



The Fight to Protect Survivors from the Alien Enemies Act Continues¹

May 29, 2025

What Happened?

On March 14, 2025, President Trump attempted to invoke the Alien Enemies Act of 1798 to justify carrying out deportations without the due process of immigration proceedings. Since then, multiple federal courts have ruled the invocation was unlawful, but the government continues to fight for its usage, including before the U.S. Supreme Court.² On May 16, 2025, the Supreme Court maintained a temporary prohibition on the deportations planned in Texas and sent the issue back to the lower courts.³ ASISTA celebrates the positive rulings but notes with condemnation that the push against them is ongoing. Any use of the Act to carry out deportations comes with a substantial threat that noncitizen survivors of sexual assault, trafficking, and other crimes will be wrongfully removed from this country without any way to plead their case.

Immigration proceedings, which may include processes referred to as “immigration court” or an “asylum interview,” ensure that, before a noncitizen is deported—particularly before they are deported to a country where they might face harm—they receive the opportunity to demonstrate they should be granted lawful status or the right to remain in the U.S. and respond to negative information in their records. The due process of these proceedings is guaranteed to noncitizens by the Immigration and Nationality Act, as well as by international agreements and the Constitution. It is a key safeguard against error or abuse by government actors, as well as protection from other reasons a person might be deported when they legally should not be.

¹ Copyright 2025, ASISTA Immigration Assistance.

² See, e.g., Sergio Martinez-Beltran, “Trump-appointed federal judge blocks use of Alien Enemies Act for Venezuelans in South Texas” (May 1, 2025), *available at* <https://www.npr.org/2025/05/01/g-s1-63830/trump-appointed-federal-judge-blocks-use-of-alien-enemies-act-for-venezuelans-in-south-texas>; Joe Walsh, “Pennsylvania judge is first to rule Trump’s use of Alien Enemies Act is justified. Here’s what that means.” (May 15, 2025), *available at* <https://www.cbsnews.com/news/trump-alien-enemies-act-pennsylvania-ruling/>.

³ See, e.g., John Fritze & Devan Cole, “Supreme Court blocks Trump from restarting Alien Enemies Act deportations” (May 16, 2025), *available at* <https://www.cnn.com/2025/05/16/politics/supreme-court-alien-enemies-act>.

The Alien Enemies Act, a wartime power formally to be used only in the context of a declared war or invasion by a foreign state, is a mechanism to circumvent all immigration law and rights. When it is invoked, the government can swiftly remove or detain citizens of the “enemy” nation based on their ancestry alone, without giving them the ability to apply for immigration status. The due process (and safeguards) of immigration proceedings are abandoned under the Act.

The Administration has claimed it can use the Act now because a gang called “Tren de Aragua” has become an invader, justifying the wartime power. In other words, it did not identify a foreign state or nation, but a criminal organization, as the enemy. It asserted it could remove “members” of the gang without due process under the Alien Enemies Act.

The use of the Alien Enemies Act against a non-state entity is not only legally dubious, but essentially unworkable by any actor concerned with accuracy. Unlike those documenting their citizenship, members of gangs do not carry gang-issued passports or birth certificates to show official, recognized, and permanent belonging to the gang. Instead, allegations and free associations, combined with being 14 or older and having a Venezuelan nationality (where Venezuela is *not* declared to be an invader itself), appear to be the ways the government is determining who falls under the Act’s provisions.⁴ Since the effect of the Act is to curtail due process even to *test* the allegations, it is effectively impossible to ensure it is being used only against actual gang members.⁵ Indeed, the ACLU and media reports assert the government produced no evidence to support the gang allegations against many of those already removed under the Act.⁶

⁴ As to the allegations and associations, ICE reportedly uses a checklist to assign points to determine if a person is a Tren de Aragua member. Eight points are sufficient for Alien Enemy Act removal, and that number is easy to reach by simple, coincidental associations with pre-identified members (calling or texting a member on apparently any topic - 6 points, appearing in a photo with two or more for any reason - 2 points, or living with one - 2 points), as well as by wearing clothing or having tattoos that are similar to ones the government associates with the gang (4 points each). See, e.g., Peter Wade, “ICE List Shows How Tattoos and Clothing Are Used to Label Immigrants as Gang Members” (Mar. 30, 2025), *available at* <https://www.rollingstone.com/politics/politics-news/ice-list-venezuelan-immigrants-gang-members-1235306641/>. ASISTA notes that many of these associations are things survivors may not have the autonomy to avoid when in an abusive, controlling relationship.

⁵ On April 7, 2025, the Supreme Court held that the government was required to give notice to individuals it wished to remove under the Act, and that a person could contest inclusion in the Act’s category of “alien enem[ies]” through a petition for writ of *habeas corpus*. *Trump v. J.G.G.*, 604 U. S. ____ (2025), *available at* https://www.supremecourt.gov/opinions/24pdf/24a931_2c83.pdf. However, it did not reach the merits of what this notice requirement entailed, beyond that it come with sufficient time to file the *habeas* petition. Critically, noncitizens accused under the Act are not entitled to free legal counsel the way defendants in a criminal case are. Thus, access to this shred of due process will be limited to those few Venezuelans who can find and afford to hire a lawyer on short notice, for a procedurally complicated federal court action. It can be reasonably expected that the majority of affected individuals will not be able to do this.

⁶ E.g., Tedd Hesson & Tom Hals, “Judge demands answers of Trump administration in Venezuela deportation case” (Mar. 18, 2025), *available at* <https://www.reuters.com/world/us/group-seeks-answers-deportation-venezuelans-despite-court-order-2025-03-17/>. Separately, a federal judge found, after the government’s own admission, that at least one

For most Venezuelan survivors, the ability to assert one is not a member of the gang—but is instead one of its victims—appears virtually nonexistent.⁷

How Are Immigrant Survivors Affected?

As with many transnational criminal organizations, the Tren de Aragua is known for using extreme violence to force compliance with its commands, as well as for human trafficking. It is well known that desperate people are physically forced to do the bidding of the gang, including prostitution or other unlawful acts, where the profits of the criminal acts flow back to the gang.⁸ To give just one example, a young woman told CNN in 2023 that the gang had forced her and other women in Colombia to have sex with clients after the gang had restrained her, drugged her, raped her, and starved her for months.⁹

Put another way, the Tren de Aragua is known to create victims wherever it operates, and these victims may be difficult to distinguish from members without meaningful inspection. A person seeming to act for the gang may not be a member but a victim under extreme duress who needs help and the opportunity to seek justice, not immediate detention and further harm in the form of removal.

As such, should the government be permitted to deport people without immigration due process, using mere allegations to guide its use of the Alien Enemies Act, survivors will surely be among those detained and removed. On top of careless mistakes by the government, it will be easy for abusers and bad actors to malevolently assert their victims are gang members when they know that no hearing will be had. Even mere

person recently removed should not have been. See, e.g., Joel Rose & Sergio Martinez Beltran, “Judge orders the Trump administration to return man who was mistakenly deported” (Apr. 4, 2025), *available at* <https://www.npr.org/2025/04/04/nx-s1-5352448/judge-orders-the-trump-administration-to-return-man-who-was-mistakenly-deported-el-salvador>. While not obviously related to erroneous allegations of Tren de Aragua membership, the example further underscores the indifference to accuracy that is also embodied in the invocation and attempted implementation of the Act. Moreover, despite the acknowledged error, the government has not agreed to return the man to the US. E.g., Kayla Epstein, “Can the US return man deported to El Salvador? Immigration lawyers think so” (Apr. 9, 2025), *available at* <https://www.bbc.com/news/articles/cx27qzdzqrgo>. This calls into question the notion that notice and an opportunity for judicial review will reliably suffice to prevent noncitizens from having their families ripped apart permanently over unjustified classification as an “alien enemy.”

⁷ It bears noting that a person might be both a survivor and a gang member. This is particularly true where the Act purports to reach members who are children as young as 14. The abandonment of immigration proceedings’ due process for these survivors—who would otherwise be entitled to seek protections despite membership or minor criminal histories—is also highly concerning.

⁸ See, e.g., Joshua Goodman, “Tren de Aragua gang started in Venezuela’s prisons and now spreads fear in the US” (Sep. 24, 2024), *available at* <https://apnews.com/article/tren-de-aragua-gang-venezuela-us-a12c8fee9dc4a0ca73769ea893e09e53>; Organized Crime and Corruption Reporting Project (OCCRP), “The Rapid Rise of Venezuela’s ‘Tren de Aragua’ Gang Leaves Destruction and Death in Its Wake” (Nov. 9, 2023), *available at* <https://www.occrp.org/en/project/narcofiles-the-new-criminal-order/the-rapid-rise-of-venezuelas-tren-de-aragua-gang-leaves-destruction-and-death-in-its-wake>.

⁹ OCCRP, “The Rapid Rise of Venezuela’s ‘Tren de Aragua’ Gang Leaves Destruction and Death in Its Wake,” *supra* at n.8.

threats to allege a survivor's gang membership will become a potent tool of power and control for abusers, similar to abusers' frequent threats to call ICE on immigrant survivors. When survivors are swept up, they will not be given a chance to defend themselves.¹⁰ They will be ripped suddenly from their families and sent to a dangerous prison where they are housed alongside their tormentors.

The Act's invocation is legally dubious, a due process abomination, and inhumane to survivors and all noncitizens. We at ASISTA are closely watching how its usage or injunction develops, and will do all we can to protect immigrant survivors and their family members from its implementation.

Additional Resources:

Proclamation:

<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/>

¹⁰ Ironically, many of the survivors who the Act would harm are the very same who Congress intended to keep in the U.S., because of their ability to assist law enforcement in catching perpetrators like Tren de Aragua members. Under the pretext of increasing safety from the gang, the Administration will remove victims and witnesses key to successful investigations and prosecutions of actual gang leaders.