigrants' Rights and Border Policy, National Security

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