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Trump-appointed judge in Texas halts deportations under Alien Enemies Act following SCOTUS ruling

JERRY LAMBE | Apr 9th, 2025, 3:43 pm

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Republican presidential nominee former President Donald Trump gestures as he departs a campaign event at Central Wisconsin Airport, Saturday, Sept. 7, 2024, in Mosinee, Wis. (AP Photo/Alex Brandon).

A Donald Trump-appointed judge in Texas on Wednesday blocked the federal government from deporting certain Venezuelan migrants currently detained in the state under an 18th century wartime power without notice or due process.

U.S. District Judge Fernando Rodriguez Jr. granted a temporary restraining order barring the Trump administration from removing individuals accused of being members of the Tren de Aragua (TdA) gang under the Alien Invasion Act of 1798 (AEA).

Rodriguez issued his four-page order in response to a lawsuit filed by the American Civil Liberties Union (ACLU) on behalf of three Venezuelan migrants who had been slated for deportation to a notorious work prison in El Salvador under the AEA last month before a federal judge in Washington, D.C., blocked the measure. With the U.S. Supreme Court vacating that judge's order on Monday, the plaintiffs alleged they are once again in immediate danger of being summarily deported, despite the justices unanimously holding that individuals subject to the AEA are entitled to due process.

“[S]ince the Supreme Court stayed that order on the basis that Petitioners had to proceed through habeas, Petitioners and others similarly situated to them are now all at imminent risk of removal,” the complaint states. “Although the Supreme Court made clear that individuals must now be given notice before they are removed pursuant to the Proclamation so they may challenge the government’s actions in court, the government has yet to explain what notice it intends to provide. That the government has yet to do so is especially problematic given the position it took prior to the Supreme Court’s ruling in the D.C. Circuit: ‘the government in no uncertain terms has conveyed that — were the injunction lifted — it would immediately begin deporting the petitioners without notice.’”

Rodriguez reasoned that the plaintiffs had established that their removal under the AEA would cause “immediate and irreparable injury” as there was a substantial likelihood that if they were erroneously deported to El Salvador they would “not be returned to the United States.” The judge noted that in the case of Kilmar Abrego

Garcia, who was deported “in error” last month, the Justice Department argued that the court “lacks the jurisdiction to compel the Executive Branch to return an erroneously-removed alien to the United States.”

“The Court finds that maintaining the status quo is required to afford the parties the ability to develop a fuller record for the Court to consider the request for a preliminary injunction and other forms of relief, as presented in the Class Petition for Writ of Habeas Corpus, and to prevent the immediate and irreparable injury that may occur with the immediate removal of any Venezuelan alien subject to the Proclamation,” Rodriguez wrote. “In addition, the Court finds that immediate and irreparable injury will result to the Petitioners before the Respondents can be heard in opposition, thus requiring the consideration and issuance of this temporary restraining order ex parte.”

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Trump on March 15, 2025, became the first president since World War II to invoke the AEA, which authorizes him to summarily remove “natives, citizens, denizens, or subjects” of a “hostile nation or government” when there is “declared war” against it or when it has

“perpetrated, attempted, or threatened against the territory of the United States” an “invasion or predatory incursion.” In a controversial and novel use of the power, Trump declared the Venezuelan gang Tren de Aragua (TdA) had committed or attempted an “invasion” or “predatory incursion” such that any member of the group was summarily removable under the Act.

The administration asserted that the gang constituted a “hybrid criminal state” for purposes of invoking the AEA.

After the administration sent more than 100 accused gang members to a notorious work prison in El Salvador without due process, a federal judge in Washington, D.C., halted the use of the AEA hours after its invocation. A series of contentious court filings and hearings followed until the Supreme Court ruled 5-4 that the class action case should have been filed as individual habeas corpus petitions in Texas, where the migrants were being detained.

Instead, the three plaintiffs filed a class-action lawsuit to include themselves and all individuals similarly situated in the Southern District of Texas who may be targeted by the administration under the AEA.

However, all nine justices were in agreement that, unlike the initial 137 migrants deported on March 15, any individuals the administration attempts to deport under the AEA going forward are entitled to notice and due process.

Rodriguez’s order came the same day that U.S. District Judge Alvin Hellerstein blocked the administration from deporting two Venezuelan migrants and others similarly situated in the Southern District of New York through invocation of the AEA.

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