

**The Alien Enemies Act of 1798 and Its Relevance to
Illegal Immigration Today**

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In the first year of his second term, President Donald Trump signed dozens of executive orders reinterpreting federal law in many important areas, especially immigration and border security. At numerous campaign rallies and in the inaugural address of his second term, President Trump said his immigration enforcement strategy will involve the Alien Enemies Act of 1798. It's imperative to consider what this eighteenth-century statute is, how the President is attempting to use it, and his strong justifications for doing so.

President John Adams signed the Alien Enemies Act (AEA) into law as the United States stood on the brink of war with France. One of four laws known collectively as the Alien and Sedition Acts, the AEA allows the president to apprehend and remove from the country any noncitizen hailing from a hostile “nation or government” when there is a “declared war” or whenever “any invasion or

predatory incursion shall be perpetrated, attempted, or threatened against the territory of the United States, by any foreign nation or government.”¹

Prior to President Trump’s invocation, the Alien Enemies Act had been used three times in American history, each during periods of major military conflict. These include the War of 1812, World War I, and after the attack on Pearl Harbor in December 1941. Proposals to use the AEA today, as the 2024 Republican platform states, would target “known or suspected gang members, drug dealers, or cartel members” with the goal of “ending the scourge of Illegal Alien gang violence once and for all.”²

Since no declared war presently exists, invoking the AEA requires establishing that criminal aliens entering the United States from the specified nations constitute an “invasion or predatory incursion” at the behest of a “foreign nation.” The first clause is easy to address.

When analyzing early statutes like the AEA, it is helpful to consider the original public meaning of the words enacted by Congress. In this case, considering how the Founding Fathers and the eighteenth-century American populace defined invasion proves helpful in seeing how the AEA can be applied to modern circumstances.

¹ An Act respecting Alien Enemies, 1 Stat. 577 (1798). In a recent court order, however, the Supreme Court did underline that aliens targeted under the Alien Enemies Act were allowed to challenge the President’s interpretation and the constitutionality of the act. See *Trump v. J.G.G.*, 604 U.S. 670, 145 S. Ct. 1003, 221 L. Ed. 2d 529 (2025).

² *2024 Republican Party Platform*, The American Presidency Project (July 08, 2024), www.presidency.ucsb.edu/documents/2024-republican-party-platform.

The word “invasion” appears frequently in colonial charters and America’s founding documents. It appears in the Federalist Papers, for example, 41 times.³ It was generally understood to mean an intrusion into U.S. territory with malicious intent. An invasion did not need to be precipitated by a foreign army.⁴ As James Madison explained in Federalist 41, “pirates and barbarians” constituted “daring and sudden invaders,” threatening America’s maritime cities.⁵ President Trump has already declared in an executive order that the “deadly drugs, violent criminals, and vicious gangs,” pouring across the southern border constitute an invasion—a proclamation that is consistent with the original public meaning of that term.⁶ When Tren de Aragua gang members enter the United States illegally and go on to pillage entire apartment buildings, traffic thousands of pounds of deadly drugs onto American streets, and commit exorbitant rates of violent crime, they are no different than the daring invaders that Madison feared.

The more challenging question is whether this invasion by criminals and gangs is “being perpetrated ... by any foreign nation or government.” The bright lines that existed when the AEA was used in the past no longer exist, with violent gangs and narco-terror groups exercising unprecedented control over governments. For example, Pablo Escobar’s Medellin cartel had a tight grip on the Colombian government, and Escobar himself actually served in the national legislature.⁷ In

³ Joshua Treviño, *The meaning of invasion under the Compact Clause of the U.S. Constitution*, TEXAS PUBLIC POLICY FOUNDATION 5 (Nov. 2022), www.texaspolicy.com/wp-content/uploads/2022/11/2022-11-RR-SST-CompactClause-JoshuaTrevino-paper5-.pdf

⁴ Joshua Treviño, *supra* note 3, at 6-7.

⁵ THE FEDERALIST No. 41 (James Madison).

⁶ Exec. Order No. 14157, 90 Fed. Reg. 8439 (Jan. 29, 2025).

⁷ Dallas Inabinett, *Burning a Nation: Pablo Escobar, Colombia, and the Cold War*, 13 THE ALEXANDRIAN, no. 1 at 5 (2024).

countries like Mexico and Haiti, as the President’s executive order explains, cartels “function as quasi-governmental entities, controlling nearly all aspects of society”;⁸ gangs control nearly one hundred percent of Haiti’s capital.⁹ Even more perniciously, in countries like Venezuela, leaders directly accept bribes from guerrilla groups to facilitate narcoterrorism operations.¹⁰ Scholars, in fact, have actually coined the term “mafia state” to describe the growing trend of criminals “penetrating governments to an unprecedented degree.”¹¹

The Supreme Court has traditionally given the president significant deference regarding foreign relations. In *Oetjen*, the Court held that deciding “who is the sovereign de jure or de facto of a foreign territory is a political question” to be left to the government.¹² In addition, the Court has repeatedly recognized that the authority to expel aliens is “inherent in the executive power to control the foreign affairs of the nation.”¹³

Regrettably, a few months ago, the Fifth Circuit Court of Appeals disagreed and blocked the president’s use of the AEA, finding “no invasion or predatory incursion” in this case.¹⁴ The court defined an invasion as an “act of war,” directed by a foreign nation.¹⁵ As the majority opinion explained, “[a] country’s encouraging

⁸ Exec. Order No. 14157, *supra* note 6.

⁹ The Associated Press, *Haiti’s Gangs Tighten Their Grip on Port-au-Prince*, NPR, July 3, 2025, www.npr.org/2025/07/03/nx-s1-5455540/haiti-gangs-capital-port-au-prince-violence.

¹⁰ Press Release, Department of Justice, Nicolás Maduro Moros and 14 Current and Former Venezuelan Officials Charged with Narco-Terrorism, Corruption, Drug Trafficking and Other Criminal Charges (March 26, 2020), www.justice.gov/archives/opa/pr/nicol-s-maduro-moros-and-14-current-and-former-venezuelan-officials-charged-narco-terrorism.

¹¹ Moisés Naím, *Mafia States*, FOREIGN AFFAIRS, May-June 2012, at 100, 100.

¹² *Oetjen v. Central Leather Co.*, 246 U.S. 297, 298 (1918).

¹³ *United States ex rel. Knauff v. Shaughnessy*, 338 U.S. 537 (1950).

¹⁴ *W.M.M. v. Trump*, 154 F.4th 207, 213 (5th Cir. 2025), reh’g en banc granted, opinion vacated, 154 F.4th 319 (5th Cir. 2025).

¹⁵ *W.M.M. v. Trump*, 154 F.4th at 223

its residents and citizens to enter this country illegally is not the modern-day equivalent of sending an armed, organized force to occupy, disrupt, or to otherwise harm the United States.”¹⁶ This type of reasoning totally sidesteps the malicious intent of foreign actors who are not merely “encouraging” their residents to illegally migrate, but are directly helping facilitate advanced drug trafficking operations and deadly violence. The court’s statutory reading is at odds with the original public meaning of the Alien Enemies Act. As explained above, early Americans certainly understood rogue, decentralized, and malevolent actors as enemy invaders.

Even more concerning is the gradual erosion of judicial deference to the executive concerning core questions of immigration enforcement and national security. The power to control the entry and removal of illegal aliens posing a deadly threat to the country is rightfully left to the president as part of his control over foreign affairs. As the Court explained in *Shaughnessy*, “the power to expel aliens” is a “fundamental sovereign attribute exercised by the Government's political departments largely immune from judicial control.”¹⁷ This power should not be left to activist judges blindly endangering our national security and American lives.

¹⁶ *W.M.M. v. Trump*, 154 F.4th at 228

¹⁷ *Shaughnessy v. United States ex rel. Mezei*, 345 U.S. 206, 210 (1953).