

The Breakfast Club

Constitutional Minute for 12 April 2025

The Alien Enemies Act

First, you need the backstory:

The termination of the Revolutionary War left the American people divided between those who, despite the war, still felt an attachment to “the mother country” and those with a new-found sympathy to France, without who’s generosity in the form of loans and military assistance, the American forces could not possibly have prevailed. Each side of this divide regarded the other with suspicion. A second issue which divided Americans at this time was the U.S. Constitution. The “Federalists” thought a replacement of the decrepit Articles of Confederation necessary to keep a union of states and a central government concept alive; the Anti-Federalists, though recognizing some of the deficiencies in the Articles, thought only a little “tweaking” of the Articles necessary. After ratification of the Constitution, these two factions quickly developed into two political parties, the Federalists, headed by Alexander Hamilton, and the Democratic-Republicans, headed by Thomas Jefferson and James Madison. Federalists generally aligned themselves with England, the Democratic-Republicans with France. With only the barest of naturalization policies in place, immigrants from both England and France continued flocking to America.

When the French Revolution (1789-1799) resulted in the 1793 beheading of the King of France and replacement of the monarchy with a republic, the Federalists, who comprised a majority in the U.S. Congress at the time, decided that the loans extended by Louis XVI were no longer valid with the King’s head detached -- conveniently ignoring the fact that a little more than a hundred years earlier the English had done the same to Charles I -- and that stopping loan payments was therefore appropriate.

Understandably upset over this loss of revenue, the French government gave their sizable fleet permission to interdict American shipping to recoup some of the loss and punish the “ungrateful upstarts.”

John Adams, who as Vice President under Washington had been largely left out of major decisions, became President himself on March 4, 1797. By then, the “Quasi War” (as it was called at the time) was well underway, mostly in the Caribbean and Atlantic, but in other oceans as well. The United States, which had sent its soldiers home more than a decade before and decommissioned much of its navy, was ill-equipped to oppose the French fleet and sought desperately to keep the conflict from becoming a declared war, with

predictable consequences. America's newspaper editors soon took sides, some sympathetic to the French predation ("we had it coming") and others agitating publicly for a declaration of war. Suspicions mounted over the large number of French citizens abiding in America, some of whom had been very prominent back in France, possibly stirring up the American public. Congress pondered what to do with these potential "agitators."

In March 1798, Congress decided to reconstitute the United States Navy, and in July authorized the use of force against France, stopping short of a declaration of war.

President John Adams took up his pen.

It is unlikely that Adams drafted all four of the laws that came to be called the Alien and Sedition Acts, but some scholars are convinced the Alien Enemies Act of 1798 was his work. Regardless, it was clearly the work of a lawyer; warning: reading it is tedious.

The [Naturalization Act of 1798](#) replaced similar naturalization acts from 1790 and 1795. It increased the residency requirement before naturalization could be applied for from five to 14 years (including 1 year in any state) and increased the period applicants had to wait after applying for citizenship from three to five years.ⁱ

The [Alien Friends Act of 1798](#) (aka "An Act Concerning Aliens") allowed the president to arbitrarily deport any non-citizen that was determined to be "dangerous to the peace and safety of the United States."ⁱⁱ The act was never enforced but it nevertheless resulted in the voluntary departure of foreigners who feared that they would be charged under the act, similar to what is happening today with the Trump administration's clamp down on our immigration laws. Self-deportation is being encouraged by the threat of fines and incarceration. In 1798, many prominent French nationals were considered for deportation but were either allowed to leave the country willingly or were not prosecuted if they stayed.

The [Sedition Act of 1798](#) criminalized false and malicious statements about the federal Government (including the President, but oddly excluded Vice President Thomas Jefferson from such statement).ⁱⁱⁱ At the time the Sedition Act was the most controversial of the four acts. Remember, the ink of the First Amendment had barely dried and suddenly speech and the printed word were both being scrutinized and restricted.

James T. Callender, a Scottish pamphleteer who had fled to the United States from England after publishing political opinions critical of British imperialism, Benjamin Franklin Bache editor of the *Philadelphia Aurora*, a Democratic-Republican newspaper who had accused George Washington of incompetence and financial irregularities, and "the blind, bald, crippled, toothless, querulous Adams" of nepotism and monarchical ambition, and one Luther Baldwin who upon hearing a cannon fire during a visit by President Adams to Newark, New Jersey, had yelled "I hope it hit Adams in the arse," were among those

convicted and fined or, in Callender's case, fined and imprisoned for nine months. (Upon assuming the Presidency in 1801, Thomas Jefferson had the government promptly refund Callender's fine.) In 1918, a new Sedition Act was passed by Congress which criminalized speech deemed "disloyal, profane, or abusive" towards the U.S. government, the flag, the Constitution, or the military. The U.S. Supreme Court upheld the 1918 Sedition Act in *Abrams v. United States* (1919).

Finally, the [Alien Enemies Act of 1798](#) (AEA) gave the president additional powers to detain non-citizens during times of war, invasion, or *predatory incursion* (emphasis added). This law remains in effect today as [Title 50 Chapter 3 of the U.S. Code](#).^{iv} The AEA was invoked by James Madison during the War of 1812, Woodrow Wilson during WWI, FDR during WWII and most recently by President Trump.

Back to our back story.

Upon the signing of these four acts into law both Jefferson (the sitting Vice President) and Madison (now a retired Congressman) sprang into action and wrote the [Kentucky \(Jefferson\) and Virginia \(Madison\) Resolutions](#) arguing that states had both the right and duty to "nullify" federal laws they deemed unconstitutional (Kentucky) and that states should interpose themselves between their citizens and the federal government to protect their rights (Virginia). Sadly, no other states publicly supported either resolution. Some scholars have concluded that passage of the Alien and Sedition Acts led to the Federalist Party's loss in the 1800 Presidential election and ultimate demise as a party.^v

And now to the present.

As noted, on March 15, 2025, President Donald Trump [invoked](#) the Alien Enemies Act for the fifth time in our history. His target: the Tren de Aragua (TdA) gang, which his administration had previously designated a terrorist organization. No estimate of the number of TdA members in the U.S. has been made public, but the arrest of 68 members [was announced](#) the day following the Executive Order was signed and the very next day, 200 detainees identified by the Trump administration to be members of the gang were deported to CECOT Prison in El Salvador, even as District Court judges attempted to halt the flights.

Will the President's invocation of the AEA ultimately be upheld? I believe it will be, for the following reasons:

While critics are quick to cite the Act's reference to "*declared war between the United States and any foreign nation or government*," the 1798 drafters were kind enough to not limit the use of the Act to actual times of war. The Act can also be invoked during "*any*

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

What is a “predatory invasion?” The Act does not define this phrase, but Webster’s 1828 Dictionary defines “predatory” as “plundering; pillaging; characterized by plundering; practicing rapine; as a *predatory* war; a *predatory* excursion; a *predatory* party.”

An “incursion ” is: “an entering into a territory with hostile intention.”

“Rapine” is an obscure word; it means (to Webster) “The act of plundering; the seizing and carrying away of things by force. Violence; force.” I think you get the picture here.

A modern dictionary adds to “predatory”: seeking to exploit or oppress others. Ex: "new laws have been passed designed to crack down on predatory lenders."

Tren de Aragua gang members are reported as being present in eleven countries including the U.S. and have been charged with: human-trafficking and smuggling, arms trafficking, bribery, drug-trafficking, illegal mining, kidnappings-for-ransom, money laundering and murder. Last year, members of the gang were famously filmed shaking down residents of an apartment complex in Aurora, Colorado. On 24 March, the administration [announced](#) it was extraditing three TA members wanted in Chile for homicide and kidnapping. Fine upstanding citizens these.

One question comes to mind: Why did Trump’s EO focus exclusively on TdA and mention no other Latin American gangs/cartel members? MS-13 has been entrenched in the US much longer^{vi} and has a more extensive network. The answer may lie in the AEA’s reference to predatory incursion “*by any foreign nation or government.*”

Trump’s EO goes to great lengths to make a connection between TdA and the Venezuelan government. “*Nicolas Maduro, who claims to act as Venezuela’s President and asserts control over the security forces and other authorities in Venezuela, also maintains close ties to regime-sponsored narco-terrorists. Maduro leads the regime-sponsored enterprise Cártel de los Soles, which coordinates with and relies on TdA and other organizations to carry out its objective of using illegal narcotics as a weapon to ‘flood’ the United States.*” *Foreign nation or government? Check.*

Interestingly, the AEA directs “*the several courts of the United States..., to cause such alien or aliens to be duly apprehended and convened before such court, judge or justice; and after a full examination and hearing on such complaint. and sufficient cause therefor appearing, shall and may order such alien or aliens to be removed out of the territory of the United States.*” Instead of assisting with removal action as directed by the AEA, we find “*the several courts of the United States,*” selected with care by Democrats, to be directly obstructing the administration’s operations under the Act.

Five of the most recent deportees, cited as: “*Donald J. Trump v J.G.G., et al.*” in court documents, challenged their deportations in the United States District Court for the District of Columbia under Judge James Boasberg, an Obama appointee, who promptly issued a Temporary Restraining Order (TRO) on the deportations until a hearing could be held to determine whether a temporary or permanent injunction against all deportations was in order. The administration promptly appealed the TRO to the Supreme Court under the Court’s emergency docket. Judge Boasberg’s courtroom demeanor, past and present, is being scrutinized as is how he ended up overseeing so many of the cases against the administration.

On 7 April, the Supreme Court issued a per curiam decision (Latin for "by the court") joined by five justices. Dissenting from the unsigned decision, allegedly written by Chief Justice John Roberts himself, were the four female justices, Amy Coney Barret only partially.

AEA is unlike most other laws. In 1948, (*Ludecke v. Watkins*) the Supreme Court declared operations under the law largely “precluded judicial review,” meaning that the President enjoys (or should enjoy) great discretion in its enforcement.

In *J.G.G.* (as it is more commonly cited) the majority declared that: 1) Judge Boasberg’s TRO was appealable. This is important because generally only injunctions are considered appealable, not TROs. Appellate courts typically only review final decisions, and TROs are not considered final decisions. But there are exceptions “when a TRO has the practical effect of a preliminary injunction or if it threatens irreparable harm, and effective review is only possible through immediate appeal,” 2) that the detainees are entitled to challenge their confinement and deportation under a writ of Habeas Corpus (see Fifth Amendment), but, 3) such writs must be filed in the venue of confinement, which in these case was in Texas, not the District of Columbia.

The most beneficial effect of this opinion will be to put a stop to “judge shopping,” at least as it regards deportation operations. Many of these detainees are incarcerated in Texas, and Texas district courts are not known for their progressivism. Texas, Louisiana, and Mississippi all fall under the Fifth Circuit Court of Appeals, headquartered in New Orleans. The Fifth Circuit is considered one of, if not the most conservative of the eleven geographic circuits.^{vii} During his first term, Donald Trump appointed six of the court’s seventeen judges. If the administration is smart, they will choose jails and prisons in the three Fifth Circuit states in which to detain the majority of illegal immigrants before deportation.

Standing on the periphery of this issue is immigration law covering “Expedited Removal.” *“Expedited removal is a process by which low-level immigration officers can summarily remove certain noncitizens from the United States without a hearing before an immigration judge....Expedited removal is only applicable to people ... who either lack the proper entry*

documents or who seek or have sought entry through fraud or misrepresentation.” It seems to me that an illegal immigrant who hides his association with MS-13, TdA or any cartel, has satisfied the misrepresentation requirement and qualified for expedited removal, but that is just me. A link to a document covering the expedited removal process, from which these quotes were taken, is found below.

There is much still to be written about this ongoing story; Democrats will continue to fight the administration at every turn and courts will continue to be used and abused in the process. Donald Trump did not “putter way” the last four years playing golf and entertaining friends at Mar a Lago; his actions show careful deliberation and forethought and I predict the President will prevail in cleansing our country of this blight.

For further reading:

- [1798 Alien Enemies Act](#)
- [Ludecke v. Watkins, 335 U.S. 160 \(1948\)](#)
- [“Invocation of the Alien Enemies Act”](#)
- [The Alien Enemy Act: History and Potential Use to Remove Members of International Criminal Cartels, Congressional Research Service](#)
- [A Primer on Expedited Removal](#)

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Previous Constitutional Minutes can be accessed [here](#).

ⁱ The Naturalization Act was replaced by a new naturalization act in 1802.

ⁱⁱ The Alien Friends Act was allowed to expire in 1800.

ⁱⁱⁱ The Sedition Act was also allowed to expire in 1800.

^{iv} See <https://www.law.cornell.edu/uscode/text/50/chapter-3>.

^v "Alien and Sedition Acts (1798)" (<https://www.archives.gov/milestone-documents/alien-and-sedition-acts>). National Archives and Records Administration. July 27, 2023. Archived (<https://web.archive.org/web/20220325102308/https://www.archives.gov/milestone-documents/alien-and-sedition-acts>) from the original on March 25, 2022. Retrieved March 25, 2025.

^{vi} MS-13 is estimated to have around 8,000 to 10,000 members in the United States. Many are undoubtedly U.S. citizens.

^{vii} There are two other non-geographic courts of appeal, making up thirteen courts of appeal in all.