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Policy Brief: The Alien Enemies Act

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What is the Alien Enemies Act of 1798?

Amid tensions with France, the Alien Enemies Act (AEA) was one of four laws enacted in 1798 under the umbrella of the Alien and Sedition Acts. The AEA gave the president the power to apprehend and remove certain noncitizens if there is a declared war between the United States and a foreign nation or government, or if the foreign nation or government perpetrates, attempts, or threatens to undertake an “invasion” or “predatory incursion” against the territory of the United States.¹ The AEA applies to “all natives, citizens, denizens, or subjects of the hostile nation or government ... age of fourteen years and upward,” who are in the United States and “not actually naturalized.”

The AEA further provides that noncitizens subject to the AEA who are not chargeable with actual hostilities or crimes against public safety shall be permitted the full time allowed by any treaty in effect, or a reasonable time if no such treaty is in effect, to wrap up their affairs and depart the United States.²

Unlike the other three laws comprising the Alien and Sedition Acts, only the AEA remains in effect today.

When has the AEA been invoked in the past?

Despite becoming law more than 225 years ago, the AEA has been invoked only three previous times in U.S. history, each of which involved actual declared wars: the War of 1812, World War I, and World War II. During World War I, the law was used to register or detain noncitizen nationals of Germany, Austria-Hungary, and the Ottoman Empire. During World War II, the AEA was invoked to detain and deport Japanese, German, and Italian noncitizens. Subsequently, hundreds of thousands of U.S. citizens of Japanese descent were forcibly relocated to internment camps under Executive Order 9066, which did not cite the AEA.³

¹ 50 U.S.C. § 21 (2024).

² 50 U.S.C. § 22 (1798).

³ Archives, National. “Executive Order 9066: Resulting in Japanese-American Internment (1942).” *National Archives*, The U.S. National Archives and Records Administration, 22 Sept. 2021, www.archives.gov/milestone-documents/executive-order-9066.

How is President Trump attempting to utilize the AEA?

On March 15, 2025, President Trump issued a [proclamation](#) invoking the AEA to detain and deport “all Venezuelan citizens 14 years of age or older” who are members of Tren de Aragua (TdA), and who “are within the United States, and are not actually naturalized or lawful permanent residents of the United States....” According to the U.S. Department of State,⁴ TdA is a transnational criminal organization that originated in Venezuela and has cells in Colombia, Peru, and Chile, along with a sporadic presence in Ecuador, Bolivia, and Brazil. The State Department designated TdA as a Foreign Terrorist Organization on February 20, 2025.

The Proclamation states that over the years, “Venezuelan national and local authorities have ceded ever-greater control over their territories to transnational criminal organizations, including TdA,” resulting in a “hybrid criminal state” that is perpetrating “an invasion of and predatory incursion” into the United States. In utilizing this language, the Trump Administration is attempting to justify the invocation of the AEA, notwithstanding the lack of a formal declared war.

The Proclamation further states that by “virtue of their membership in TdA,” such noncitizens are chargeable with “actual hostility” against the United States and are therefore subject to immediate removal, without any procedural due process protections to refute claimed membership in TdA or challenge removability, and without time to wrap up their affairs.

Is the Proclamation currently in effect?

On March 15, shortly after the Proclamation was issued, the American Civil Liberties Union (ACLU) and Democracy Forward sued to prevent it from taking effect, arguing in *J.G.G. v. Trump*⁵, that the AEA has only ever been invoked in time of war, and by its plain language, only applies to warlike actions. The groups also claim that the Proclamation allows agents to immediately deport noncitizens without any review of the determination that they are so-called “alien enemies” and therefore requested a temporary restraining order (TRO) preventing the execution of any summary removals, and a determination that the use of the AEA in these circumstances is unlawful. The federal court swiftly issued a TRO blocking the Trump Administration from removing the named plaintiffs from the United States and shortly thereafter granted class certification and extended the ruling to cover everyone in danger of removal under the AEA. Despite this, on the evening of March 15, more than 200 alleged TdA members were removed from the United States on flights heading for one of the notorious mega prisons in El Salvador. The Trump Administration maintains that it did not violate the court order. The case is pending before the federal district court for the District of Columbia.

⁴ “Designation of International Cartels - United States Department of State.” *United States Department of State*, 2025, www.state.gov/designation-of-international-cartels/.

⁵ “J.G.G. V. TRUMP | American Civil Liberties Union.” *American Civil Liberties Union*, 17 Mar. 2025, www.aclu.org/cases/j-g-g-v-trump“www.aclu.org/cases/j-g-g-v-trump”. Accessed 18 Mar. 2025.

What are the open questions regarding President Trump’s unprecedented invocation of the AEA?

To whom does the AEA/Trump Proclamation apply?

The plain language of the AEA applies to “all natives, citizens, denizens, or subject of the hostile nation or government” who are over age 14 and who are “not actually naturalized.” Thus, the AEA applies to any non-U.S. citizen national of the hostile nation or government who is in the United States, including lawful permanent residents (LPR), recipients of Temporary Protected Status, and nonimmigrants. Note, however, that the March 15, 2025, Proclamation specifically excludes Venezuelan LPRs from its scope. Further, under the plain language of the AEA, dual U.S.-Venezuelan citizens should be excluded.

Can the AEA be invoked during peacetime?

The Constitution gives Congress the power to declare war. As such, with respect to the invocation of the AEA in times of war, the president may not act until Congress formally declares war. However, because the AEA has never previously been invoked in reliance on the “invasion” or “predatory incursion” language, questions remain as to the scope of when this extraordinary authority may be invoked, including whether it may be invoked in peacetime. The Proclamation claims that a “hybrid criminal state” controlled by the TdA is perpetrating an invasion or predatory incursion and only specifically mentions drug trafficking into the United States. The plaintiffs in *J.G.G.* argue that criminal activities do not rise to the level of an “invasion” or “predatory incursion.”⁶

Is the Trump Proclamation overly broad?

While on its face the Proclamation does not appear to be overly broad, there are significant concerns that it will be implemented in an overly broad manner, such that individuals unassociated with TdA have been or will be swept up in the summary removal process. The Proclamation’s lack any due process means no one who the federal authorities claim to be an alien enemy will be able to challenge that designation or obtain a meaningful review of their immigration status. U.S. citizens could be swept up in the process and rapidly deported.

Does the Proclamation violate due process?

The Proclamation raises significant due process concerns. First, as noted in the Proclamation, individuals deemed “alien enemies” are charged with “actual hostility” against the United States and are therefore subject to immediate removal, without the opportunity to appear before an immigration judge or other adjudicator. Therefore, there is no apparent opportunity for an individual charged with TdA membership to dispute the designation as alien enemies, contest their removal, or apply for humanitarian protection, if warranted.

⁶ See Memorandum of Law in Support of Plaintiff’s Motion for Temporary Restraining Order at 10-11, *J.G.G. v. Trump*, 1:25-cv-00766 (D.D.C. 2025). Found at <https://www.aclu.org/cases/j-g-g-v-trump?document=TRO-MEMO>.

In this regard, the Proclamation's failure to provide any due process protections conflicts with the Immigration and Nationality Act which specifies the "sole and exclusive" procedures for the removal of noncitizens.⁷ Furthermore, with respect to individuals seeking protection from persecution or torture, the INA and implementing regulations guarantee that they be given a meaningful opportunity to apply for asylum or other forms of humanitarian protection. It remains an open question whether the administration can use the AEA to override procedures under the INA, which Congress enacted more than a hundred years later, as well as the Convention Against Torture, which the U.S. ratified in 1994.

Does the AEA authorize indefinite detention and violate due process?

On March 15, the administration immediately deported over 200 people to El Salvador, but the Proclamation states that those designated as alien enemies shall be "subject to detention until removed" indicating that it authorizes longer periods of and even indefinite detention. The AEA may also at least partially run afoul of the right to be free from indefinite civil detention, as recognized by the 2001 Supreme Court case, *Zadvydas v. Davis*. In *Zadvydas*, the Court reasoned that while the government has a legitimate interest in deporting individuals who have violated immigration laws, that interest does not justify holding them in custody indefinitely without some showing that deportation is likely to occur in the reasonably foreseeable future.

While the government may have a compelling national security interest during wartime, there is a question as to whether indefinite detention contemplated under the AEA is constitutional, without some showing that the individual poses a genuine threat. Moreover, the Act's failure to provide any procedural safeguards, such as hearings or judicial review, further exacerbates its constitutional infirmities.

Does the AEA empower the President to compel states and localities to enforce the Proclamation?

The Proclamation authorizes the Attorney General and DHS Secretary "to utilize agents, agencies, and officers of" ... "the several States, territories, dependencies, and municipalities thereof and of the District of Columbia" to implement the Proclamation. The AEA, however, is silent with respect to the federal government's authority to require state and local governments to defend against an invasion. If the federal government attempts to use the AEA to compel state and local jurisdictions to participate in or expend resources to support federal enforcement activities, it may violate the 10th Amendment prohibition against the federal government "commandeering" of state and local resources.

⁷ See 8 U.S.C. § 1229a.