

Mandates of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; the Working Group on Enforced or Involuntary Disappearances; the Special Rapporteur on extrajudicial, summary or arbitrary executions; the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; the Special Rapporteur on the situation of human rights defenders; the Special Rapporteur on the independence of judges and lawyers; the Independent expert on the promotion of a democratic and equitable international order; the Independent Expert on human rights and international solidarity; the Special Rapporteur on the human rights of migrants; the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; the Special Rapporteur on trafficking in persons, especially women and children and the Working Group on discrimination against women and girls

Ref.: UA USA 14/2025

(Please use this reference in your reply)

23 April 2025

Excellency,

We have the honour to address you in our capacity as Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism; Working Group on Enforced or Involuntary Disappearances; Special Rapporteur on extrajudicial, summary or arbitrary executions; Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context; Special Rapporteur on the situation of human rights defenders; Special Rapporteur on the independence of judges and lawyers; Independent expert on the promotion of a democratic and equitable international order; Independent Expert on human rights and international solidarity; Special Rapporteur on the human rights of migrants; Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment; Special Rapporteur on trafficking in persons, especially women and children and Working Group on discrimination against women and girls, pursuant to Human Rights Council resolutions 49/10, 54/14, 53/4, 52/10, 52/4, 53/12, 57/7, 53/5, 52/20, 52/7, 53/9 and 50/18.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning recent deportations of Venezuelan and Salvadoran nationals from the United States to El Salvador, particularly those carried out under the Alien Enemies Act. We are concerned that the deportations and related detentions were not consistent with international human rights law, including the prohibitions on unlawful or arbitrary expulsion, freedom from arbitrary detention, the right to due process in the expulsion of migrants and asylum seekers, the right to family life and the rights of children, the obligation of *non-refoulement*, the prohibition on enforced disappearance, and the requirement of humane conditions of detention. We are also concerned about the designation of organized criminal groups such as the Tren de Aragua as terrorist organizations, and threats to the independence and authority of U.S. judges, and to the professional work of immigration lawyers, in cases where the deportation measures are being challenged. We are extremely alarmed by the imminent prospect of further deportations, in violation of international law. We urge your Excellency's Government to review these laws, policies and practice to ensure that any measure taken complies with international human rights law and standards.

According to information received:

Designation of terrorist organizations

On 20 February 2025, the United States Department of State designated¹ eight transnational criminal organizations, including drug cartels, as Foreign Terrorist Organizations (FTOs) under section 219 of the Immigration and Nationality Act and Specially Designated Global Terrorists (SDGTs) under Executive Order 13224. The new designations included Tren de Aragua and Mara Salvatrucha (MS-13), among six other organised crime groups.

The U.S. states in the designation that Tren de Aragua originated in Venezuela and has cells in Chile, Colombia and Peru and a sporadic presence in Ecuador, Bolivia, and Brazil. The group has allegedly conducted kidnappings, extorted businesses, bribed officials, authorized attacks on U.S. law enforcement and assassinated a Venezuelan opposition figure. The U.S. states that MS-13 originated in Los Angeles and shifted to Central America as individuals were deported there. MS-13 engages in violence in El Salvador, Honduras, Guatemala, Mexico and the U.S., including assassinations and the use of Improvised Explosive Devices (IEDs) and drones against El Salvador Government officials and facilities. It also uses public displays of violence to intimidate the population in order to control territory and manipulate elections in El Salvador.

The designation of a group as a FTO triggers the application of the criminal offence of providing “material support or resources” to it, renders foreign members of the group inadmissible to and removable from the U.S., and requires U.S. financial institutions to freeze FTO funds. The designation of a group as a SDGT blocks its property in the U.S. and prohibits transactions or dealings with its property.

The Alien Enemies Act

On 14 March 2025, the President of the United States signed an executive proclamation² invoking the Alien Enemies Act (50 U.S.C. paras. 21–24) in relation to Tren de Aragua (TdA). According to the proclamation, this organisation:

“[I]s perpetrating, attempting, and threatening an invasion or predatory incursion against the territory of the United States. TdA is undertaking hostile actions and conducting irregular warfare against the territory of the United States both directly and at the direction, clandestine or otherwise, of the Maduro regime in Venezuela”. [section 1]

The proclamation asserts that Tren de Aragua is a designated Foreign Terrorist Organization which “operates in conjunction with Cártel de los

¹ <https://www.state.gov/designation-of-international-cartels/>.

² <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/>

Soles, the Nicolas Maduro regime-sponsored, narco-terrorism enterprise based in Venezuela, and commits brutal crimes, including murders, kidnappings, extortions, and human, drug, and weapons trafficking”. Tren de Aragua is further alleged to engage in “mass illegal migration to the United States to further its objectives of harming United States citizens, undermining public safety, and supporting the Maduro regime’s goal of destabilizing democratic nations in the Americas”.

Under section 2 of the proclamation, the U.S. President ordered that:

“[A]ll Venezuelan citizens 14 years of age or older who are members of TdA, are within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies. I further find and declare that all such members of TdA are, by virtue of their membership in that organization, chargeable with actual hostility against the United States and are therefore ineligible for the benefits of 50 U.S.C. 22. I further find and declare that all such members of TdA are a danger to the public peace or safety of the United States.

Section 4 of the proclamation orders the Attorney General and the Secretary of Homeland Security to apprehend, restrain, secure, and remove every Alien Enemy described in section 1 of this proclamation. The proclamation also prohibits the entry into the U.S. of the so-called “alien enemies” (section 6(a)); requires the immediate apprehension and detention of “alien enemies” in the U.S. pending removal from the U.S. (section 6(b)); and authorizes removal “to any such location as may be directed by the officers responsible for the execution of these regulations consistent with applicable law” (section 6 (c)). Section 6(d) provides for the seizure and forfeiture of “alien enemy” property which is used, intended to be used, or is commonly used to perpetrate the hostile activity and irregular warfare.

The Alien Enemies Act of 1789 (50 U.S.C. para. 21) relevantly provides that:

“Whenever there is a declared war between the United States and any foreign nation or government, or any invasion or predatory incursion is perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government, and the President makes public proclamation of the event, all natives, citizens, denizens, or subjects of the hostile nation or government, being of the age of fourteen years and upward, who shall be within the United States and not actually naturalized, shall be liable to be apprehended, restrained, secured, and removed as alien enemies. The President is authorized in any such event, by his proclamation thereof, or other public act, to direct the conduct to be observed on the part of the United States, toward the aliens who become so liable; the manner and degree of the restraint to which they shall be subject and in what cases, and upon what security their residence shall be permitted, and to provide for the removal of those who, not being permitted to reside within the United States, refuse or neglect to

depart therefrom; and to establish any other regulations which are found necessary in the premises and for the public safety.”

The Act permits the U.S. President to “declare such reasonable time as may be consistent with the public safety, and according to the dictates of humanity and national hospitality” to allow “alien enemies” to depart the U.S., to prepare for the recovery, disposal, and removal of his goods and effects, and for his departure (50 U.S.C. para. 22).

The present invocation of the Alien Enemies Act appears intended to permit summary deportations of migrants and asylum seekers without applying the substantive grounds for removal under U.S. immigration law or the full guarantees of due process under U.S. law, including detailed individualized assessment and judicial protections, including under the Immigration Nationality Act of 1952, the right to asylum (8 U.S.C. para. 1158(a)(1) and 8 U.S.C. para. 1101(a)(42)(A)), the prohibition on *non-refoulement* to persecution (8 U.S.C. para. 1231(b)(3), implementing the 1951 Refugee Convention and the 1967 Protocol relating to the Status of Refugees) and on *refoulement* to torture (8 U.S.C. para. 1231, implementing the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) ratified by the U.S. on 23 October 1994). Under U.S. immigration law, deportation decisions can be administratively appealed to the Board of Immigration Appeals (BIA) and, in some cases, judicially reviewed before the federal courts for habeas corpus. The ordinary period of detention pending removal is 90 days.

The extent to which deportations of migrants and asylum seekers under the Alien Enemies Act are subject to due process safeguards and judicial review are the subject of multiple legal proceedings in the U.S., including before the U.S. Supreme Court.

The Alien Enemies Act, which was adopted in 1798, has only been invoked on three previous occasions, namely the 1812 war between the U.S. and the United Kingdom and the First and Second World Wars. The Act was not used to deport anyone during those conflicts, but was used to deport small numbers of foreign nationals immediately after the Second World War. German citizens were granted a level of due process at that time.

On 26 February 2025, the combined U.S. intelligence community reportedly assessed that Tren de Aragua was not controlled by the Venezuelan Government.

Deportations of Venezuelan nationals

On 15 March 2025, three aircraft departed Texas in the U.S., transited through Honduras, and landed in El Salvador on 16 March 2025, reportedly carrying 261 adult men deported. Of these, 238 were Venezuelan nationals and 23 were Salvadorian nationals allegedly associated with MS-13. Among the 238 Venezuelan nationals, 137 were apparently deported under the Alien Enemies Act, due to their alleged connection with Tren de Aragua, and the other 101 were removed under U.S. immigration law.

Between 30 and 31 March 2025, the U.S. deported 17 adult men to El Salvador who allegedly had Tren de Aragua or MS-13 affiliations and who had final orders of removal under U.S. immigration law. Seven of the men are Venezuelan citizens and the other 10 are Salvadorans. On 12 April 2025, the U.S. removed another 10 alleged gang members to El Salvador. The U.S. authorities have reportedly transferred other Venezuelans subject to deportation to Texas in preparation for their removal prior to judicial review.

Many of those deported are currently detained in El Salvador's maximum-security prison, the Centro de *Confinamiento del Terrorismo* (Terrorism Confinement Center) (CECOT). El Salvador has indicated that they will be held for a period of one year, which is renewable. Most of the Venezuelans deported have no previous connection with the country or legal status in El Salvador.

According to the information received, many of these individuals held an "Alien number" (also known as "A number"), a unique number that the U.S. Department of Homeland Security assigns to an individual who does not have U.S. citizenship, which is used by the U.S. Immigration and Customs Enforcement (ICE) to track individuals. After being reportedly transferred, these numbers, which were accessible by their legal counsels and family members, ceased to exist. Their family members and legal counsel were not informed of their transfers by the U.S. Government or of their arrival by the Government of El Salvador.

The authorities in the U.S. and El Salvador have not released the names or legal status of the detainees or provided information to prove their alleged gang associations or any criminal activities. While CECOT is a prison, it is unknown whether the detainees are under any form of criminal investigation in El Salvador, are being held under some form of immigration administrative detention law or are being held under some other legal framework.

It is unknown what legal procedure the U.S. authorities have applied, and will continue to apply, to determine who meets the definition of "alien enemy", including the investigative process and the standards of proof and evidence. In a statement to a U.S. court, U.S. ICE indicated that many removed under the Alien Enemies Act do not have criminal records. The U.S. reportedly uses an "Alien Enemy Validation Guide" which assigns points for various indicators of gang membership. According to reports, individuals may have been identified with Tren de Aragua based on their tattoos, clothing, social media activities and migration status. Family members have indicated that some tattoos of those deported have no connection to gangs, while some individuals do not have tattoos.

It is reported that a number of deported individuals had claimed asylum in the U.S. and their claims were pending at the time of removal, while others had been granted temporary protection status or withholding of removal under U.S. law due to fear of *refoulement*, particularly against return to Venezuela. It has also been reported that while in detention in the U.S., asylum seekers did not have access to legal representation or an interpreter, which hindered their ability to

challenge an eventual negative assessment from the asylum officer and to request a hearing before an immigration judge.

There are fears about their safety in El Salvador, including risks of death, torture, enforced disappearances, and arbitrary imprisonment in the CECOT and other detention facilities, whether at the hands of convicted gang members or the prison authorities. There are also concerns that the Venezuelan detainees may be subject to onward or “chain refoulement” to Venezuela given their uncertain legal status in El Salvador, where they have not been convicted, are not under apparent criminal investigation, and have neither Salvadoran nationality nor any determinate immigration status in that country.

The U.S. authorities have indicated that some individuals were removed under U.S. immigration law rather than the Alien Enemies Act. However, in addition to “ordinary” removal powers, the Immigration Nationality Act of 1952 exceptionally permits the U.S. Secretary of State to deport a noncitizen where they have reasonable ground to believe that the person’s presence would have “potentially serious adverse foreign policy consequences” for the U.S., and such power appears subject to a lesser standard of due process and judicial review. The Act also provides for expedited removal in certain circumstances.

The U.S. Government admitted in recent court proceedings that one Salvadoran national was deported to El Salvador due to an “administrative error”. On 10 April 2025, the U.S. Supreme Court ordered the U.S. Government to “facilitate and effectuate the return” of that person, whom a lower court had found faced a risk of violence or torture if sent to El Salvador. The U.S. Government had maintained that it could not seek the person’s return because it would threaten U.S. foreign policy and its relationship with an ally in the fight against gangs, and the person is no longer within U.S. jurisdiction. The U.S. Attorney General indicated on 14 April 2015 that the U.S. would “facilitate” the return of the individual, including by providing a plane, if El Salvador wished to return him. At this time, it is unknown whether the U.S. Government has requested the Government of El Salvador to return the individual. The President of El Salvador has stated that he has no authority to return a “terrorist” to the United States. On 16 April 2025, a federal judge declared that the U.S. appeared to have done “nothing” to facilitate his return.

The deportations have reportedly occurred under a recent agreement between the U.S. and El Salvador, by which El Salvador will detain individuals deported from the U.S., including violent criminals of any nationality, in return for 6 million USD for one year. It is unknown whether the agreement includes any mechanism for monitoring human rights protection during the deportation process and detention in El Salvador, or provides for any remedial or accountability mechanisms for human rights violations.

Lawyers, prominent civil rights and human rights groups, civil society organisations, and the Venezuelan Government have condemned the deportations as contrary to international human rights law. On 31 March 2025, the Inter-American Commission on Human Rights expressed concern that the deportations appeared to be implemented “without full adherence to due process

guarantees”.³ It called on the U.S. when deporting any person “to provide adequate conditions of return, to prevent forced removals that fail to assess potential needs for international protection, and to uphold due process guarantees”, as well as to ensure “the right of protection from arbitrary arrest”.

U.S. political leaders have also reportedly vilified those deported, such as when the U.S. President called them “barbarians” or “some of the most violent alien enemies of the World” on 12 April 2025.

At the present time, the fate and whereabouts of a large number of those deported remains unknown.

Conditions of transfer

A video footage released by the Government of El Salvador showed the arrival on 16 March 2025 of those who had been deported. The footage showed that maximum security precaution measures had been taken by the Salvadoran authorities, including many officers wearing riot gear, and the shackling of the hands and ankles of the detainees as they exited the aircraft onto the airport tarmac. Some appeared to be struggling to walk as law enforcement officers put pressure on their heads to force them to bend down at the waist. The men were then transported to prison in a convoy of buses guarded by police and military vehicles and a helicopter. They were then shown kneeling on the ground as their heads were shaved before they changed into the CECOT’s all-white uniform and were placed in cells.

Detention in the Terrorism Confinement Center (CECOT)

CECOT, in Tecoluca, was built in 2024 to house up to 40,000 prisoners and is one of the largest prisons in Latin America. It is reportedly currently at about half of its inmate capacity. The CECOT is not known to have been visited by any independent human rights mechanism. A U.S. judge recently described the facility as “one of the most dangerous prisons in the Western Hemisphere”.

Within Salvadoran prisons, there are past reports of physical abuse, prolonged solitary confinement, torture or cruel, inhuman, or degrading treatment or punishment, and summary executions. At least 368 prisoners have allegedly died from malnutrition, blunt force trauma, strangulation and denial of medicine or health care. Without following the investigation procedures for potentially unlawful deaths, these deaths have been considered to be caused by natural causes. Some bodies may be buried in mass graves in some prisons, without due notification to families, who may still consider that their family members are detained.

The conditions of detention at CECOT reportedly do not meet international standards. Despite its potential capacity, CECOT reportedly experiences severe overcrowding, with each cell accommodating approximately 70 inmates, where convicted individuals and pre-trial suspects allegedly share the same cell and

³ https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/065.asp&utm_content=country-usa&utm_term=class-mon

the same space. Detainees reportedly sleep on metal beds without mattresses and are confined to their cells for 23 hours a day, deprived of outdoor time.

On the other hand, there have been frequent references to poor food and water accessibility, lack of essential medicines for people with chronic and serious illnesses, as well as poor exposure to sunlight. Other persons also detained in other prisons are reportedly participating in training and work processes, without knowing the criteria for their admission, conditions and effects on their re-socialisation process. Recent regulatory reforms have severely increased the length of pre-trial detention, and eliminated prison benefits for inmates associated with gang crime.

Among those deported from the U.S. between 15 and 16 March 2025 are people who are ill and need medical assistance, including cases of intellectual disability, chronic respiratory illness, high blood pressure and possible schizophrenia. There are reportedly no recreational, educational or rehabilitation activities available in the CECOT. The Minister of Justice and Public Security of El Salvador has previously declared that “those held at CECOT would never return to their communities”.

To date, those deported have been denied communication with lawyers. The absence of legal representation raises serious concerns regarding the protection of the rights of detained migrants and asylum seekers, including by preventing them from challenging their detention or seeking other legal remedies. None of the individuals have reportedly been granted access to their files or allowed to challenge their detention in El Salvador.

The deported migrants and asylum seekers have also reportedly been denied visitation rights, including from family members. Some families reportedly initially believed their loved ones were being deported to Venezuela, only to later discover they had been sent to El Salvador. Many families reportedly learned about the deportations through television broadcasts, creating anxiety and uncertainty about the well-being of their relatives. As mentioned above, many people continue not to have information on the fate and whereabouts of their deported relatives. Some relatives of prisoners in El Salvador have reportedly been threatened with imprisonment on some occasions.

The Government of El Salvador has reportedly also denied consular assistance by Venezuela and may not have informed the detainees of their right to consular assistance. El Salvador and Venezuela also do not maintain diplomatic relations.

Civil society organisations in El Salvador are allegedly barred from accessing facilities. These organisations, involved in casework, reportedly face threats of reprisals, contributing to a climate of fear and uncertainty and deterring the work of human rights defenders.

There is a lack of public information about those detained. Despite numerous requests, no public data about them has been shared, and lists have not been provided to the countries of origin. The absence of official information also impedes the protection of the rights of detainees, remedies and accountability.

The lack of information and denial of visits by lawyers, family members and NGOs has resulted in incommunicado detention and enforced disappearances.

The deportations have occurred in the context of a prolonged state of emergency in El Salvador, in effect for 37 months, alongside executive decrees and legal reforms that have diminished legal safeguards and due process for detainees (see SLV 1/2024, SLV 2/2023, SLV 4/2022, SLV 2/2022, SLV 4/2021). These circumstances have led to mass arrests and expedited trials, frequently targeting individuals with alleged ties to *maras*, *pandillas* and/or organised crime. Concerns have arisen regarding the independence of special judges handling cases related to organised crime and terrorism, who, due to a recent judicial reform, now reportedly manage cases from the investigation phase through sentencing and prison oversight. Unclear jurisdictional boundaries under Salvadoran law pose significant challenges, with uncertainty about which judge can oversee cases and evaluate the legality of detention, effectively creating a legal black hole.

Judicial proceedings

On 15 March 2025, a U.S. district court ordered a temporary halt to deportations under the Alien Enemies Act, and the return of the first two aircraft that were already in the air at the time, in order to ensure due process was provided to migrants and asylum seekers prior their deportation. The decision did not review whether the Alien Enemies Act provided a lawful basis for the deportations.

Further proceedings before the court have considered whether the U.S. authorities complied with the order to return the flights; and whether the “state secrets privilege” under U.S. law can prevent the disclosure of information about the flights so as not to “undermine or impede future counterterrorism operations.”

On 26 March 2025, a U.S. federal appeals court upheld the district court’s temporary order preventing further deportations.

On 7 April 2025, the United States Supreme Court overturned the lower courts’ halt on deportations but determined that, while judicial review is limited under the Alien Enemies Act, any person subject to removal is still constitutionally entitled to due process and habeas corpus. Specifically, it held that detainees are entitled to reasonable notice that they are subject to removal and an opportunity to be heard before a court. The Court did not address otherwise the lawfulness of using the Alien Enemies Act.

The judge in the above-mentioned U.S. district court case has been subject to a campaign of public vilification and intimidation by senior U.S. officials, including the U.S. President, who called him “a radical left lunatic judge”, and the Attorney General and various Republican Party politicians, with accusations that the judge is a Marxist and terrorist sympathizer.

On 18 March 2025, the Chief Justice of the U.S. Supreme Court felt compelled to intervene, stating that “For more than two centuries it has been established

that impeachment is not an appropriate response to disagreement concerning a judicial decision. The normal appellate review process exists for that purpose”.

On 31 March 2025, the Inter-American Commission on Human Rights (IACHR) condemned attacks on the U.S. judiciary in this context:

[T]he Commission has observed with concern public statements by high-ranking officials that could undermine the credibility and independence of the judiciary. The separation of powers and the independence of the branches of government are essential elements of representative democracy and any actions that may be perceived as exerting undue influence over judicial processes or discrediting the legitimacy of judicial decisions interfere with this separation and possibly even with the rule of law. At a minimum, intemperate criticism of the judiciary risks eroding public confidence in the administration of justice. The IACHR underscores the importance of upholding the autonomy of the judiciary and ensuring that judicial actors can perform their duties free from external pressure, interference, or any form of retaliation.⁴

On 21 March 2025, the U.S. President also issued a memorandum directing the Attorney General and Secretary of Homeland Security to seek sanctions against attorneys engaged in what the administration deems “frivolous, unreasonable, or vexatious litigation” against the U.S. The directive specifically targets immigration lawyers, accusing them of “coach[ing] clients to conceal their past or lie about their circumstances when asserting their asylum claims, all in an attempt to circumvent immigration policies enacted to protect our national security and deceive the immigration authorities and courts into granting them undeserved relief.” The memorandum calls for prioritizing the enforcement of regulations governing attorney conduct and discipline in immigration proceedings. The memo also directs a review of attorney conduct in litigation against the government over the past eight years, with potential consequences including loss of security clearances and termination of federal contracts.

Immigration detention in transit at Guantánamo Bay, Cuba

Since 29 January 2025, U.S. ICE has reportedly removed 367 Venezuelans to Venezuela under U.S. immigration law. Some transited through the U.S. military facility at Guantánamo Bay, Cuba, and then to Honduras, before arriving in Venezuela.

Among these, on 20 February 2025, 177 Venezuelans detained at Guantánamo Bay were removed to Venezuela.

On 20 March 2025, another 20 people, mainly Venezuelans who were alleged to be gang members, were flown from Texas to Guantánamo Bay.

⁴ https://www.oas.org/en/iachr/jsForm/?File=/en/iachr/media_center/preleases/2025/065.asp&utm_content=country-usa&utm_term=class-mon

On 12 April 2025, 10 individuals allegedly associated with MS-13 and Tren de Aragua were reportedly deported from Guantánamo Bay to El Salvador and detained in CECOT.

Migrants have reportedly been held at two facilities at Guantánamo Bay for the necessary time for the order of removal from the U.S. to take effect. One facility is “Camp 6”, a military prison that was built after 9/11 to hold Al Qaeda suspects. The other is a medium-security dormitory building that is part of a migration operations centre. The U.S. Government has indicated that eventually thousands of migrants could be held at Guantánamo Bay.

Lawyers have commenced legal proceedings to gain access to migrants at Guantánamo Bay. There are concerns about whether the U.S. Government has the legal authority to transfer people from detention by U.S. Immigration and Customs Enforcement in the U.S. to detention in Cuban territory at the US-leased military facility at Guantánamo Bay.

Some alleged victims

In relation to the allegations presented above, we present below a - non-exhaustive - list of some of the individuals allegedly deported from the U.S. to El Salvador, many of whom are allegedly held in CECOT with no contact with their legal representatives, family members, or person of choice:

Individuals deported on 15 March 2025:

1. **Marcos Jesus Basulto Salinas**, Venezuelan national, ID number 21425624.
2. **Wilken Rafael Flores Jimenez**, Venezuelan national, ID number 28323781.
3. **Richard Daniel Giron Maurera**, Venezuelan national, ID number 28304465.
4. **Christean Bill Petterson Torres**, Venezuelan national, ID number 26416352.
5. **Keider Alexander Flores Navas**, Venezuelan national, ID number 31863956.
6. **Tito Alejandro Martinez Borrego**, Venezuelan national, ID number 27621348.
7. **Rafael Antonio Martínez Vegas**, Venezuelan national, ID number 20978967.
8. **Carlos Alejandro Cañizales Arteaga**, Venezuelan national, ID number 28529490.
9. **Yoswaldo José Mata Ribeiro**, Venezuelan national, ID number 26895243.
10. **Angel Alberto Blanco Marín**, Venezuelan national, ID number **29594608**.
11. **Jhon William Chacín Gómez**, Venezuelan national, ID number 22126779.
12. **Ángelo Escalona Sevilla**, Venezuelan national, ID number 32096787.

13. **Joel Manuel Suarez Fuentes**, Venezuelan national, ID number 29701514.
14. **Yeison Seven Hernández Carache**, Venezuelan national, ID number 26929286.
15. **Darwin Gerardo Hernández Carache**, Venezuelan national, ID number 25111213.
16. **Robinson Josué Saavedra Caruci**, Venezuelan national, ID number 26797724.
17. **Jesús Gabriel Roos Ortega**, Venezuelan national, ID number 27467230.
18. **Yornel Santiago Benavides Rivas**, Venezuelan national, ID number 25639734.
19. **Jean Pier Gualdrón Gualdrón**, Venezuelan national, ID number 31587631.
20. **Gustavo Adolfo Aguilera Agüero**, Venezuelan national, ID number 26579982.
21. **Luis Alfredo Nuñez Falcón**, Venezuelan national, ID number 20388414.
22. **Ysqueibel Yonaiquer Peñaloza Chirinos**, Venezuelan national, ID number 27173684.
23. **Bruce Embelgert Cedeño Contreras**, Venezuelan national, ID number 29785579.
24. **Wild Yahare Romero Chirinos**, Venezuelan national, ID number 24915013.
25. **Luis Gustavo Rodríguez Lugo**, Venezuelan national, ID number 26580212.
26. **Josué Abrahán Basto Lizcano**, Venezuelan national, ID number 27069380.
27. **Brayant Abrahán Francisco Silva Rauseo**, Venezuelan national, ID number 30619803.
28. **Maikel Enrique Moreno Ramírez**, Venezuelan national, ID number 31076516.
29. **José Alfredo Bastidas Venegas**, Venezuelan national, ID number 29556806.
30. **Yonathan Alexander Torrealba Torrealba**, Venezuelan national, ID number 29805696.
31. **Edwuar José Hernández Herrera**, Venezuelan national, ID number 29717699.
32. **Jesús Antonio Hueck Escobar**, Venezuelan national, ID number 22522511.
33. **Ányelo José Sarabia González**, Venezuelan national, ID number 31261394.
34. **Ronald Josué Marea Medina**, Venezuelan national, ID number **25.272.178**.
35. **Mervin José Yamarte Fernández**, Venezuelan national, ID number **26.239.696**.
36. **Andry Javier Perozo Palencia**, Venezuelan National, ID number **23.855.480**
37. **Frizgeralth de Jesús Cornejo Pulgar**, Venezuelan National, ID number **6.838.666**

38. **Edwin Jesús Meléndez Rojas**, Venezuelan National ID number, **2.938.496**
39. **Carlos Alexis Uzcategui Vielma**, Venezuelan National, holder of “A number” 244-840-437.
40. **Wilmer José Vega Sandia**, Venezuelan national, ID number **6.721.086**,
41. **Franco José Caraballo Tiapa**, Venezuelan national, ID number 26.599.400
42. **Jerce Egbunik Reyes Barrios**, Venezuelan national.
43. **Lainerke Daniel Manzo Lovera**, Venezuelan national, ID number **4.284.314**
44. **Andry Omar Blanco Bonilla**, Venezuelan National, ID number **17.065.718**,
45. **Yuber Alexander Cabrera Briceño**, Venezuelan National, ID number **27.776.297**
46. **Francisco Javier Garcia Casique**, Venezuelan national, ID number 29598847.
47. **Jonathan Miguel Ramirez Ramirez**, Venezuelan national, ID number 34301250.
48. **Jose Antonio Peña Méndez**, Venezuelan national, ID number 26525839.
49. **Jhon Deivis Troconis Gonzalez**, Venezuelan national, ID number 20815248.
50. **Luis Ricardo Yáñez**, Venezuelan national, ID number 20606790.
51. **José Miguel Flores Rodriguez**, Venezuelan national, ID number 27926624.
52. **Victor José Bracho Gómez**, Venezuelan national, ID number 23648082.
53. **Keivi José Guerrero Padrón**, Venezuelan national, ID number 27206353.
54. **Manuel Alexander González Hernández**, Venezuelan national, ID number 27716717.
55. **César Tovar**, Venezuelan national, ID number 28278536.
56. **Luis Carlos José Marcano Silva**, Venezuelan national, ID number 27125248.
57. **Jinder Moises Angulo Aparicio**, Venezuelan national, ID number 29953076.
58. **Alfredo Silva Cáceres**, Venezuelan national, ID number 27517906.
59. **David Cabrera**, Venezuelan national, ID number 19341574.
60. **Kerbin Antonio Martínez Vargas**, Venezuelan national, ID number 27249255.
61. **Luis Tomas Morillo Piña**, Venezuelan national, ID number 20292836.
62. **Hutsman Ricardo Mathie Zavala**, Venezuelan national, ID number 22553454.
63. **Idenis Alexander Sánchez Paredes**, Venezuelan national, ID number 30933812.
64. **Pedro Rafael Escobar Blanco**, Venezuelan national, ID number 19914932.
65. **Jonathan José Plaza Carmona**, Venezuelan national, ID number 19226413.

66. **Julio Enrique Zambrano Pérez**, Venezuelan national, ID number 28430774.
67. **Omar José Rincón Bohorquez**, Venezuelan national, ID number 17635835.
68. **Henry José Albornoz Quintero**, Venezuelan national, ID number 25622583.
69. **Victor Andrés Ortega Burbano**, Venezuelan national, ID number 29724834.
70. **Nolberto Rafael Aguilar Rodríguez**, Venezuelan national, ID number 23572363.
71. **Jorge Luis Zarraga Rosales**, Venezuelan national, ID number 19740434.
72. **Obed Eduardo Navas Díaz**, Venezuelan national, ID number 27590647.
73. **Wilfredo José Mata Fornerino**, Venezuelan national, ID number 19544586.
74. **Anyelo Sierra Cano**, Venezuelan national.
75. **Gabriel Zambrano Torrealba**, Venezuelan national.
76. **Yolfran Alejandro Escobar Falcon**, Venezuelan national.
77. **Carlos Julio Silva Freitas**, Venezuelan national.
78. **Frengel José Reyes Mota**, Venezuelan national.
79. **Deibyn Iradan Gualtero Quiroz**, Venezuelan national.
80. **Keiver Rafael Zabaleta Morillo**, Venezuelan national.
81. **Neiyerver Adrián Leon Rengel**, Venezuelan national.
82. **Wuilliam Ramon Lozada Sanchez**, Venezuelan national.
83. **Eddie Adolfo Hurtado Quevedo**, Venezuelan national.
84. **Daniel Enrique Paz González**, Venezuelan national.
85. **Leonel Javier Echavez Paz**, Venezuelan national.
86. **Edicson David Quintero Chacón**, Venezuelan national.
87. **Keiber Enrique Leal Bautista**, Venezuelan national.
88. **Geormar Ismael Lopez Rodríguez**, Venezuelan national.
89. **Kenlyn Rafael Rodríguez Rojas**, Venezuelan national.
90. **Albert Aloy Primoschitz González**, Venezuelan national.
91. **Ali David Navas Viscaya**, Venezuelan national.
92. **Ricardo Javier Jaromillo Labrador**, Venezuelan national.
93. **Jorge Luis Guerrero Quintero**, Venezuelan national.
94. **Cesar Francisco Tobar Marcano**, Venezuelan national.
95. **Widmer Josneider Agelviz Sanguino**, Venezuelan national.
96. **Jordan Jesus Hunk Mendoza**, Venezuelan national.
97. **Victor Jose Bracho Gomez**, Venezuelan national.
98. **Juan Jose Ramos Rmos**, Venezuelan national.
99. **Jason Alfredo Silva Cáceres**, Venezuelan national.
100. **Andres Guillermo Morales Rolon**, Venezuelan national.
101. **Charlie Michelle Gonzalez Rodriguez**, Venezuelan national.
102. **Anderson Steven Petit Finday**, Venezuelan national.
103. **Alex Daniel Méndez Boyer**, Venezuelan national.
104. **Luis Carlos Rivera González**, Venezuelan national.
105. **Moises Samuel Perfecto de la Rosa**, Venezuelan national.
106. **Aldrin Jose Delgado Piña**, Venezuelan national.
107. **Leonardo Gabriel García Prado**, Venezuelan national.

Of the individuals listed above, a copy of cases numbered 1 to 45 were also transmitted to your Excellency's Government through the urgent procedure of the humanitarian mandate of the Working Group on Enforced or Involuntary Disappearances' (WGEID), on 16 April and 23 March 2025.

Without prejudging the accuracy of the received information, we express our serious concern that the deportation procedures and the application of the Alien Enemies Act are not consistent with international human rights law and standards.

Arbitrary expulsions

We are concerned that the deportation decisions under the Alien Enemies Act were not reached in accordance with U.S. law and were thus arbitrary, contrary to international law. Under article 13 of the ICCPR and articles 4 and 5(2) of the International Law Commission Draft Articles on the Expulsion of Aliens ("ILC Draft Articles"), an alien may be expelled only in pursuance of a decision reached in accordance with the law. The State's prerogative of regulating conditions of expulsion on its territory within the limits of international law entails the obligation to comply with the rules it has laid down or subscribed to (ILC commentary to article 4, para. 3). Further, any ground of expulsion "shall be assessed in good faith and reasonably, in the light of all the circumstances, taking into account in particular, where relevant, the gravity of the facts, the conduct of the alien in question or the current nature of the threat to which the facts give rise" (ILC Draft Articles, article 5(3)).

In the present situation, the U.S. authorities have invoked the Alien Enemies Act as the formal legal basis for the expulsions. However, the Act relevantly requires "invasion or predatory incursion... by any foreign nation or government". In our view, these legal criteria do not appear to be fulfilled on any plausible application of the U.S. domestic law principles of statutory interpretation, including the ordinary meaning of the text, the statutory context, the legislative intent and precedent, among others. First, the activities of organised criminal gangs cannot be reasonably characterised as an actual, attempted or threatened "invasion or predatory incursion". The plain textual meaning of these terms denotes military attacks, such as by organised militaries or paramilitary groups, and the Act has only ever been applied in these wartime contexts (the 1812 war and the First and Second World Wars). Secondly, the gangs are not acting on behalf of "any foreign nation or government", as the U.S. intelligence community itself has affirmed, even citing Venezuelan Government approval of the US' listing of Tren de Aragua as a terrorist organisation. To the contrary, the Venezuelan authorities have made efforts to suppress Tren de Aragua.

We note that the U.S. President gives prominence to the prior designation of Tren de Aragua as a terrorist organization under U.S. law as part of its justification for invoking the Alien Enemies Act. However, we are concerned that a terrorist listing, even if it were correct, does not substantiate in any way that there exists an invasion or incursion by a foreign State. Terrorism is generally understood to be perpetrated by non-State actors, including because other legal frameworks apply to State conduct, including the international law on the use of force and non-intervention, human rights law and the law of State responsibility. Furthermore, we are concerned that the designation conflates terrorism and organized crime, when the two phenomena are distinct and

should be subject to separate legal regimes. While States may have power to deport persons who pose a genuine terrorist threat, as defined in accordance with best practice international standards, deportations must be in accordance with law, not arbitrary, and subject to due process and judicial safeguards.

Thirdly, the application of the Act to deport certain individuals does not appear to have been in accordance with the law, due to the absence of sufficient evidence in some cases to substantiate the alleged involvement of particular individuals with Tren de Aragua, suggested also by the lack of reasoning given for such decisions. The decisions do not seem to have been made “in good faith and reasonably”, in light of the conduct of the individuals and the nature of the threat; there appears to be no “convincing basis” for some expulsions.⁵ Rather, the purpose of using the Act appears to circumvent the substantive and stronger due process guarantees in U.S. immigration law and could therefore be seen as an abuse of power resulting in arbitrary expulsions.

Fourthly, the decisions were not in accordance with domestic law because the individuals do not appear to have been given “reasonable time” to leave the U.S., including to get their affairs in order, as required by the Act. In this respect, article 21 of the ILC Draft Articles similarly requires the expelling State to give the noncitizen subject to expulsion a reasonable period of time to prepare for his or her departure, having regard to all circumstances.

We emphasize that where expulsion is found to be unlawful by a competent authority, an individual has the right to be readmitted, save where his or her return constitutes a (genuine) threat to national security or public order, or where the noncitizen otherwise no longer fulfils the conditions for admission under the law of the expelling State (ILC Draft Articles, article 29(1)). An unlawful expulsion also entails the international responsibility of the State (ILC Draft Articles, article 30) and thus the obligation to make reparation, including restitution, compensation and satisfaction (such as an apology). Furthermore, there is an obligation to cease further unlawful conduct and to guarantee non-repetition.

Arbitrary detention and humane and dignified treatment

We are concerned that the detention of the individuals before, during and after their deportation may have been arbitrary, contrary to article 9 of the ICCPR, ratified by the U.S. on 1 April 1970. We recall that article 9(1) provides that everyone has the right to liberty and security, and no one shall be arbitrarily arrested, detained, or deprived of liberty except by lawful procedure. ICCPR rights are not limited to citizens of States parties but “must also be available to all individuals, regardless of nationality or statelessness, such as asylum seekers, refugees, migrant workers and other persons, who may find themselves in the territory or subject to the jurisdiction of the State Party” (general comment No. 31, para. 10).

While detention for the purpose of expulsion can be permissible under international law, it must be in accordance with law. Since there appear to be no lawful grounds for expulsion under the Alien Enemies Act, as explained in the previous section

⁵ *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo), Merits, Judgment, I.C.J. Reports 2010, p. 639, at p. 669, para. 81.*

on arbitrary expulsions, any detention incidental to expulsion likewise cannot be considered to be in accordance with law.

Further, legality requires that the substantive grounds for detention must be defined with sufficient precision to avoid overly broad or arbitrary application. In this respect, we are concerned that, in permitting the detention of any national over 14 years old of an “enemy” State, the grounds of detention under the Act are *prima facie* overbroad and arbitrary, since there is no empirical basis to suspect that all such persons are security risks, absent individual risk factors. While the U.S. President’s proclamation narrows liability to detention to those who are “members” of Tren de Aragua, there is no detail or specification of the criteria for membership, resulting in further unstructured discretion and ambiguity in the law.

In the application of the law to the individuals, it appears that there are additional reasons to believe that the detentions are arbitrary, contrary to article 9 of the ICCPR. According to reports, the U.S. authorities have assumed that some individuals are associated with Tren de Aragua based on factors such as tattoos, clothing, social media posts or migration status that, in context, are not necessarily reliable indications of gang membership. The Human Rights Committee has stated that “[t]he notion of “arbitrariness” is not to be equated with “against the law” but must be interpreted more broadly to include elements of inappropriateness, injustice, lack of predictability, and due process of law, as well as elements of reasonableness, necessity, and proportionality” (general comment No. 35, para. 12).

In the relevant context of immigration detention, the Human Rights Committee has found that any detention must be necessary and proportionate (general comment No. 35, para 18): “Detention in the course of proceedings for the control of immigration is not *per se* arbitrary, but the detention must be justified as reasonable, necessary and proportionate in light of the circumstances, and reassessed as it extends in time”.⁶ These requirements further imply that, to justify detention, there must be “particular reasons specific to the individual, such as an individualized likelihood of absconding, danger of crimes against others, or risk of acts against national security”.⁷

In addition, detention must be a measure of last resort, only permissible for the shortest period of time and when no less restrictive measure is available (general comment No. 35, para. 18; WGAD A/HRC/39/45, Annex and Special Rapporteur on torture (A/HRC/37/50). We note that the U.S. authorities did not provide the individuals with a reasonable opportunity to facilitate their own voluntary departure.

We emphasize further that continued detention contrary to a judicial order of release is unlawful.⁸ We are concerned that the U.S. authorities may not have respected the order of the U.S. district court to return to the U.S. two aircraft carrying people subject to deportation and within the exclusive control of the U.S. authorities at the time.

⁶ *A v Australia*, UNHRC Communication No. 560/1993 (3 April 1997), paras. 9.3–9.4.

⁷ *A v Australia* (1997), *ibid*, para. 9.4.

⁸ *Chambala v Zambia*, UNHRC Communication No. 856/1999 (15 July 2003), para. 7.3; *Mpandanjila et al v Zaire*, UNHRC Communication No. 138/1983 (26 March 1986), para. 10.

We are also concerned that, if individuals cannot be deported to El Salvador or Venezuela for any reason, the Alien Enemies Act would permit potentially their indefinite detention in the U.S., including at Guantánamo Bay, Cuba, which would constitute arbitrary detention and potentially could, depending on the length of stay, amount to cruel, inhuman or degrading treatment or punishment. We note that detention for the purpose of expulsion must normally end where expulsion cannot be carried out (ILC Draft Articles, article 19(3)(b)).

We recall also that article 9 of the ICCPR provides that anyone who is arrested or detained shall be brought promptly before a judge officer authorized by law to exercise judicial power. The summary nature of the deportations under the Alien Enemies Act, without access to judicial review, accordingly appears to violate article 9.

The Human Rights Committee has noted that the conditions of detention are relevant to an assessment of whether detention is arbitrary: “Although conditions of detention are addressed primarily by articles 7 and 10, detention may be arbitrary if the manner in which the detainees are treated does not relate to the purpose for which they are ostensibly being detained” (general comment No. 35, para. 14). We recognise the possible security risks posed by mass deportations and mass arrivals of alleged members of criminal networks or suspected violent offenders. However, their treatment must still respect international standards, including the absolute prohibition of torture and other cruel, inhuman or degrading treatment or punishment (CAT, articles 1, 2 and 16), and the obligation of humane and dignified treatment (ICCPR, article 10). The United Nations Standard Minimum Rules on the Treatment of Prisoners establishes that restraints shall only be used that are authorized by law and as a precaution against escape during transfer, and removed as soon as feasible afterwards (rules 47 and 48). We emphasize that detention for the purpose of expulsion must not be arbitrary or punitive (ILC Draft Articles, article 19(1)(a)). In this regard, given our concerns that many of the people deported may not have links with criminal organizations, high security measures would not be justified in relation to them.

Similarly, the confinement of people who are not convicted prisoners or criminal suspects in the harsh conditions of CECOT, a maximum-security prison for the most violent offenders, would also tend to indicate arbitrariness and the failure to separate is against the Nelson Mandela Rules (rule 11). This is specifically relevant to the potential breach of the US’ obligation of non-refoulement to arbitrary detention in El Salvador.

We are also concerned about detention in transit at Guantánamo Bay, Cuba, which is currently a military facility used to hold alleged Al-Qaeda suspects, as well as Haitian migrants previously, and where there have been repeated concerns about the adequacy of detention conditions.

We draw attention to article 13 of the ILC Draft Articles, which requires that “[a]ll aliens subject to expulsion shall be treated with humanity and with respect for the inherent dignity of the human person at all stages of the expulsion process”, and that such people are “entitled to respect for their human rights”.

Due process in the expulsion of migrants and asylum seekers

We are concerned that the summary nature of deportations of migrants and asylum seekers under the Alien Enemies Act, which circumvented due process protections under U.S. immigration law, failed to accord due process in the expulsion of migrants and asylum seekers, contrary to article 13 of the ICCPR, which provides:

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 13 applies to aliens subject to any form of obligatory expulsion (general comment No. 15, para. 9), including deportation. The Human Rights Committee has stated that “[t]he procedural guarantees of article 13 of the Covenant incorporate notions of due process also reflected in article 14 and thus should be interpreted in the light of this latter provision” (general comment No. 32). Article 13 must also be applied to aliens in a non-discriminatory manner.⁹ Similar protections are reflected in the ILC Draft Articles, article 26(1)(f) of which adds that there must be free assistance of an interpreter at the review stage if necessary.

Specifically, we are concerned that:

- (a) The deportation decisions were not reached “in accordance with law”, which requires that the decision must comply with the relevant substantive and procedural domestic laws, as interpreted and applied “in good faith and in a reasonable manner”, and not abusively, by the responsible national authorities.¹⁰ The Alien Enemies Act was improperly applied to their situation as explained earlier. In addition, the decisions were otherwise not in accordance with law because they were arbitrary, unreasonable, capricious, or disproportionate, and the application of the domestic law in these cases was not accessible and foreseeable.
- (b) The deported people were not able to submit reasons against their expulsion, in order to effectively challenge the allegations and evidence alleged by the authorities. The ILC Draft Articles likewise recognise “the right to challenge the expulsion decision” (article 26(1)(b)).
- (c) There was no right of effective review by or appeal to a competent authority, that is, to a higher authority independent of the original decision-maker, and with deportations suspended pending the outcome.¹¹

⁹ General comment No. 15, para. 10.

¹⁰ *Maroufidou v Sweden*, UNHRC Communication No. 58/1979 (9 April 1981), paras. 9.3 and 10.2.

¹¹ *Hammel v Madagascar* (1987), above, para. 19.2; ILC Draft Articles, article 27.

- (d) As a result of the absence of review, there was no right to be represented before it.

We note that the U.S. authorities have not demonstrated any “compelling reasons of national security” that might justify modifications to due process. We emphasize that the failure to accord due process enables consequential violations of the principle of non-refoulement, since individuals are denied an effective opportunity to articulate any protection concerns.

Family and child rights

We are concerned that individuals were deported under the Alien Enemies Act without considering the impacts on their family lives and the rights of children. We recall that the ICCPR prohibits arbitrary or unlawful interference with the family under article 17(1) and entitles the family to protection under article 23. In addition, article 18 of the ILC Draft Articles provides that “[t]he expelling State shall respect the right to family life of an alien subject to expulsion. It shall not interfere arbitrarily or unlawfully with the exercise of such right”. We recall the strong presumption in favour of maintaining the family unity under international law (Human Rights Committee, general comment No 19, para. 5). The Committee on the Rights of the Child emphasizes that “[p]reventing family separation and preserving family unity are important components of the child protection system” under article 9(1) of the CRC. Article 9(1) of the CRC requires children not to be separated from their parents unless it is necessary for the best interests of the child; for example, when the child is in danger of experiencing imminent harm (CRC/C/CG/14, para. 61). Separation from parents must also be subject to judicial review and in accordance with applicable law and procedures (article 9(1), CRC).

In highly securitized settings, we note that the challenge of maintaining family unity and other household burdens disproportionately falls to women, due to the focus on men in the contexts of “national security” or countering terrorism. The burdens often arise directly from a lack of due process and legal grounds for arrest, incommunicado detention, and the absence of necessary information or redress for families.¹² This results in “unseen burdens” for women as spouses, caregivers, parents, and family members (A/HRC/46/36).

The obligation of non-refoulement

We are deeply concerned that the deportations under the Alien Enemies Act did not appear to provide any opportunity for individuals to claim protection against *refoulement* under international law and U.S. law, including by suspending deportation action while any claims were pending. Concerns arise in relation to both Venezuelans and Salvadorans deported to El Salvador, as well as the risk of onward refoulement of the Venezuelans from El Salvador to Venezuela.

In relation to El Salvador, there are concerns that detention in the CECOT or other Salvadoran prisons may involve risks of arbitrary deprivation of life, torture or cruel, inhuman or degrading treatment or punishment, enforced disappearance and arbitrary detention, including as a result of the threat of violence in the prisons and the

¹² See e.g., A/HRC/46/36, para. 12 and WGAD cases cited therein.

very poor conditions of detention. Risks emanate from both Salvadoran authorities as well as prisoners, which include gang members and others convicted of serious violent offences. Under international law, private actors can be recognized as a source of harm where the State is unable or unwilling to protect individuals.¹³ The failure to shield prisoners from inter-prisoner violence can violate the right to life (Human Rights Committee, general comment No. 36, para. 25).

The lack of a clear legal status in El Salvador could also expose the Venezuelans to indefinite, arbitrary detention, since they do not appear to be under criminal investigation in El Salvador, have no lawful immigration status there, and are subject to “renewable” one-year detention apparently as migrants in a criminal justice prison. Protracted arbitrary detention could also constitute torture or cruel, inhuman or degrading treatment or punishment.

Their uncertain legal status also raises concerns about the prospect of “chain refoulement” of individuals from El Salvador to Venezuela, the state of nationality of 238 of the people deported. Their precarious legal status leaves them highly vulnerable to removal to Venezuela as their state of nationality, including because the state of emergency in force in El Salvador may impede effective protection against *refoulement*. The United Nations High Commissioner for Refugees (UNHCR) has called on States to ensure that Venezuelans are not forcibly returned to Venezuela.

We recall that a State shall not expel a foreign national on a ground that is contrary to its obligations under international law (ILC Draft Articles, article 5(4)). In this respect, we emphasize that the prohibition on *refoulement* under international human rights law applies to any form of removal or transfer of persons, including deportation, where there are substantial grounds for believing that the returnee would be at risk of irreparable harm upon return on account of torture, cruel, inhuman or degrading treatment or punishment, or other serious human rights violations,¹⁴ such as arbitrary deprivation of life, enforced disappearance, arbitrary detention, or flagrant denial of fair trial. The prohibition is absolute and without any exception, and applies to all persons, irrespective of their citizenship, nationality, statelessness, or migration status. It applies wherever a State exercises jurisdiction or effective control, including outside its own territory, as is the case when the U.S. uses its facility at Guantanamo Bay to transit individuals from the U.S. to El Salvador. Customary international refugee law also prohibits *refoulement* to persecution, as reflected in article 33 of the 1951 Refugee Convention.

Specifically, article 2 of the ICCPR entails “an obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm” (general comment No. 31, para. 12). The duty to respect and ensure the right to life under article 6 of the ICCPR requires States parties to refrain from deporting, extraditing or otherwise transferring individuals to countries in which there are substantial grounds for believing that a real risk exists that their right to life would be violated (general

¹³ UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees* (UNHCR 1992).

¹⁴ See e.g. Convention against Torture, Article 3; UNHCR, ‘Complementary Forms of Protection’, EC/50/SC/CRP.18 (2000); UNHCR, ExCom Conclusion No. 103 (LVI) (2005); Global Compact for Migration, Objective 21; OHCHR, *The Principle of Non-refoulement under International Human Rights Law* 2018; OHCHR, *Principles and Guidelines on the Human Rights Protection of Migrants in Vulnerable Situations* 2018.

comment No. 36, para. 30; see also principle 5 of the Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions). State parties to the ICCPR must adopt special measures and respond urgently and effectively in order to protect individuals who find themselves under a specific threat (ibid, para. 23; see also ILC Draft Articles, article 23).

Further, article 7 of the ICCPR, prohibits refoulement to torture or cruel, inhuman or degrading treatment or punishment (general comment No. 20, para. 9). Relevantly, Human Rights Committee has found that certain treatment in detention may violate article 7: aggressive interrogation techniques; a severe violation of liberty, such as prolonged arbitrary detention, enforced disappearance or incommunicado detention; prolonged solitary confinement; return of a refugee to a country of origin where persecution has not ceased; protracted deprivation of food and drink in detention; serious violations of the minimum humane conditions of detention and unjustified interference in the family. Humiliating or arbitrary practices in detention may also be degrading. The absolute prohibition against *refoulement* under human rights law is broader than in refugee law, meaning that persons may not be returned even when they may not qualify for refugee status under the 1951 Refugee Convention or domestic law. Accordingly, non-refoulement under human rights law must be assessed independently of refugee status determinations, to ensure that the fundamental right to be free from return to serious human rights violations is respected.

Article 3(1) of the CAT further provides that “[n]o State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture. Article 3(2) states that “[f]or the purpose of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights”. See similarly ILC Draft Articles, article 24.

Article 8 of the United Nations Declaration on the Protection of All Persons from Enforced Disappearances provides that no State shall expel, return or extradite a person to another State where there are substantial grounds to believe that he would be in danger of enforced disappearance (article 8). The Working Group on Enforced Disappearances has expressed concern about the increasing practice of forced returns by States in violation of article 8 and the principle of *non-refoulement* (A/HRC/48/57).

Enforced disappearance

We are concerned that the deportations and related detention were carried out in a manner which could have involved enforced disappearances, including short-term disappearances,¹⁵ namely, the deprivation of liberty of individuals and refusing to acknowledge it or to disclose the fate or whereabouts of the individual, for whatever purpose or duration and in whatever context, contrary to the 1992 Declaration on the Protection of All Persons from Enforced Disappearance. In some cases, the fate of many of the individuals during their transfer was and continues to be unknown to their lawyers or families. Some of the families also believed that their relatives were being transferred to Venezuela, not El Salvador. Their continuing detention in the closed CECOT prison

¹⁵ See General Comment No. 36 (2019) and WGEID, CCPR/C/VEN/CO/5, para. 23.

or other facilities, without external independent monitoring or public information, and in the absence of any clear legal status under El Salvador's law, also raises concerns. All returns of migrants must be formally documented and undertaken in accordance with the law in order to avoid disappearances during those processes, including temporary or short-term disappearances (A/HRC/36/39/Add.2, para. 60).

The prohibition of enforced disappearance has attained the status of *jus cogens* and, according to article 7 of the 1992 Declaration, no circumstances whatsoever, whether a threat of war, a state of war, internal political instability or any other public emergency, may be invoked to justify it. Moreover, the 1992 Declaration provides that no State shall practice, permit or tolerate enforced disappearances (article 2) and that each State shall take effective legislative, administrative, judicial or other measures to prevent and terminate acts of enforced disappearance in any territory under its jurisdiction (article 3). All acts of enforced disappearance shall be offences under criminal law punishable by appropriate penalties which shall take into account their extreme seriousness (article 4), no order or instruction of any public authority, civilian, military or other, may be invoked to justify an enforced disappearance (article 6).

The right to a prompt and effective judicial remedy must be guaranteed as a means of determining the fate or whereabouts or state of health of persons deprived of their liberty and/or identifying the authority ordering or carrying out the deprivation of liberty is required to prevent enforced disappearances under all circumstances (article 9). The Declaration further sets out the necessary protection relating to the rights to be held in an officially recognized place of detention, and to be brought before a judicial authority promptly after detention; to accurate information on the detention of persons and their place of detention being made available to their family, counsel or other persons with a legitimate interest; and to the maintenance in every place of detention of official up-to-date registers of all detained persons (articles 10 and 12). The Working Group on Enforced or Involuntary Disappearances has underlined the importance of ensuring procedural safeguards upon detention and during the first hours of deprivation of liberty, including immediate registration, judicial oversight of the detention, prompt notification of family members, and the availability of a defence lawyer of one's choice (A/HRC/48/57).

The Declaration further establishes that States should take any lawful and appropriate action to bring to justice persons presumed to be responsible for acts of enforced disappearance (article 14), and that the persons responsible for these acts shall be tried only by ordinary courts and not by other special tribunal, notably military courts (article 16); and the victims or family relatives have the right to obtain redress, including adequate compensation (article 19).

We furthermore underline that enforced disappearances constitute a violation of articles 6, 7, 9, 10 and 16, read alone and in conjunction with article 2(3) of the ICCPR regarding the disappeared person and article 7, read alone and in conjunction with article 2(3) of the ICCPR in relation to their family.

Enforced disappearance is a particularly aggravated form of arbitrary detention (Human Rights Committee, general comment No. 35, para. 17). It may also amount to torture or other cruel, inhuman or degrading treatment or punishment, both with regard to the disappeared and with regard to their family members, due to the anguish and

uncertainty concerning the fate and whereabouts of loved-ones (see e.g. Committee against Torture and Human Rights Committee).

Intimidation of judges and immigration lawyers

We are deeply concerned at repeated verbal attacks on the judiciary and lawyers by U.S. Government officials in the context of cases considering the deportations. Judges must be protected from intimidation, which undermines the independence of the judiciary (general comment No. 32, para. 14).

We are also concerned at the U.S. President's direction to sanction lawyers supposedly engaged in "frivolous, unreasonable, or vexatious litigation" against the U.S., which singles out immigration lawyers in asylum cases. Such measures would undermine the right to legal representation under international law and consequently the right to due process, punish and delegitimize lawyers for undertaking their professional work, and chill advocacy for human rights.

In this respect, we recall that mandate holders have already expressed serious concern (USA 9/2024) at reports that judges and prosecutors in the country are facing harassment and intimidation from public officials in the U.S. administration and from members of the general public that go beyond the accepted limits of freedom of expression under international human rights law. According to international standards, it is the duty of all governmental and other institutions to respect and observe the independence of the judiciary, including by protecting it from intimidation and political interference, and to ensure that all judges and prosecutors are able to perform all of their professional functions without intimidation, hindrance, harassment, improper interference or sanctions.

These attacks are of special concern when they come from current government officials. Some of these statements by government officials may amount to interference in the independence of the judiciary and improper interference in the legal profession. Politicians and public officials "play an important role in shaping the media agenda, public debate and opinion and that, as a result, ethical behaviour and attitudes on their part, including in their public communications, are essential for promoting the rule of law, the protection of human rights, and for ensuring public trust in democratic systems of governance" (2021 Joint Declaration on Politicians and Public Officials and Freedom of Expression). The exercise of the rights provided for under article 19 of the ICCPR carries with it special duties and responsibilities; in this instance, those duties include the respect of the rights or reputations of others.

The right to health

We are concerned by the physical and mental health of those deported and wish to recall international human rights law and standards, including article 12 of the International Covenant on Economic Social and Cultural Rights (ICESCR), which guarantees the right of everyone to the enjoyment of the highest attainable standard of physical and mental health. In addition, by virtue of article 2(2) and article 3, the ICESCR proscribes "any discrimination in access to health care and underlying determinants of health, as well as to means and entitlements for their procurement, on the grounds of race, colour, sex, language, religion, political or other opinion, national

or social origin, property, birth, physical or mental disability, health status (including HIV/AIDS), sexual orientation and civil, political, social or other status, which has the intention or effect of nullifying or impairing the equal enjoyment or exercise of the right to health” (Committee on Economic, Social and Cultural Rights, general comment No. 14 para. 18).

The full texts of the human rights instruments and standards recalled above are available on www.ohchr.org or can be provided upon request.

In view of the urgency of the matter, we would appreciate a response as soon as possible on the initial steps taken by your Excellency’s Government to safeguard the rights of the above-mentioned person(s) in compliance with international instruments.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would also be grateful for your observations on the following matters:

1. Please provide any additional information and any comment you may have on the above-mentioned allegations.
2. Please indicate whether the U.S. President’s proclamation applying the Alien Enemies Act in relation to Tren de Aragua and other criminal organizations will be rescinded, and whether ordinary U.S. immigration law will be applied to determine eligibility for deportation. Please explain whether the terrorist designation of Tren de Aragua will be reviewed.
3. Please explain what steps the U.S. authorities will take to prevent further unlawful or arbitrary expulsions contrary to international law, and to take all feasible measures to obtain the return to the U.S. of any person who was unlawfully or arbitrarily expelled.
4. Please indicate how the U.S. authorities will ensure that any detention for the purpose of deportation will respect the right to liberty and freedom from arbitrary detention, as well as the requirements of judicial review of detention, under international law.
5. Please explain how the U.S. authorities will respect the requirement of due process in the expulsion of migrants and asylum seekers under international law, including decisions in accordance with law, a right to submit reasons against deportation and a right of review accompanied by a right of representation.
6. Please indicate how the U.S. authorities will ensure that the right to family life and the best interests of the child will be protected in detention and deportation decisions and procedures, so as to prevent the separation of children from their parents.
7. Please explain what measures the U.S. authorities took to ensure that in advance of these or any future deportations that the detention conditions

and treatment of detainees meet international standards, in particular under the CAT, articles 7 and 10 of the ICCPR and the UN Standard Minimum Rules for the Treatment of Prisoners. Please also explain what post-deportation inspections and monitoring is in place to ensure that the rights of detainees are respected in El Salvador

8. Please explain how the principle of non-refoulement will be applied, in order to prevent removal to risks of arbitrary deprivation of life, enforced disappearance, torture or cruel, inhuman or degrading treatment or punishment, arbitrary detention, denial of justice and other serious human rights violations.
9. Please explain what measures have been taken to notify relatives and lawyers of persons deprived of their liberty, as well as consular authorities where requested, about the transfer of a person, the current place of detention, and the authority responsible for overseeing the deprivation of liberty.
10. Please indicate how the U.S. authorities will prevent enforced disappearances before, during and after the deportation process.
11. Please explain what human rights safeguards, if any, are included in the deportation and detention agreement between the U.S. and El Salvador, including any provision for effective monitoring.
12. Please indicate what steps will be taken to prevent the intimidation, harassment and vilification of judges in the context of judicial decisions reviewing deportations, the application of the Alien Enemies Act and related matters.

In view of the urgency of the matter, we would appreciate a response on the initial steps taken by your Excellency's Government to safeguard the rights of all individuals affected by the deportations and related detentions addressed in this letter.

While awaiting a reply, we urge that all necessary interim measures be taken to prevent any irreparable harm to the life and personal integrity of those affected, to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person responsible for the alleged violations.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press

release will indicate that we have been in contact with your Excellency's Government to clarify the issue/s in question.

We would also like to inform your Excellency's Government that, given the allegations of enforced disappearance, the Working Group on Enforced or Involuntary Disappearances may decide to transmit those cases not already transmitted through its humanitarian procedure. We urge the Government to respond separately to the present communication and to the humanitarian procedures.

Please be informed that a related communication has been sent to the Government of El Salvador. A copy of this communication has also been sent to the Government of Venezuela (Bolivarian Republic of) and the Government of Cuba.

Please accept, Excellency, the assurances of our highest consideration.

Ben Saul

Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism

Gabriella Citroni

Chair-Rapporteur of the Working Group on Enforced or Involuntary Disappearances

Morris Tidball-Binz

Special Rapporteur on extrajudicial, summary or arbitrary executions

Balakrishnan Rajagopal

Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context

Mary Lawlor

Special Rapporteur on the situation of human rights defenders

Margaret Satterthwaite

Special Rapporteur on the independence of judges and lawyers

George Katrougalos

Independent expert on the promotion of a democratic and equitable international order

Cecilia M. Bailliet

Independent Expert on human rights and international solidarity

Gehad Madi

Special Rapporteur on the human rights of migrants

Alice Jill Edwards

Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment

Siobhán Mullally

Special Rapporteur on trafficking in persons, especially women and children

Laura Nyirinkindi
Chair-Rapporteur of the Working Group on discrimination against women and girls