The Alien Enemies Act in 2025:
Executive Overreach and Threat to Civil Liberties

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I. INTRODUCTION

In March 2025, President Donald Trump issued Presidential Proclamation 10903, titled "Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren De Aragua,"[1] using the wartime provisions of the 1798 Alien Enemies Act to detain and deport some 137 Venezuelan nationals.[2] This invocation of the Alien Enemies Act (AEA) relied on unclear evidence such as tattoos and hand gestures that experts maintained were unreliable in identifying members of Tren De Aragua (TdA). The lack of substantial evidence coupled with the swiftness of enforcement has raised multiple lawsuits and serious questions about the persistence of the AEA as a means to bypass due process, asylum, and freedom from discrimination based on national origin.[3]

This reemergence of the AEA calls to national memory its last invocation that authorized the detention of German, Italian, and Japanese nationals on the grounds of suspected espionage – notably before any declaration of war during World War II, and largely without due process. Relevant case law in *Ludecke v. Watkins* and *Korematsu v. United States* emerged out of contestation of the deprivation of liberty enabled by wartime powers like the AEA. In these instances, the Supreme Court affirmed a logic of judicial deference to executive authority that validated the Executive's use of the AEA. Despite widespread condemnation in the years following, the AEA, a statutory avenue that directly contributed to the disavowed contexts of the case, has remained intact. With the Trump administration's recent invocation of the AEA, its broad scope has already proven vulnerable to pretextual uses of executive power toward widespread mass detention and deportation efforts.

This paper argues that President Trump's invocation of the AEA demonstrates the dangers posed to civil liberties by its continued presence in the American legal system. By analyzing its contemporary and historical impacts, it will demonstrate that the AEA is an outdated wartime power that must be repealed to avoid three specific consequences: (1) Widespread circumvention of procedural due process; (2) Enablement of collective and discriminatory punishment; and (3) Legitimization of unchecked executive authority to activate powers along discretionary definitions of "invasion".

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[1] Proclamation No. 10903, Invocation of the Alien Enemies Act Regarding the Invasion of the United States by Tren de Aragua (Mar. 15, 2025) https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/

[2] Marianne LeVine, *Trump's White House defends deportations under Alien Enemies Act*, *Wash. Post* (Mar. 17, 2025), https://www.washingtonpost.com/politics/2025/03/17/trump-presidency-news/

[3] Leila Fadel & Obed Manuel, *Trump invoking Alien Enemies Act to deport is 'a threat to everyone,' lawyer argues*, NPR (Mar. 17, 2025), https://www.npr.org/2025/03/17/nx-s1-5329815/alien-enemies-act-lawsuit-trump

II. FACTS

A. The Alien Enemies Act provided the legal basis to circumvent due process.

President Trump's Proclamation 10903 is a key example of how the AEA can be invoked to summarily detain and deport individuals without due process. The wartime measure allows the president to apprehend and remove "all natives, citizens, denizens, or subjects" during a declared war or an "invasion or predatory incursion [that] is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government."[4] Legal experts maintain that the AEA contemplates a state of war caused by an invasion or threatened invasion of a foreign military, as reflected in its use before Proclamation 10903, and doesn't account for threats posed by foreign drug cartels.[5] Issued on March 15, 2025, Proclamation 10903 utilized an unprecedented definition, being unreviewed judicially, that argued "the entry of and continued presence of persons associated with designated cartels" fulfilled the AEA qualifying terms.[6]

Using this basis, 261 alleged members of TdA were imprisoned in El Salvador, with 137 of them falling under the provisions of the AEA.[7] The administration provided no substantial evidence toward its claims of irregular warfare by TdA, TdA's relationship to the Venezuelan government, or the deportees' membership in TdA.[8] Further, none of the 137 deportees appeared in front of a judge despite many having strong cases against their alleged connection with TdA.[9] This caused various lawsuits to be filed that contested the legality of Proclamation 10903. While the Supreme Court and lower courts ruled both ways regarding the validity of Trump's use of the AEA, the courts maintained that detained individuals must be granted a chance to challenge their removal in front of a judge.[10] In response to one Judge's attempt to challenge the legality of Trump's use of the AEA, the White House rejected the lawful basis of the challenge, noting that the removals had already occurred.[11] While the AEA has been invoked previously only during declared periods of war, such as in World War I and II, Proclamation 10903 pushed the boundaries of the AEA's terms and powers such that judicial review was rendered ineffective in stopping detention or deportation.

Thus, the Trump administration's Proclamation 10903 alongside historical examples demonstrate that the AEA can and has been used as a statutory avenue to circumvent procedural due process by leveraging the executive power granted by the wartime measure. It remains the case, regardless of interpretation of the AEA's terms, that individuals in every instance were

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[4] Proclamation No. 10903

[5] "The Alien Enemy Act: History and Potential Use to Remove Members of International Criminal Cartels." August 19, 2026. https://www.congress.gov/crs-product/LSB11269.

[6] Ibid.

[7] Marianne LeVine, Maria Sacchetti, Joyce Sohyun Lee & Natalie Allison, *White House official says 137 immigrants deported under Alien Enemies Act*, *Wash. Post* (Mar. 16, 2025), https://www.washingtonpost.com/immigration/2025/03/16/alien-enemies-act-venezuela-el-salvador-prison/

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

[9] Akshaya Kumar, *United States: Repeal the Alien Enemies Act: A Human Rights Argument*, Human Rights Watch (May 1, 2025), https://www.hrw.org/report/2025/05/01/united-states-repeal-alien-enemies-act/a-human-rights-argument: "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."

[10] Ibid.

[11] Ibid.

detained without due process.[12]

B. The Alien Enemies Act enables collective punishment based on nationality.

The AEA states plainly in its language that national origin is the sufficient criterion to identify, apprehend, and remove an individual during a period of war or invasion from a foreign government. Historically, this language has proven to be broad in scope, granting the executive branch discretionary power over the movement of entire nationalities. During World War II, the AEA was invoked to mandate the detention of tens of thousands of Japanese, German, and Italian nationals, many of whom were longtime U.S. residents with no evidence of individual threat.[13] The statute's structure authorizes the Executive to define who qualifies as an "enemy alien" and to impose restrictions without individualized suspicion or procedural protections. Due to the AEA's classification of "natives, citizens, denizens, or subjects" of a hostile nation, Jewish refugees who were German citizens were interned alongside Nazi sympathizers, as they were both considered German "alien enemies".[14] Similarly, Japanese nationals were subject to abduction based on their nationality, but were granted no opportunity to prove their innocence through judicial proceedings.[15] These examples demonstrate how the AEA necessarily discriminates based on the protected classification of national origin, and has punished innocent individuals in the past due to its broad scope.

Today, this blanket treatment of individuals based on their citizenship status or place of origin has impacted Venezuelan nationals who were detained and deported simply for their nationality and unsubstantiated affiliation with TdA. Many of the Venezuelan nationals identified as "alien enemies" under Proclamation 10903 were asylum seekers and were following conventional immigration proceedings before they were abducted and sent to an El Salvadoran prison.[16] Noncitizens are guaranteed hearings if they express fear of persecution or torture, as well as the right to seek asylum under the 1967 Refugee Protocol and the Refugee Act of 1980. These protections have been upheld as recently as 2022, when a DC Circuit Court upheld the executive's "power to expel" so long as it is to "any place where they will not be persecuted [or tortured]."[17] Trump's invocation of the AEA actively ignored these protections in favor of executive authority, enabling collective punishment based on nationality rather than individual culpability. In both historical and contemporary instances, the AEA has discriminated on sweeping classifications that harm innocent individuals.

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[12] Ibid.

[13] Proclamation No. 2525, 6 Fed. Reg. 6321 (1941) (Japanese enemy aliens); Proclamation No. 2526, 6 Fed. Reg. 6323 (1941) (German enemy aliens); Proclamation No. 2527, 6 Fed. Reg. 6324 (1941) (Italian enemy aliens).

[14] Harvey Strum, "Jewish Internees in the American South: 1942–1945," *Jewish Archives*, vol. 27 (1990), pp. 27-48, https://sites.americanjewisharchives.org/publications/journal/PDF/1990_42_01_00_strum.pdf#search=%20Jewish%20Internees%20 (accessed April 22, 2025).

[15] "The Alien Enemies Act Paved the Way for Japanese-American Incarceration — Let's Keep It in the Past," Densho (last visited Dec. 19, 2025), https://densho.org/catalyst/the-alien-enemies-act-paved-the-way-for-japanese-american-incarceration-lets-keep-it-in the-past/

[16] Akshaya Kumar, *United States: Repeal the Alien Enemies Act: A Human Rights Argument*, Human Rights Watch (May 1, 2025), https://www.hrw.org/report/2025/05/01/united-states-repeal-alien-enemies-act/a-human-rights-argument: "Many had active conventional immigration proceedings pending against them, including asylum claims, some with pending hearings previously scheduled for just days after their deportation. Others had temporary protected status in the United States, in recognition of the risks of return back to Venezuela."

[17] Huisha-Huisha v. Mayorkas, 27 F.4th 718, 735 (D.C. Cir. 2022).

C. The Alien Enemies Act provides a legal route to expansions of unchecked executive authority based on entirely discretionary parameters.

While the AEA has been invoked in three instances during a declared period of war against a hostile nation, Proclamation 10903 demonstrates how the AEA is not specific enough regarding the existence of an invasion, the identity of "enemy" individuals, or the evidentiary basis for deeming an entire nationality dangerous. Indeed, the Trump administration took advantage of a historical precedent of deference to executive authority under the AEA to justify its unilateral decision-making. This "political question doctrine," which defers to Congress and the Executive on sensitive immigration and national security matters, has been used historically to interpret the use of the AEA and its powers as outside the realm of judicial review.

In the 1948 *Ludecke v. Watkins* case, a German national challenged the legality of his extended confinement under the AEA after hostilities in World War II had ended. The Supreme Court decided that the question of when the AEA's requisite period of war ends, and when its powers expire, was of a political nature and thus "too fraught with gravity even to be adequately formulated when not compelled".[18] While it didn't explicitly refer to the AEA, the infamous *Korematsu v. United States* case similarly demonstrated this "political question doctrine" in the Supreme Court's decision to defer to the discretion of the military and Congress in the constitutionality of the summary removal of thousands of individuals of Japanese descent from the United States West Coast.[19] In the context of World War II, the use of executive authority to summarily detain and deport individuals without due process has been largely disavowed, and yet the lack of guardrails against this deference to executive power has remained widely unaddressed. These instances illustrate how the AEA provides a pathway for the violation of civil liberties via its overbroad language and discretionary power, the consequences of which are observable in the wake of Proclamation 10903.

III. ANALYSIS

A. Summary deportation of noncitizens violates the modern interpretation of "due process of the law" in the context of removal proceedings.

As demonstrated in part A of Section II (Facts) above, the AEA has been used repeatedly to summarily detain and deport individuals without due process or demonstrable evidence of their individual conduct. The AEA notably makes no provisions regarding procedural protections for those identified as "alien enemies," barring a protection for the allotment of a "reasonable" amount of time to settle their affairs before deportation.[20] In the aforementioned *Ludecke v. Watkins* case, the Supreme Court rejected the claim that Ludecke's detention and pending deportation under the AEA violated his Fifth Amendment right to due process. However, modern jurisprudence and interpretation of the Constitution's Due Process Clause establish "heightened protection against government interference with certain

[18] Ludecke v. Watkins, 335 U.S. 160 (1948)

[19] Korematsu v. United States, 323 U.S. 214 (1944): "We cannot say that the war-making branches of the Government did not have ground for believing that, in a critical hour, such persons could not readily be isolated and separately dealt with, and constituted a menace to the national defense and safety which demanded that prompt and adequate measures be taken to guard against it."

[20] Alien Enemies Act, 50 U.S.C. 22

fundamental rights".[21] The AEA fundamentally conflicts with modern standards, particularly concerning the right to freedom from arbitrary detention and the right to be judged on individual conduct. The AEA, as a wartime power, authorizes the detention of subject individuals for a necessarily indefinite period of time, as observed in World War II and the current detentions of Venezuelan nationals. This similarly contradicts the Supreme Court's contemporary precedent, which maintains that freedom from indefinite detention "lies at the heart" of Fifth Amendment liberties.[22] The Supreme Court has also expanded due process rights for noncitizens in the years following *Ludecke*. *Shaughnessy v. U.S.* (1953), for example, upholds that individuals "who have once passed through our gates, even illegally, may be expelled only after proceedings conforming to traditional standards of fairness encompassed in due process law."[23] Further, *Mathews v. Eldridge* (1976) maintains that adequate notice and a right to legal counsel must be provided to noncitizens.[24] Such decisions post-Ludecke demonstrate a level of development in due process protections for noncitizens that were largely ignored via Proclamation 10903. This deference to the Executive branch has been subject to scrutiny since *Ludecke*, with Justice Black's dissent noting, "The effect of this holding is that any unnaturalized person, good or bad, loyal or disloyal to this country … can be summarily seized, interned, and deported from the United States, … and that no court of the United States has any power whatsoever to review, modify, vacate, reverse, or in any manner affect the … deportation order."[25] While *Ludecke* was decided in regard to deportation following the end of a wartime period, the argument toward the AEA's unconstitutionality is bolstered by the strengthening of due process in the decades since *Ludecke*. This was reflected by the Supreme Court's decision in response to Proclamation 10903 that found that "detainees subject to removal orders under the AEA are entitled to notice and an opportunity to challenge their removal."[26] It is important to note that the Court did not strike down the unprecedented interpretation of the AEA, but simply upheld the right to due process *habeas corpus*, in accordance with the Fifth Amendment. Taken together, this analysis demonstrates that the AEA's summary deportation remains incompatible with contemporary constitutional standards.

B. <u>The Alien Enemies Act's use of the broad "suspect classification" of national origin violates modern interpretations of the Equal Protection Clause.</u>

The AEA's use of nationality-based classifications conflicts with modern standards of equal protection. At the time of its most recent contestation via *Ludecke* in 1948, equal protection jurisprudence was not as developed. The Supreme Court upheld the constitutionality of the internment of individuals of Japanese descent, as well as German, Italian, and Austro-Hungarian nationals. While the constitutionality of the AEA has been upheld in past invocations, developments in equal protection jurisprudence indicate that the AEA's discrimination based on nationality is both outdated and unconstitutional.

The AEA's focus on nationality might be understood under modern equal-protection jurisprudence as impacting a "suspect classification". Under the Equal Protection Clause of the Fourteenth Amendment,[27] suspect classification refers conceptually to discrete and insular

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[21] Washington v. Glucksberg, 521 U.S. 702, 720 (1997).
[22] Zadvydas v. Davis, 285 F.3d 398 (5th Cir. 2002).
[23] Shaughnessy v. U.S. ex rel. Mezei, 345 U.S. 206 (1953).
[24] Mathews v. Eldridge, 424 U.S. 319 (1976).
[25] Ludecke v. Watkins, 335 U.S. 160 (1948).
[26] Trump v. J. G. G., 604 U.S. ___ (2025)
[27] United States v. Carolene Prods. Co., 304 U.S. 144, 152–53 n.4 (1938).

minorities— including but not limited to racial, national, or religious minorities— and requires heightened judicial scrutiny when a government action has a disproportionate impact on a particular group.[28] This strict scrutiny seeks to ensure that use of these classifications is upheld only if it is narrowly tailored to serve a compelling government interest. Far from being narrowly tailored, the targeting of sweeping classifications of national belonging,[29] under the AEA, has repeatedly been leveraged to disparately impact based on race, ancestry, and nationality. During World War II, President Roosevelt justified the enforcement of the AEA on Japanese and German nationals via wholesale characterizations as unassimilable and disloyal. The injustice of this use of the AEA was recognized decades later, with the Bush administration recognizing in 2001 that "Italian, Japanese, and German aliens were subjected to restrictions based on their ancestry" during World War II.[30]

With the AEA being used to subject anybody of Venezuelan descent to detention and deportation, it remains an example of loosely tailored parameters and little requirement of substantial evidence that contradicts standards of equal protection today. Its reliance on ancestry as a proxy for threat reflects the very form of discriminatory reasoning the Equal Protection Clause was designed to preclude, and reflects an overbroad and unconstitutional means of addressing security concerns.

C. The Alien Enemies Act authorization of discretionary executive action contradicts modern standards of separation of powers and wartime authority authorization.

The AEA contradicts modern separation-of-powers jurisprudence due to its overbroad and historically unreviewable authority over detention and deportation. As reviewed in part C of Section II above, the invocation of the AEA has historically been considered to be of a political nature, and thus nonjusticiable. This adherence to the "political question doctrine" that defers decision-making to the executive during national emergencies has been at the root of the deprivation of civil liberties brought about by the AEA. The political question doctrine continues to pose the risk that the courts might allow a president's discretionary definition of an invasion or predatory incursion to stand. In 2025, *Trump v. J.G.G.* maintained that questions of the AEA's interpretation and constitutionality could be subject to judicial review,[31] but this does not close the door to the threats to civil liberties that the AEA would continue to pose even in a less pretextual invocation. The precedent signaled in *Hamdi v. Rumsfeld* (2004) provides some resistance to the AEA, particularly regarding the implications of attempts to equate migration and drug trafficking to an invasion by a foreign government. Although *Hamdi* argued regarding the detention of American citizens designated as enemy combatants, Justice O'Connor's insistence that there must be "a role for all three branches when individual liberties are at stake" demonstrates that Trump's discretionary interpretation and use of the AEA requires heightened scrutiny, at the very least.[32] Whether the AEA is invoked in a declared war or not, the harms it has caused historically demonstrate that the antiquated statute has offered discretionary power that hasn't been meaningfully checked by Congress or the Judiciary, and must be reconsidered.

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[28] Village of Willowbrook v. Olech, 528 U.S. 562 (2000)
[29] Alien Enemies Act, 50 U.S.C. § 21 ("all natives, citizens, denizens, or subjects").
[30] U.S. Department of Justice, "A Review of the Restrictions on Persons of Italian Ancestry," 15.
[31] Trump v. J. G. G., 604 U.S. ___ (2025)
[32] Hamdi v. Rumsfeld, 542 U.S. 507 (2004)

IV. LIMITATIONS

It is important to understand the limitations of the facts and analyses presented above and address counterarguments against repealing the AEA. For one, proponents of the AEA might consider sovereign emergency powers to be of enduring importance in moments of national crisis. Being that the statute is a centuries-old tool of self-defense that has survived constitutional challenges, one might regard the AEA's absolute discretion to neutralize wartime threats without the delays of judicial review to be necessary. Moreover, one could argue that the AEA's exigent powers serve as a deterrent for foreign governments that seek to do harm to the U.S. In response to concerns about executive overreach, it could be argued that increasing oversight, checks and balances, and narrower definitions could address the AEA's threat to civil liberties while protecting national security. A limitation to repealing the AEA is that it would not completely eliminate discretionary power from the executive branch. Additionally, a total repeal faces the political hurdles of Congress, where lawmakers could be hesitant to strip national security tools from the executive branch. This is of particular relevance given the current sentiment toward noncitizens in American legislation and is reflected in the stagnation of the legislation that has proposed the AEA's repeal, the Neighbors not Enemies Act.[33]

V. CONCLUSION

The persistence of the AEA allows for an outdated wartime executive authority, largely incompatible with modern jurisprudence, to pose an ongoing threat to the civil liberties of individuals in the United States. This paper has identified three specific consequences that individuals may be subject to due to a failure to repeal the AEA:

(1) Widespread circumvention of due process: By allowing the AEA to persist, noncitizens in the United States are subject to summary abduction, detention, and removal without access to a preliminary hearing. This consequence has already impacted tens of thousands of individuals historically, and some 137 individuals just this year.

(2) Discrimination based on national origin and ancestry: The AEA enables the government to impose punishment based primarily on nationality— a criterion that bears little connection to individual threat or culpability. Its use of these categories has repeatedly harmed individuals who pose no demonstrable danger, with this identity-based enforcement contradicting modern equal-protection standards.

(3) Unchecked executive discretion: The AEA's broad and largely unreviewable authority permits the Executive to define terms like "invasion" or "enemy" and restrict movement without evidentiary standards or judicial oversight. This not only risks manipulation, but also undermines separation-of-powers principles. The persistence of this discretionary power leaves the door open for future abuses of civil liberties on unverifiable grounds, particularly during moments of crisis.

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[33] Congress.gov." Actions - S.193 - 119th Congress (2025-2026): Neighbors Not Enemies Act." January 22, 2025. https://www.congress.gov/bill/119th-congress/senate-bill/193/all-actions.

While the resistance against Proclamation 10903 provides some insight into the judiciary's response to the AEA, it was perhaps not enough. The Trump Administration utilized the delayed response from the courts to remove 137 individuals, and by the time the court made a ruling, it was too late. Noting the historical record and broad provisions of the AEA, the facts and analyses put forward in this paper suggest that repealing the AEA would be the most effective way to prevent abuses of civil liberties. As noted in section IV, reforms to the AEA provide some means to procedurally check executive overreach and establish clearer statutory boundaries in theory. However, with a law fundamentally tied to collective punishment, no amount of modern oversight would justify its power to strip liberties based solely on discretion and national origin. Rather, modern means of legal recourse exist to address national security threats through individualized suspicion. The Immigration and Nationality Act and targeted counter-espionage laws, for example, handle threats without discriminating based on nationality or vague definitions of who is an "alien enemy."[34] Today, it is crucial to ensure that citizens and noncitizens alike are guaranteed legal protections and that no single branch of government can weaponize an antiquated statute to bypass constitutional protections under the guise of national defense.

[34] 8 U.S.C. § 1227(a)(4)(A)(i)

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