



Written by [Veronika Kyrylenko](#) on September 3, 2025

5th Circuit Blocks Trump's Wartime Deportation of Venezuelans

A federal appeals court has halted President Donald Trump's attempt to use the Alien Enemies Act of 1798 (AEA) to deport Venezuelan nationals accused of gang ties.

In a [2-1 decision](#), the 5th Circuit concluded that the administration's proclamation did not identify either an "invasion" or a "predatory incursion," the only triggers that allow the wartime law to apply.

Judge Leslie Southwick, writing for the majority, explained:

Our analysis leads us to GRANT a preliminary injunction to prevent removal because we find no invasion or predatory incursion, conclude on the current record that the updated notice satisfies due process, and REMAND for further proceedings.



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[The case](#) began when two Venezuelans were detained under a March [presidential proclamation](#). This action was filed on April 16 in the Northern District of Texas by the detainees themselves. They brought it on their own behalf and on behalf of a putative class of others in custody, challenging the Trump administration's use of the AEA "to arrest, detain, and deport them for alleged gang activity without due process."

The Supreme Court had already intervened once. It issued a [temporary injunction](#) and sent the case back to the appeals court to test both the legality of the proclamation and the adequacy of due process.

The decision keeps deportations on hold. It narrows executive reliance on wartime powers and leaves standard immigration statutes as the primary tools for removal.

The Crux of the Case

Trump's proclamation identified Tren de Aragua (TdA), a Venezuelan gang, as a force infiltrating the United States and carrying out "irregular warfare." The administration declared this an invasion and predatory incursion directed by the regime of Venezuela's President Nicolás Maduro.

The petitioners countered that the AEA was never intended for such circumstances. The court accepted the government's factual findings — drug trafficking, infiltration, violence — but ruled they did not meet the statute's strict definitions.



Invasion and Incursion

The judges grounded their analysis in Founding-era dictionaries and constitutional usage, and defined invasion as

an act of war involving the entry into this country by a military force of or at least directed by another country or nation, with a hostile intent. Some of the definitions we have quoted also suggest the intent needs to be to conquer, occupy, or otherwise exercise some long-term control.

Predatory incursion, they said, meant:

Armed forces of some size and cohesion, engaged in something less than an invasion, whose objectives could vary widely, and are directed by a foreign government or nation.

Southwick stressed that modern conditions, like cyberattacks, may update the statute's application. But he said the core requirement remains: a warlike act by a nation.

By that measure, mass migration, drug trafficking, and irregular crime were not enough:

A country's encouraging its residents and citizens to enter this country illegally is not the modern-day equivalent of sending an armed, organized force.... The AEA does not apply today either.

Was TdA Acting for Venezuela?

The government argued that because the Maduro regime directed TdA's activities, the gang's crimes counted as acts of a foreign government. The court accepted the link but found it irrelevant, since the threshold requirement — an invasion or incursion — had not been met.

Southwick wrote:

Had we determined TdA was engaged in either an invasion or a predatory incursion, the findings in the Proclamation that such actions were being directed at least in part by the foreign Maduro regime would satisfy the requirement.... We held instead that TdA was not the kind of organized force or engaged in the kind of actions necessary to constitute an invasion or predatory incursion.

The court added that Trump had narrowed his own power by naming TdA specifically. The act permits targeting all nationals of a hostile country, yet the proclamation named only alleged gang members. That wording, the court argued, did not invalidate the proclamation but underscored how far the case had drifted from the statute's original purpose.

Habeas Corpus and Wrongful Deportations

The court also confronted what the AEA means for access to habeas corpus. The Constitution permits suspension of the writ only "in Cases of Rebellion or Invasion" when public safety requires it. By



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invoking the AEA, the administration sought to move detainees outside ordinary judicial protections.

The Supreme Court had already underscored that the “prospect of irremediable error means Petitioners’ interests at stake are accordingly particularly weighty” ([A.A.R.P. v. Trump](#), 145 S. Ct. 1368). The 5th Circuit built on that warning. Normally, deportation is not considered irreparable harm because a person can be returned if they win their case. But here, the government itself admitted it was “unable to provide for the return of an individual deported in error to a prison in El Salvador where it is alleged that detainees face indefinite detention.” In such circumstances, the court explained, “there is little potential for effective relief.”

The government argued that detainees who filed habeas petitions would not be removed under the AEA until their cases were resolved. Yet the only “authority” it cited was the updated notice itself, which contained no such guarantee. Nor was there evidence of a broader commitment not to remove detainees while habeas claims were pending. Assurances in district court applied only to the two named petitioners, not to the larger group. As the Supreme Court had already held, the government cannot avoid class-wide relief “by promising as a matter of grace to treat named plaintiffs differently” (*id.* at 1369).

On that basis, the 5th Circuit concluded that preliminary relief was warranted not only for the two Venezuelans who brought the case, but also for the putative class of similarly situated detainees.

Balancing the Equities

The court also weighed the public interest. As the Supreme Court explained in [Nken v. Holder](#) (2009), there is a strong interest not only in preventing wrongful removals, but also in carrying out valid removal orders promptly.

The government argued that TdA detainees posed special dangers, citing threats to staff and resistance in detention facilities. The court dismissed this as assuming the very point in dispute — that they were TdA members. With that question unresolved, the equities tilted toward protecting detainees from removals that may prove unlawful and irreversible.

Peacetime Tools

Blocking the Alien Enemies Act does not leave the government powerless. Immigration statutes already authorize removal of individuals tied to foreign terrorist organizations. They also cover those convicted of violent crimes or engaged in espionage or sabotage. As Judge Southwick noted,

The Government has broad authority to remove aliens who are members of foreign terrorist organizations or who otherwise engage in terrorist activities in the United States.

Because the State Department has formally designated Tren de Aragua a foreign terrorist organization, immigration statutes apply to it directly. They may take longer than the AEA, the court acknowledged, but they preserve due process.

The court stressed that its injunction is narrow. It blocks only the Alien Enemies Act, not other immigration laws:

The Government may remove the named plaintiffs or putative class members under other lawful authorities.



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That distinction leaves national security tools intact while preventing a wartime statute from becoming a shortcut for immigration enforcement. By rejecting Trump’s proclamation, the court reinforced a principle: Extraordinary powers belong to extraordinary times. Unless the Supreme Court intervenes, the AEA will remain confined to wars and invasions — not the broader struggles the White House sought to wage.

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