Die Einleitung (Seite [1] bis [6])
des *Supreme Court*-Schriftsatzes der Trump-Regierung wegen *Alien Enemies Act* / *Tren de Aragua*

Mit einer Nachbemerkung zur Frage: „Worum ging es in dem Ludecke-Fall?“

Application **to vacate the orders issued by the United States District Court for the District of Columbia**	**Anmerkungen und Hinweise**
[1] Pursuant to Rule 23 of the Rules of this Court and the All Writs Act, 28 U.S.C. 1651, the Acting Solicitor General—on behalf of applicants President Donald J. Trump, et al.—respectfully files this application to vacate the orders issued by the U.S. District Court for the District of Columbia (App., infra, 147a-148a). In addition, the Acting Solicitor General respectfully requests an immediate administrative stay of the district court's order pending the Court's consideration of this application.	**Rule 23:** https://www.supremecourt.gov/filingandrules/2023RulesoftheCourt.pdf, S. 28 gedruckten bzw. 34 der digitalen Seitenzählung **28 U.S.C. 1651:** https://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title28-section1651&num=0&edition=prelim **a:** die Anlagen zu dem Regierungs-Schriftsatz (in derselben Datei).
This case presents fundamental questions about who decides how to conduct sensitive national-security-related operations in this country—the President, through Article II, or the Judiciary, through TROs. The Constitution supplies a clear answer: the President. The republic cannot afford a different choice.	Nein, die Frage ist vielmehr, ob der/die PräsidentIn oder die Gerichte dafür zuständig sind, den *Alien Enemies Act*, in dessen Rahmen der Präsident politische Entscheidungen treffen darf, zu interpretieren hat.
On February 6, 2025, the Secretary of State named Tren de Aragua (TdA) a designated foreign terrorist organization and a specially designated global terrorist group. 90 Fed. Reg. 10,030 (published Feb. 20, 2025). That designation reflected the **[2]** President's recognition	https://public-inspection.federalregister.gov/2025-02873.pdf; vgl. 8 USC 1189 (*Designation of foreign terrorist organizations*).

of the acute danger that TdA presents to our national security.	
The President has since determined that thousands of members of this designated foreign terrorist organization have illegally "infiltrated" the country, in furtherance of the Maduro regime's "goal of destabilizing democratic nations, * * * including the United States." App., infra, 176a.	https://www.govinfo.gov/content/pkg/FR-2025-03-20/pdf/2025-04865.pdf
The President acted swiftly and tasked his Administration with neutralizing TdA. Upon finding that "TdA is undertaking hostile actions and conducting irregular warfare against the territory of the United States both directly and at the direction * * * of the Maduro regime in Venezuela," App., infra, 177a, the President invoked his Article II powers, coupled with his authority under the Alien Enemies Act (AEA), 50 U.S.C. 21 et seq., which has long authorized summary removal of enemy aliens engaged in "invasions or predatory incursions" of U.S. territory. After making the requisite AEA findings, the President designated TdA members in the United States as "subject to immediate apprehension, detention, and removal." App., infra, 177a.	*Declaration of Rebecca Hanson*, Assistant Professor at the University of Florida, S. 4: „It is absolutely implausible that the Maduro regime controls TdA or that the Maduro government and TdA are intertwined. The relationship between the Maduro government and TdA is largely antagonistic." / „That year [2023] the Venezuelan government began cracking down on TdA, including when they sent 11,000 soldiers to raid the Tocorón prison that had been a hub of TdA activity." https://uscode.house.gov/browse/prelim@title50/chapter3&edition=prelim 50 U.S.C. 21 enthält aber *zwei* Tatbestandvoraussetzungen: • „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" und

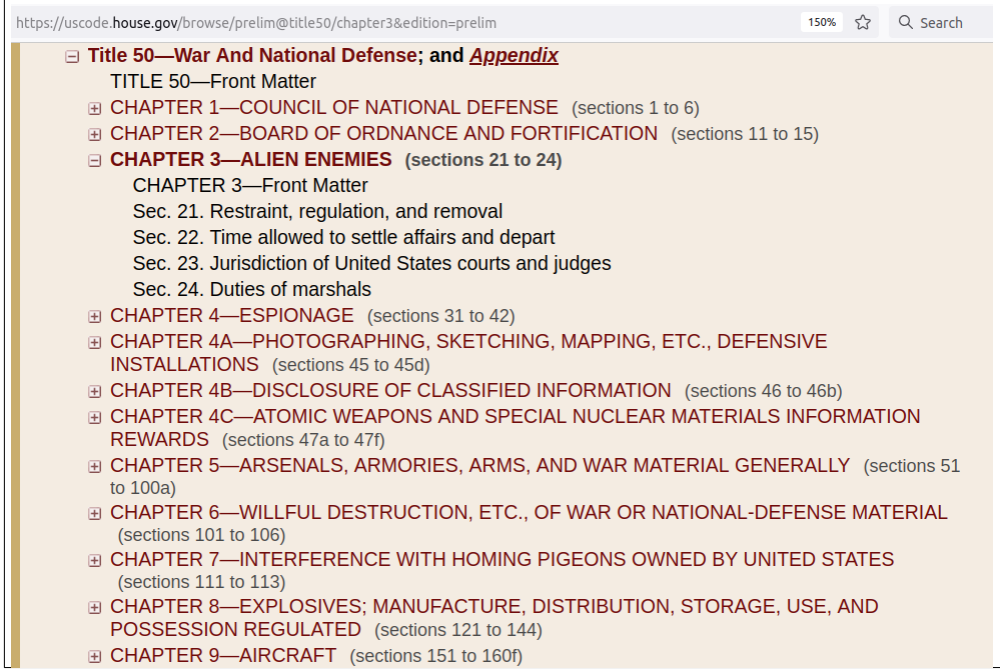
- „the President makes public proclamation of the event“.

Da steht also (1.a) *nicht*, daß der/die PräsidentIn dafür zuständig ist, festzulegen, ob das Ereignis stattfindet, sondern (b) seine/ihre Sache ist nur, das Ereignis bekannt zu geben.

Außerdem steht da (2.), daß der/die Präsident – wenn das Ereignis stattfindet und bekannt geben ist – entscheiden darf, welche der fraglichen AusländerInnen unter welche Bedingungen bleiben dürfen und welche rausgeschmissen werden.

Dieser Unterschied zwischen (1.a) und (2.) dürfte beredt sein.

https://uscode.house.gov/browse/prelim@title50/chapter3&edition=prelim



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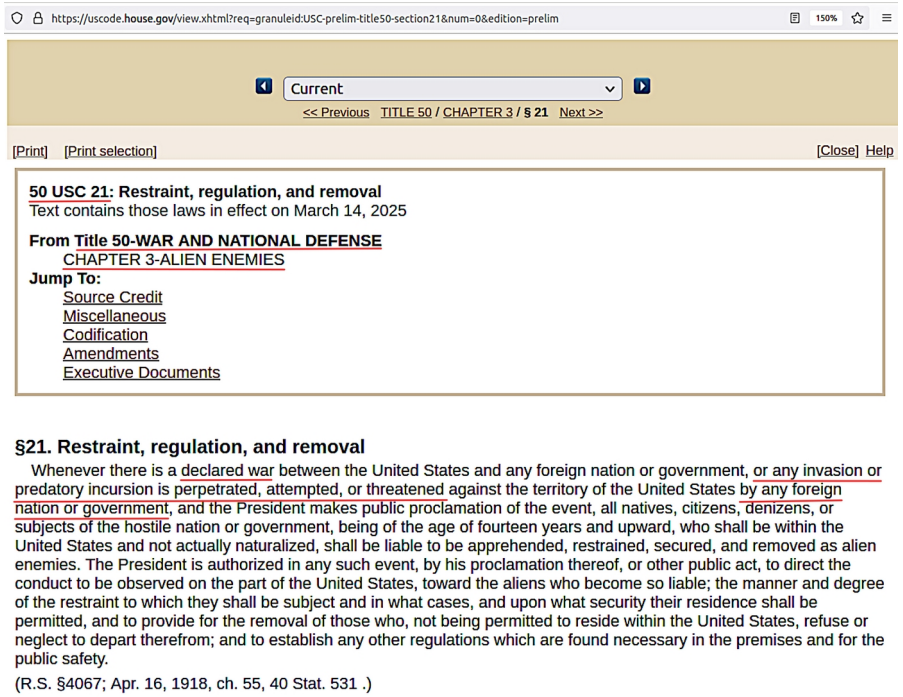

To protect the country against TdA members engaged in a campaign of terror, murder, and kidnapping, aimed at destabilizing our country, the Administration detained designated TdA members identified through a rigorous process. The government prepared to immediately remove them by plane to El Salvador, which had agreed to detain these foreign terrorists after extensive negotiations. In the President's judgment, swift removal of TdA members was imperative to prevent them from endangering personnel and detainees in U.S. detention facilities and continuing to infiltrate U.S. communities. The United States thus has an overwhelming interest in removing these foreign actors whom the President has identified as engaging in "irregular warfare" and "hostile actions against the United States." App., infra, 176a.	*Declaration of Rebecca Hanson*, Assistant Professor at the University of Florida, S. 3, 4 f.: „The gang's established and existing revenue streams and criminal work is largely outside the United States. There is no evidence to suggest that drug or arms trafficking or transnational extortion are core sources of income for the group. […]. There is no credible evidence that TdA has a foothold as a criminal organization within the United States. […]. Rather, the vast majority of arrests of suspected TdA members in the United States have been for crimes like shoplifting and cell phone robbery". Vielleicht haben „The United States" auch/vielmehr ein Interesse, daß ihre Gesetze (hier: der *Alien Enemies Act*) von PräsidentInnen eingehalten wird / daß PräsidentInnen nur im Rahmen ihrer Kompetenzen handeln…
Saturday March 15, 2025 thus marked the culmination of weeks of work by **[3]** President Trump and his Cabinet, who identified foreign enemies within our borders; invoked a longstanding statutory scheme to combat them; and then negotiated and planned a sensitive national-security operation, in conjunction with a foreign country, to remove them from the United States. As with many sensitive diplomatic and national-security operations, speed was of the essence. See App., infra, 160a-161a.	

Yet even before the Proclamation's public issuance, the district court halted the imminent removal of five identified plaintiffs (respondents here) without even hearing from the government. App., infra, 147a.	Das Bemerkenswerte ist vielmehr, daß die Proklamation erst einen Tag, *nachdem* sie angeblich umschrieben worden war, veröffentlicht wurde. Und ihre Anwendung anscheinend schon vor Unterzeichnung vorbereitet wurde.[1] https://www.courtlistener.com/docket/69741724/jgg-v-trump/?filed_after=&filed_before=&entry_gte=&entry_lte=&order_by=desc#minute-entry-419394068
Hours later, the court enjoined all further removals under the Proclamation of TdA members after hurriedly certifying a putative class of "[a]ll noncitizens in U.S. custody who are subject to" the Proclamation "and its implementation." Id. at 148a. That order is forcing the United States to harbor individuals whom national-security officials have identified as members of a foreign terrorist organization bent upon grievously harming Americans. Those orders—which are likely to extend additional weeks—now jeopardize sensitive diplomatic negotiations and delicate national-security operations, which were designed to extirpate TdA's presence in our country before it gains a greater foothold. The government sought imme-	https://www.courtlistener.com/docket/69741724/jgg-v-trump/?filed_after=&filed_before=&entry_gte=&entry_lte=&order_by=desc#minute-entry-419399699

1 „While he [Plaintiff-Petitioner J.G.G.] was awaiting a hearing on the merits of his applications for protection in Adelanto, **California**, J.G.G. was awakened at 2:00 am on March 6, 2025, and he was told that he was being released and that he had to sign documents that were available only in English to receive his property. J.G.G. then signed documents under false pretense. Instead of being released, J.G.G. was abruptly and without explanation transferred to **El Valle** Detention Center in **Texas**" (*Memorandum in Support for Temporary Restraining Order*, S. 6 der gedruckten bzw. 7 der digitalen Seitenzählung – Hv. hinzugefügt; vgl. Declaration of J.G.G., S. 1 f.)
„ICE [Immigration and Customs Enforcement] proceeded to detain [Plaintiff-Petitioner] J.A.V. at Moshannon Valley Processing Center in **Pennsylvania**. J.A.V. Decl. ¶ 6. On March 9, 20205, J.A.V was transferred with a group of other Venezuelans to **El Valle**. J.A.V. Decl. ¶ 7. Notwithstanding the fact that J.A.V. has a master calendar hearing scheduled for March 19, 2025, he was told on March 14, 2025 that that he was being moved in preparation for a later flight with a group of other Venezuelans. J.A.V. Decl. ¶¶ 9, 10. J.A.V has since been informed that he will be put on a plane on Saturday March 15, 2025 or Sunday March 16, 2025. J.A.V. Decl. ¶ 11." (ebd., S. S. 6 f. der gedruckten bzw. 7 f. der digitalen Seitenzählung; Hyperlinks + Hv. hinzugefügt)
usw.

diate relief from the D.C. Circuit, which took the extraordinary step of hearing argument within days and issuing 93 pages of opinions. Id. at 1a-93a.	https://storage.courtlistener.com/recap/gov.uscourts.cadc.41845/gov.uscourts.cadc.41845.01208724047.0_2.pdf
A majority of the D.C. Circuit panel held that the district court's orders, though styled as temporary restraining orders (TROs), are appealable. App., infra, 7a-8a (Henderson, J., concurring); id. at 73a-75a (Walker, J., dissenting).	
That majority further agreed that the government faces "irretrievable injury" because the district court's orders enjoining further removals "risk 'scuttling delicate international negotiations' " during the critical juncture when the orders are in effect. Id. at 8a (Henderson, J., concurring);	„In an accompanying affidavit, the government alleges that it has negotiated time-sensitive agreements with the governments of El Salvador and Venezuela to accept certain Venezuelan nationals subject to the challenged executive order. See Kozak Decl. at 1 ¶ 2. **If true**, those allegations establish that the government risks irretrievable injury and thus that we may exercise appellate jurisdiction. Granted, **the government does not specify why** a two-week interlude would dismantle the agreements—it notes only that ‚foreign interlocutors might change their minds,' id. at 2 ¶ 4 (emphasis added)—**but in assessing our jurisdiction, we <u>assume</u> these claims to be true**. Tel-Oren v. Libyan Arab Republic, 726 F.2d 774, 775[2] (D.C. Cir. 1984) (per curiam)." (Hv. + FN hinzugefügt) Die *Appeals Court*-Mehrheit hat also durchaus *nicht*, „agreed that the government faces ‚irretrievable injury'" hat, sondern auf Grundlage der *Annahme*, daß die entsprechende Behauptung der Regierung wahr sei, seine *Zuständigkeit* bejaht. Was den tatsächlich drohenden Schaden anbelangt, so sagten Henderson und Millett:

2 „In their complaint, plaintiffs **alleged** that defendants were responsible for […]. For purposes of our jurisdictional analysis, **we assume** plaintiffs' allegations to be true." (Hv. hinzugefügt)

see id. at 76a (Walker, J., dissenting). Yet a different majority **[4]** of the Court nonetheless voted to deny relief. Id. at 28a-29a (Henderson, J., concurring); id. at 31a-32a (Millett, J., concurring).	• „The Executive's burdens are comparatively modest compared to the plaintiffs'" (*Court of Appeals for the D.C. Circuit* vom 26.03.2025, S. 27 der Datei = S. 26 des Votums von Henderson) • „the balance of harms weighs strongly in favor of the Plaintiffs." (ebd., S. 46 [s.a. 50[3]] der Datei = S. 16 [s.a. 20] des Votums von Millett)
That decision cries out for this Court's intervention. Most fundamentally, respondents cannot obtain relief because they brought the wrong claims in the wrong court. They style their claims as exclusively arising under the Administrative Procedure Act (APA). But this Court has held that detentions and removals under the Alien Enemies Act are so bound up with critical national-security judgments that they are barely amenable to judicial review at all. Ludecke v. Watkins, 335 U.S. 160 (1948)[4].	https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf, S. 5 der Datei: „The very nature of the President's power to order the removal of all enemy aliens rejects the notion that courts may pass judgment upon the exercise of his discretion." Das bezieht sich aber wohl ausschließlich auf 50 USC 21 Satz 2:

3 „The government nonetheless argues that the TROs should be treated as injunctions because they work ‚an extraordinary harm' to the President's authority under Article II to conduct foreign affairs. Gov't First Stay Mot. 4; Gov't Second Stay Mot. 8. But the government has shown no such harm here, and its own arguments weigh against it. To start, as noted above, the TROs do not affect the government's ability to remove deportable individuals under federal laws other than the AEA or to detain and arrest anyone who is a threat to national or domestic security. So the only potential harm is the temporary inability to remove individuals under the AEA and Proclamation."

4 **Siehe zu dieser Entscheidung** – außer nebenstehender Anmerkung – **unten** meine Antwort auf die Frage, *„Worum ging es in dem Ludecke-Fall überhaupt?"* (**S. 16**).

„**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.“

Das heißt: **Wenn** ein ein solches Ereignis eingetreten ist und es bekannt gemacht worden, **dann** liegt es im – gerichtlich nicht kontrollierbaren Ermessen –, ob die Leute, die unter die Norm fallen, abgeschoben werden.[5]

Das heißt aber nicht – jedenfalls nicht notwendigerweise –, daß auch die Frage, **ob** ein solches Ereignis eingetreten ist und ist ob es bekannt gemacht wurde, nicht der gerichtlichen Kontrolle unterliegt. Außerdem hängt die Abschiebung davon ab, daß sie *„refuse or neglect to depart therefrom“*. Das dürfen heißen: Sie sind zunächst einmal aufzufordern, auszureisen – und es stellt sich die weitere Frage, ob gerichtlich überprüfbar ist, ob eine solche Forderung erfolgt ist.

5 Vgl. „The Alien Enemies Act (AEA) contains two provisions: a conditional clause and an operative clause. The conditional clause limits the AEA's substantive authority to conflicts between the United States and a foreign power. Specifically, there must be (i) ‚a declared war between the United States and any foreign nation or government, or' (ii) an ‚invasion or predatory incursion [] perpetrated, attempted, or threatened against the territory of the United States by any foreign nation or government,' and (iii) a presidential ‚public proclamation of the event.' 50 U.S.C. § 21. If these conditions are met: […**dann** tritt die Rechtsfolge ein, daß der/die PräsidentIn sein Ermessen ausüben darf…]. Thus, the AEA vests in the President near-blanket authority to detain and deport any noncitizen whose affiliation traces to the belligerent state. A central limit to this power is the Act's conditional clause—that the United States be at war or under invasion or predatory incursion.“ (*Court of Appeals for the D.C. Circuit* vom 26.03.2025, S. 3, 4 der Datei = S. 2, 3 des Votum von Henderson)

Instead, aliens subject to the AEA can obtain only limited judicial review through habeas[6]. Here, however, respondents not only abandoned their claims for habeas relief below, but also filed this suit in the District of Columbia—not the district of their confinement (the Southern District of Texas).	*Court of Appeals for the D.C. Circuit* vom 26.03.2025, S. 10 der Datei = S. 9 des Votums von Henderson: „Plaintiffs initially challenged the lawfulness of the Proclamation under the APA and sought various forms of relief, including a writ of habeas corpus. Compl. at 21. But they quickly abandoned their habeas claims and no longer contest their confinement, only their detention. Cf. Rumsfeld, 542 U.S. at 439[7] (explaining that habeas' geographic limits have ‚no application' when plaintiffs are ‚not challenging any present physical confinement'); Citizens Protective League v. Clark, 155 F.2d 290 (D.C. Cir. 1946) (hearing AEA challenge outside of habeas)." (Hyperlinks hinzugefügt) S. außerdem: • *Memorandum in Support for Motion for Preliminary Injunction*, S. 9 - 14 der gedruckten bzw. 19 - 24 der digitalen Seitenzählung.

6 https://www.etymonline.com/word/habeas%20corpus: „in phrase *habeas corpus ad subjiciendum* ‚produce or have the person to be subjected to (examination),' opening words of writs in 14c. Anglo-French documents to require a person to be brought before a court or judge, especially to determine if that person is being legally detained. From *habeas*, second person singular present subjunctive of *habere* ‚to have, to hold' (from PIE root *ghabh- ‚to give or receive') + *corpus* ‚person,' literally ‚body' (see corporeal)."
Vgl.:
- http://www.zeno.org/nid/20002408864: *habēre* = haben, halten usw. (*habeo* = 1. Person Singular)
- http://www.zeno.org/nid/20002311984: *corpus* = Körper usw.

https://dictionary.justia.com/habeas-corpus: „A legal action that allows someone in custody to challenge the legality of their detention, often in instances where they're being held without charges, have been denied due process, have been granted parole, or have had probation terminated without cause".
https://www.law.cornell.edu/wex/habeas_corpus: „The habeas corpus first originated back in 1215, through the 39th clause of the Magna Carta signed by <English> King John, which provided ‚No man shall be arrested or imprisoned...except by the lawful judgment of his peers and by the law of the land,'" (Hyperlinks hinzugefügt)

7 https://tile.loc.gov/storage-services/service/ll/usrep/usrep542/usrep542426/usrep542426.pdf, S. 14 der Datei: „As in Braden [v. 30th Judicial Circuit Court of Ky., 410 U.S. 484 so auch in Strait v. Laird, 406 U. S. 341], the immediate custodian rule had no application because petitioner was not challenging any present physical confinement." M.a.W.: Sowohl in dem Braden- als auch in dem Strait-Verfahren wurde die Inhaftierung *nicht* angefochten – und *folglich* mußte der Rechtsschutz auch nicht am Inhaftierungsort gesucht werden.

	• *Court of Appeals for the D.C. Circuit* vom 26.03.2025, S. 10 der Datei = S. 9 des Votums von Millett).
Dismissal should have followed on this basis alone. Yet no majority of the D.C. Circuit resolved that question. Judge Walker's dissent rightly recognized that AEA plaintiffs must seek habeas. App., infra, 79a-86a. Judge Millett's concurrence incorrectly blessed APA claims. Id. at 63a-65a. But Judge Henderson's concurrence—the deciding vote—inexplicably "assume[d]" jurisdiction, then refused to decide whether respondents could bring APA claims. Id. at 8a, 24a-25a.	Nein, der APA ist auf Seite 24 und 25 des Henderson-Votums gar nicht erwähnt. Und auf S. 24 heißt es vielmehr: „plaintiffs contend that the Immigration and Nationality Act (INA)'s procedures are the ‚*exclusive* procedure' for removal and thus eclipse any contrary authority in the AEA. Pl. Br. 24 (quoting 8 U.S.C. § 1229a(a)(3)). This claim, however, speaks more to plaintiffs' likelihood of success on the merits than the government's. And although it is a primarily legal question, it is one we need not —and therefore ought not—decide in this nascent posture." (*Court of Appeals for the D.C. Circuit* vom 26.03.2025, S. 25 der Datei = S. 24 des Votums von Henderson; Hyperlinks + Hv. hinzugefügt) Das scheint mir aber eine *ganz andere* Frage zu sein – nämlich die Frage, ob und ggf. wie weit der *Alien Enemies Act* durch den späteren *Immigration and Nationality Act* derogiert (verdrängt) wurde.

On top of that, the district court improperly used class certification to effectively impose a backdoor nationwide injunction against the Proclamation. This Court has held that to certify a class under Federal Rule of Civil Procedure 23, courts must follow rigorous procedures and establish that an ascertainable class shares common issues capable of mass resolution. E.g., Wal-Mart Stores, Inc. v. Dukes, 564 U.S. 338 (2011). Yet the district court certified a circular class of "[a]ll noncitizens in U.S. custody" subject to the Proclamation without following any of the usual procedural or **[5]** substantive guardrails. App., infra, 148a. When it is easier to certify classes of designated foreign terrorists than a garden-variety class action over defective products, something has gone seriously awry. Yet no majority of the D.C. Circuit passed on the question. Judge Walker found it unnecessary after concluding respondents' claims belong in habeas proceedings in Texas. Id. at 91a n.86.	https://www.uscourts.gov/sites/default/files/civil-rules-procedure-dec2017_0.pdf, S. 31 f. der gedruckten bzw. 50 der digitalen Seitenzählung https://tile.loc.gov/storage-services/service/ll/usrep/usrep564/usrep564338/usrep564338.pdf. *Court of Appeals for the D.C. Circuit* vom 26.03.2025, S. 91 der Datei = S. 20 des Votums von Walker: „Whether Plaintiffs can seek habeas relief through a class action in the Southern District of Texas seems to be an open question for that court to resolve in the first instance." (Es handelt sich allerdings nicht um „n.86", sondern um Fußnote 75).
Judge Millett opined that a "swift class action" is necessary to preserve these aliens' rights. Id. at 68a.	ebd., S. 68 der Datei = S. 38 des Votums von Millett: „Plaintiffs, by contrast, are not manipulating anything. The government's implementation of the Proclamation gave no individual notice or any time at all to file suit to challenge their removal. Only a swift class action could preserve the Plaintiffs' legal rights before the rushed removals mooted their cases and thrust them into a Salvadorean prison."

But Judge Henderson's tie-breaking concurrence declined to "pass on the class action 'fit' of the plaintiffs' claims." Id. at 28a, 29a n.9.	ebd., S. 28 der Datei = S. 27 des Votums von Henderson: „Even if we decline to stay the district court's injunctions, the government contends that we should narrow their scope. In its view, the lower court entered an ‚unconstitutional' ‚universal TRO.' Gov't Br. 20; Gov't Reply 15–16. […]. But what the district court did here was *not* a universal injunction—*i.e.*, it did not enter relief that goes beyond the parties to the suit." Erst am Endes des Absatzes (auf der folgenden Seite), aus dem die beiden zitierten Sätze stammen, steht FN 9 – und diese lautet dann: „I do not pass on the class action ‚fit' of the plaintiffs' claims."
Even taking the district court's mistaken view that courts have a broad role to play in interpreting the AEA on its own terms, its orders are unsupportable. The AEA requires the President to make two findings for designated enemy aliens to be summarily removable: here, that TdA members are involved in, threatening, or attempting an "invasion" or "predatory incursion," and that TdA has "infiltrated," and "acts at the direction" of a foreign nation or government. App., infra, 176a-177a. The President made both findings based on specific descriptions of TdA's hostile activities and close entwinement with the Maduro regime in Venezuela. Ibid. Yet the courts below effectively nullified that determination without engaging with it.	Siehe dazu bereits oben S. 2 („50 U.S.C. 21 enthält aber *zwei* Tatbestandvoraussetzungen: […].") sowie FN 5 auf S. 8. Im AEA steht *nicht*, daß der/die PräsidentIn dafür zuständig ist, festzulegen, ob das Ereignis (*invasion* etc.) **stattfindet**, sondern seine/ihre Sache ist nur, das Ereignis **bekannt zu geben** – und wenn beides (Ereignis und Bekanntmachung) tatsächlich passiert ist, dann hat er Ermessen hinsichtlich Verbleibt oder Abschiebung bestimmter Leute.
Only this Court can stop rule-by-TRO from further upending the separation of powers—the sooner, the better. Here, the district court's orders have rebuffed the President's judgments as to how to protect the Nation against foreign terrorist organizations and risk debilitating effects for delicate foreign negotiations. More broadly, rule-by-TRO	

has become so commonplace among district courts that the Executive Branch's basic functions are in peril. In the two months since Inauguration Day, district courts have issued more than 40 injunctions or TROs against the Executive Branch. Whereas "district courts issued 14 universal injunctions against the federal **[6]** government through the first three years of President Biden's term," they issued " 15 universal injunctions (or temporary restraining orders) against the current Admin-istration in February 2025 alone." Appl. to Stay Injunction at 6, Office of Personnel Mgmt. v. American Fed. of Gov't Emps. (No. 24A904).	Wie neulich schon angemerkt: Allein die Zahlen beweisen nichts. Allenfalls, wenn sich der Entscheidungsmaßstab der Gerichte geändert hätte (gegenüber Biden großzügig und gegenüber Trump streng) könnte es Anlaß für Kritik geben; aber auch dann wäre immer noch zu fragen, ob der großzügige oder der strenge Maßstab zutreffend ist. https://www.supremecourt.gov/DocketPDF/24/24A904/352768/20250324090408115_Application%20America%20Federation%20of%20Govt%20Employees.pdf, S. 6 der gedruckten bzw. S. 10 der digitalen Seitenzählung
The Framers prized "[e]nergy in the executive" and "[d]ecision, activity, secrecy, and dispatch" as paramount qualities for "good government," The Federalist No. 70, at 471, 472 (Alexander Hamilton) (Jacob E. Cooke ed., 1961)—not the energetic dispatch of injunctions to restrain the President from discharging his paramount duties to the Nation.	https://guides.loc.gov/federalist-papers/text-61-70#s-lg-box-wrapper-25493457: „Energy in the Executive is a leading character in the definition of good government. […]. That unity is conducive to energy will not be disputed. Decision, activity, secrecy, and despatch will generally characterize the proceedings of one man in a much more eminent degree than the proceedings of any greater number; and in proportion as the number is increased, these qualities will be diminished." Vgl. https://catalog.princeton.edu/catalog/9924470833506421#view, vol, 2, p. 240 („Number LXXX" ist ein Druckfehler), 241 f.

PS.:

Sind präsidiale Berufungen auf den *Aliens Enemies Act* gerichtlich überprüfbar?

Siehe zur Frage der gerichtlichen Überprüfbarkeit von präsidialen Berufungen auf den *Alien Enemies Act* auch noch Ludecke v.[8] Watkins, 335[9] U.S.[10] 160[11] - 173[12] [163 f.[13]] (1948[14]) – eine Entscheidung, auf die sich die Trump-Regierung wie gesehen (oben S. 7) für die *gegenteilige* Auffassung, beruft:

> „As Congress explicitly recognized in the recent Administrative Procedure Act, some statutes ‚preclude judicial review.' Act of June 11, 1946, § 10, 60 Stat. 237, 243. **Barring**[15] questions of interpretation and constitutionality, the Alien Enemy Act of 1798 is such a statute."
> (https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf, S. der Datei 4 f.; Hyperlink + Hv. hinzugefügt)

Deutsche Übersetzung:

> „Wie der Kongreß im kürzlich verabschiedeten [*recent*] Verwaltungsverfahrensgesetz [*Administrative Procedure Act*] ausdrücklich anerkannte, schließen einige Gesetze ‚eine gerichtliche Überprüfung aus'. Gesetz vom 11. Juni 1946, § 10, 60 Stat. 237, 243. **Abgesehen** von Fragen der Auslegung und Verfassungsmäßigkeit ist der *Alien Enemy Act* von 1798 ein solches Gesetz."

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8 = lat. *versus* = dt. *gegen* (http://www.zeno.org/nid/20002720663)

9 = Band der Entscheidungen des US-*Supreme Court*.

10 = Abkürzung für den Titel der *Supreme Court*-Entscheidungssammlung (*U.S. Reports*).

11 = erste Seite der zitierten Entscheidung.

12 = letzte Seite des Merheitsvotums.
Es folgen ein Minderheitsvotum von Richter Black, dem Douglas, Murphy und Rutledge zustimmten (S. 173 [= 14 der Datei] - 184 [= 25 der Datei]) sowie ein weiteres Minderheitsvotum, dem (lt. S. 184 / 25) Murphy und Rutledge zustimmte (S. 184 [= 25 der Datei] - 187 [= 28 der Datei]) und das eine Verletzung des *due process*-Grundsatzes der US-Verfassung (trotz Existenz von Anhörungskommissionen) als gegeben ansah. In dem Votum von Black heißt es bzgl. des Votums von Douglas:

> „MR. JUSTICE DOUGLAS has given reasons in his dissenting opinion why he believes that deportation of aliens, 'without notice and hearing, whether in peace or war, would be a denial of due process of law. I agree with MR. JUSTICE DOUGLAS for many of the reasons he gives' that deportation of petitioner without a fair hearing as determined by judicial review is a denial of due process of law. But I do not reach the question of power to deport aliens of countries with which we are at war while we are at war, because I think the idea that we are still at war with Germany in the sense contemplated by the statute controlling here is a pure fiction."
> (https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf, S. 16 der Datei)

13 = Seite, auf der sich die zitierte Stelle befindet.

14 = Jahr, in dem die Entscheidung erging.

15 = *abgesehen von*, *ausgenommen* (https://de.langenscheidt.com/englisch-deutsch/barring; vgl. https://de.pons.com/%C3%BCbersetzung-2/englisch-deutsch/barring).

Siehe zu dieser Passage der Ludecke-Entscheidung: *Court of Appeals for the D.C. Circuit* vom 26.03.2025, S. 13 der Datei = S. 12 des Votums von Henderson:

> „Questions of interpretation and constitutionality—the heartland of the judicial ken—are subject to judicial review. See Japan Whaling Ass'n v. Am. Cetacean Soc'y, 478 U.S. 221, 230[16] (1986) (explaining that ‚a decision which calls for applying no more than the traditional rules of statutory construction' is not a political question). Indeed, the Ludecke Court [= der *Supreme Court* in der Zusammensetzung, die er zum Zeitpunkt der Ludecke-Entscheidung hatte] itself engaged in interpretation, rejecting a definition of ‚the statutory phrase 'declared war' that would "mean 'state of actual hostilities.' Id. at 166 n.11, 170–71 [siehe den hiesigen Anhang auf S. 21]."

> „Fragen der Auslegung und der Verfassungsmäßigkeit – der Kern [*heartland*] der gerichtlichen Arbeit [*ken* = u.a. Wissensbereich] – unterliegen der gerichtlichen Überprüfung. Siehe Japan Whaling Ass'n v. Am. Cetacean Soc'y, 478 U.S. 221, 230[17] (1986) (wo erklärt wird, daß ‚eine Entscheidung, die nicht mehr erfordert als die Anwendung der traditionellen

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16 https://tile.loc.gov/storage-services/service/ll/usrep/usrep478/usrep478221/usrep478221.pdf, S. 10: „The political question doctrine excludes from judicial review those controversies which revolve around policy choices and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the Executive Branch. The Judiciary is particularly ill suited to make such decisions, as ‚courts are fundamentally underequipped to formulate national policies or develop standards for matters not legal in nature.' United States ex rel. Joseph v. Cannon, 206 U. S. App. D. C. 405, 411, 642 F. 2d 1373, 1379 (1981) (footnote omitted), cert. denied, 455 U.S. 999 (1982). As Baker [v. Carr, 369 U. S. 186, 217 (1969)] plainly held, however, the courts have the authority to construe treaties and executive agreements, and it goes without saying that interpreting congressional legislation is a recurring and accepted task for the federal courts." (Hyperlinks hinzugefügt)
Mit anderen Worten:

- *Ob* ein Land einem anderen Land den Krieg *erklärt*, ist eine politische Entscheidung, die – demokratisch legitimierte – politische Instanzen und nicht – fachlich legitimierte – gerichtliche Instanzen entscheiden sollten.
- Ob eine Kriegserklärung abgegeben *wurde*, ist eine tatsächliche Frage, die Gerichte aufklären können.
- Was die Begriffe *„invasion"* und *„predatory incursion"* in einer bestimmten Norm bedeuten, ist eine juristische Frage, die – unter Anwendung der gebotenen philologischen Hilfsmittel – zu beantworten Gerichten zusteht.
- Ob eine Invasion oder ein räuberisches Eindringen i.S.d. Norm stattfindet, ist eine tatsächliche Frage, die Gerichte aufklären können.
- Wie auf eine solche Invasion oder ein solches Eindringen – *falls* sie denn stattfinden – zu reagieren ist, ist eine politische Frage, die – demokratisch legitimierte – politische Instanzen (also die Gesetzgebungsorgane und im Rahmen deren Vorgaben die Exekutive, sofern beide – gemäß der *bürgerlichen* Konzeption – unterschieden sind und nicht – gemäß der *marxistischen* Konzeption – die Volksvertretung selbst eine „arbeitende [d.h.: nicht nur legeferierende <Gesetze machende>, sondern auch regierende] Körperschaft" [MEGA I/22, 179 - 226 <201 f.> = MEW 17, 313 - 365 <339>: „Die Kommune sollte nicht eine parlamentarische, sondern eine arbeitende Körperschaft sein, vollziehend und gesetzgebend zu gleicher Zeit."] ist) entscheiden sollten.

Tatsachen festzustellen, Begriffe zu definieren und die Tatsachen unter die (so) definierten Begriffe zu subsumieren, ist alltäglich gerichtliche Arbeit.

17 Siehe FN 15.

> Regeln der Gesetzesauslegung‘, keine politische Frage ist). In der Tat hat der *Ludecke Court* [= der *Supreme Court* in der Zusammensetzung, die er zum Zeitpunkt der Ludecke-Entscheidung hatte] selbst eine Auslegung vorgenommen und eine Definition der gesetzlichen Formulierung ‚erklärter Krieg‘ abgelehnt, die ‚Zustand tatsächlicher Feindseligkeiten‘ bedeuten würde.“

Worum ging es in dem Ludecke-Fall überhaupt?

Ludecke war – unstreitig – ein Deutscher (und anscheinend Röhm-/Strasser-Anhänger[18]), der während des II. Weltkrieges inhaftiert wurde und *nach* der deutschen Kapitulation[19] unter Berufung auf den *Alien Enemies Act* abgeschoben werden sollte. Dagegen wandte er sich an die Gerichte.

- Daß Ludecke Deutscher war, war – wie gesagt – unstrittig.

- Ebenso war unstrittig, daß es einen Krieg zumindest gegeben hatte; daß dieser gegen Staaten geführt wurde und daß es auch eine Kriegserklärung und *keinen* Friedensvertrag gab. (Die BRD und die DDR waren noch nicht gegründet worden; auch der sog. Generalvertrag [amtlich: *Vertrag über die Beziehungen zwischen der Bundesrepublik Deutschland und den Drei Mächten*] zwischen der Bundesrepublik und den Westmächten existierte folglich noch nicht und wurde erst 1952 (BGBl. II 1955, 305 - 311 [311: „Geschehen zu

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18 Nach den vom *Supreme Court* zitierten Feststellungen des *District Court* war Ludecke „out of Germany for most of the period of 1923 to March 1933. He returned to Germany in March 1933 and became a member of the Nazi party. Later he had some disagreements with other members and as a result he was sent to a German concentration camp, from which he escaped March 1, 1934, after being confined for over eight months. Sometime thereafter he came to this country and published a book, ‚I Knew Hitler‘ [‚The Story of a Nazi Who Escaped The Blood Purge‘-‘In memory of Captain Ernst Roehm and Gregor Strasser and many other Nazis who were betrayed, murdered, and traduced in their graves‘], in 1937.“ (https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf, S. 3 der Datei, FN 3)

19 Nach der Kapitulation *vielleicht* wegen logistischer Schwierigkeiten und weil Abschiebungen in Drittländer damals anscheinend außerhalb des Bereichs des Vorstellbaren waren: „we reach the claim that while the President had summary power under the Act, it did not survive cessation of actual hostilities. This claim in effect nullifies the power to deport alien enemies, for such **deportations are hardly practicable during** the pendency of what is colloquially known as **the shooting war**.“ (https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf, S. 7 der Datei; Hv. hinzugefügt)
In FN 2 der *Supreme Court*-Entscheidung heißt es: „We are advised that there are 530 alien enemies, ordered to depart from the United States, whose disposition awaits the outcome of this case.“ (ebd., S. 3)

Bonn am sechsundzwangisten Tag des Monats Mai 1952“; http://www.bgbl.de/xaver/bgbl/start.xav?startbk=Bundesanzeiger_BGBl&jumpTo=bgbl255s0301b.pdf]) unterzeichnet und später ratifiziert.)

- Ludecke wollte, daß sich die Gerichte über die übereinstimmende Einschätzung von Kongreß und Präsidenten, daß der Kriegszustand noch nicht beendet sei, hinwegsetzen; die *Supreme Court*-Mehrheit lehnte dies ab:

  - Die fünf die Entscheidung tragenden *Supreme Court*-Mitglieder weigerten sich, den Wortlaut des Gesetzes *„declared war“* als *„actual hostilities“* zu lesen[20] und sagten statt dessen:

    „War does not cease with a cease-fire order, and power to be exercised by the President such as that conferred by the Act of 1798 [= Alien Enemies Act] is a process which begins when war is declared but is not exhausted when the shooting stops. See United States v. Anderson, 9 Wall. 56, 70[21]; The Protector, 12 Wall. 700[22]; McElrath v. United States, 102 U.S. 426, 438[23]; Hamilton v. Kentucky Distilleries Co., 251 U.S. 146, 167[24]. ‚The state of war‘ may be terminated by treaty or legislation or Presidential proclamation. Whatever the mode, its termination is a political act. Ibid.“
    (https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf, S. 10)
    „Der Krieg endet nicht mit einem Befehl zum Stillstand der Waffen, und die von dem/der Präsidenten/in auszuübende Befugnis, wie sie durch das Gesetz von 1798 [= *Alien Enemies Act*] verliehen wurde, ist ein Prozeß, der mit der

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20 *„reason, authority, and history […] led us to reject reading the statutory language ‚declared war‘ to mean ‚actual hostilities,‘ […]“* (https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf, S. 11 f. der Datei).

21 https://tile.loc.gov/storage-services/service/ll/usrep/usrep076/usrep076056/usrep076056.pdf, S. 15 der Datei: *„In a foreign war, a treaty of peace would be the evidence of the time when it closed, […].“*

22 https://tile.loc.gov/storage-services/service/ll/usrep/usrep079/usrep079700/usrep079700.pdf, S. 1 (s.a. 3) der Datei: *„The beginning and termination of the late rebellion in reference to acts of limitation, is to be determined by some public act of the political department. […]. Its termination as to certain States will be referred to the proclamation of the 2d April, 1866, declaring that the war had closed in those States, and as to Texas to the proclamation of the 20th August, 1866, declaring it bad closed in that State also.“*

23 https://tile.loc.gov/storage-services/service/ll/usrep/usrep102/usrep102426/usrep102426.pdf, S. 13 der Datei: *„Not until the twentieth day of August, 1866, on which day the President announced, by proclamation, that the insurrection against the national authority was at an end, and that ‚peace, order, tranquillity, and civil authority‘ then existed ‚in and throughout the whole of the United States of America‘ 14 Stat. 814, United States v Anderson, 9 Wall. 71, The Protector, 12 id. 702.“*

24 https://tile.loc.gov/storage-services/service/ll/usrep/usrep251/usrep251146/usrep251146.pdf, S. 22 der Datei: *„‚Conclusion of the war‘ clearly did not mean cessation of hostilities“*.

Kriegserklärung beginnt, aber nicht mit der Beendigung der Ballerei endet. Siehe United States v. Anderson, 9 Wall. 56, 70; The Protector, 12 Wall. 700; McElrath v. United States, 102 U.S. 426, 438; Hamilton v. Kentucky Distilleries Co., 251 U.S. 146, 167. Der ‚Kriegszustand' kann durch einen Vertrag, ein Gesetz oder eine Proklamation des/der Präsidenten/in beendet werden. Unabhängig von der Art und Weise ist seine Beendigung ein politischer Akt."

Auch die Mehrheit hat sich also einer Antwort auf die Frage, wann ein erklärter Krieg endet, *nicht* völlig enthalten, sondern gesagt: durch *„treaty or legislation or Presidential proclamation"* – und festgestellt, daß alldies in Bezug auf den II. Weltkrieg 1948 (noch) nicht geschehen war. (Einen Krieg zu beginnen oder zu beenden ist in einem anderen – nämlich: politischen – Sinne eine Entscheidung, als es – *sofern überhaupt* – vielleicht eine ‚Entscheidung' ist, eine festgestellte Tatsache unter einen definierten Begriff zu subsumieren.)

- Die vier überstimmte *Supreme Court*-Mitglieder sagten dagegen:

  „German aliens could not now, if they would, aid the German Government in war hostilities against the United States. For as declared by the United States Department of State, June 5, 1945, the German armed forces on land and sea had been completely subjugated and had unconditionally surrendered. […]. Of course it is nothing but a fiction to say that we are now at war with Germany."
  (https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf, S. 18, 19)

  „AusländerInnen deutscher Staatsangehörigkeit [*German aliens*] könnten, selbst wenn sie es wollten, der deutschen Regierung jetzt nicht mehr bei den Kriegshandlungen gegen die Vereinigten Staaten helfen. Denn wie das Außenministerium der Vereinigten Staaten am 5. Juni 1945 erklärte, waren die deutschen Streitkräfte zu Lande und zu Wasser vollständig niedergeworfen worden und hatten bedingungslos kapituliert. [...]. Selbstverständlich ist die Behauptung, wir befänden uns jetzt im Krieg mit Deutschland, nichts als eine Fiktion."

- Damals wollte der Präsident selbstverständlich *nicht*, daß *alle* Deutschen aus den USA abgeschoben werden. Vielmehr sollten nur diejenigen abgeschoben werden, die der Generalstaatsanwalt = Justizminister als gefährlich ansieht. Darüber entschieden Anhörungskommissionen (keine Gerichte).

Schließlich ist noch zu erwähnen, daß es in dem Mehrheitsvotum der Ludecke-Entscheidung folgende Fußnote 17 gab:

> „The additional question as to whether the person restrained is in fact an alien enemy fourteen years of age or older may also be reviewed by the courts.“
> (https://tile.loc.gov/storage-services/service/ll/usrep/usrep335/usrep335160/usrep335160.pdf, S. 12 der Datei)
>
> „Die weitere Frage, ob es sich bei der Person, die Einschränkungen unterliegt (z.B.: abgeschoben werden soll) [*the person restrained*[25]] tatsächlich um eineN ausländischeN FeindIn handelt, der/die vierzehn Jahre oder älter ist, kann gleichfalls von den Gerichten geprüft werden.“

Das „*also*“ (auch, gleichfalls) bezieht sich auf folgenden Formulierung im Haupttext der Entscheidung:

> „resort to the courts may be had […] to challenge the construction and validity of the statute and to question the existence of the ‘declared war,’ […].“
> (ebd.)
>
> „die Gerichte [können …] angerufen werden […], um die Auslegung und Gültigkeit des Gesetzes anzufechten und die Existenz des ‚erklärten Krieges‘ in Frage zu stellen, […].“

Der *Supreme Court* hatte also damals – im Gegensatz zu dem, was die Trump-Regierung suggeriert (*„this Court* [der Supreme Court] *has held that detentions and removals under the Alien Enemies Act are so bound up with critical national-security judgments that they are barely amenable to judicial review at all.*[26] *Ludecke v. Watkins, 335 U.S. 160 (1948).“*) – die Justiziabilität von zwei Fragen *bejaht* – nämlich:

- Ist die Person, die abgeschoben werden soll, ein *„alien enemy“* – also: Hat die Person die Staatsangehörigkeit eines Landes, mit dem ein Konflikt einer der im Gesetz genannten drei Arten (*„declared war“*, *„invasion or predatory incursion“*) besteht?

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25 50 USC 21 hat die Überschrift *„Restraint, regulation, and removal“* und spricht von *„liable to be apprehended, restrained, secured, and removed“*.

26 „Dieser Gerichtshof [der *Supreme Court*] hat entschieden, daß Inhaftierungen und Abschiebungen nach dem *Alien Enemies Act* so sehr mit heiklen / ernsten [*critical*] Fragen [*judgments*] der nationalen Sicherheit verbunden sind, daß sie kaum einer gerichtlichen Überprüfung zugänglich sind.“

- Findet ein „erklärter Krieg“ statt?

Wenn Gerichte, sofern sich der/die PräsidentIn auf das Stattfinden eines erklärten Krieges beruft, überprüfen dürfen, ob tatsächlich ein erklärter Krieg stattfindet, dann *liegt zumindest nahe*, anzunehmen, daß – sofern sich der/die PräsidentIn statt dessen auf das Stattfinden einer *„invasion or predatory incursion“* beruft – *deren* Stattfinden gerichtlich zu prüfen ist.

In den aktuellen *Tren de Aragua*-Fällen

- sollen **alle** *Tren de Aragua*-Mitglieder (deren Gefährlichkeit vermutlich stillschweigend vorausgesetzt wird, da ja auf die angebliche Mitgliedschaft in einer angeblich terroristischen Organisation und nicht auf die Staatsangehörigkeit abgestellt wird) abgeschoben werden und gibt es keine Kommissionen (um Feststellungen zur Mitgliedschaft zu treffen);

- ist *strittig*, ob die Betroffenen Mitglieder von *Tren de Aragua* sind (und eine Organisationsmitgliedschaft schwieriger festzustellen als eine Staatsangehörigkeit),

- unstrittig, daß es *keinen* Krieg und keine Kriegserklärung gibt,

- aber strittig,
  - ob *Tren de Aragua* eine *„foreign nation or government“* ist
    und
  - ob, ob eine *„invasion or predatory incursion“* seitens dieser vermeintlichen Nation oder Regierung *„perpetrated, attempted, or threatened against the territory of the United States“* wird

- und was von den diesmal umstrittenen Fragen politische und was juristische Frage sind.

Anhang:

Fußnote 11 aus dem Mehrheits-Votum zum Ludecke-Fall des US-*Supreme Court* (die dort zitierte Kessler-Entscheidung gibt es unter folgender Adresse: https://casetext.com/case/united-states-v-watkins-33#p142):

the Attorney General was the President's voice and conscience. A war power of the President not subject to judicial review is not transmuted into a judicially reviewable action because the President chooses to have that power exercised within narrower limits than Congress authorized.

And so we reach the claim that while the President had summary power under the Act, it did not survive cessation of actual hostilities.[10] This claim in effect nullifies the power to deport alien enemies, for such deportations are hardly practicable during the pendency of what is colloquially known as the shooting war.[11] Nor does law

[10] "The cessation of hostilities does not necessarily end the war power. It was stated in *Hamilton* v. *Kentucky Distilleries & W. Co.*, 251 U. S. 146, 161, that the war power includes the power 'to remedy the evils which have arisen from its rise and progress' and continues during that emergency. *Stewart* v. *Kahn*, 11 Wall. 493, 507. Whatever may be the reach of that power, it is plainly adequate to deal with problems of law enforcement which arise during the period of hostilities but do not cease with them. No more is involved here." *Fleming* v. *Mohawk Wrecking & Lumber Co.*, 331 U. S. 111, 116.

[11] The claim is said to be supported by the legislative history of the Act. We do not believe that the paraphrased expressions of a few members of the Fifth Congress could properly sanction at this late date a judicial reading of the statutory phrase "declared war" to mean "state of actual hostilities." See p. 3, *supra*. Nothing needs to be added to the consideration which this point received from the court below in the *Kessler* case. Circuit Judge Augustus Hand, in this case speaking for himself and Circuit Judges L. Hand and Swan, said:

"Appellants' counsel argues that the Congressional debates preceding the enactment of the Alien Law of 1798 by Gallatin, Otis and others, show that Congress intended that 'war' as used in the Alien Enemy Act should be war in fact. We cannot agree that the discussions had such an effect. Gallatin argued that Section 9 of Art. I of the Constitution allowing to the states the free 'Migration or Importation' of aliens until 1808 might stand in the way of the Act as

Diese Bemerkung dürfte einschließen, daß die Frage, ob die "power [...] properly invoked" wurde, gerichtlich zu prüfen und zu beantworten ist.

United States ex rel. Kessler v. Watkins, 163 F. 2d 140
https://casetext.com/case/united-states-v-watkins-33#p142

lag behind common sense. War does not cease with a cease-fire order, and power to be exercised by the President such as that conferred by the Act of 1798 is a process which begins when war is declared but is not exhausted when the shooting stops.[12] See *United States* v. *Ander-*

proposed if it was not limited to a 'state of actual hostilities.' It however was not so limited in the text of the act and it is hard to see how the failure to limit it in words indicated a disposition on the part of Congress to limit it by implication. Otis objected to limiting the exercise of the power to a state of declared war because he thought that the President should have power to deal with enemy aliens in the case of hostilities short of war and in cases where a war was not declared. That Otis wished to add 'hostilities' to the words 'declared war,' and failed in his attempt, does not show that Congress meant that when war was declared active hostilities must exist in order to justify the exercise of the power. The questions raised which were dealt with in the act as finally passed were not how long the power should last when properly invoked, but the conditions upon which it might be invoked. Those conditions were fully met in the present case and no question is raised by appellants' counsel as to the propriety of the President's Proclamation of War. There is no indication in the debates or in the terms of the statute that the exercise of the power, when properly invoked, should cease until peace was made, and peace has not been made in the present case. If the construction of the statute contended for by appellants' counsel were adopted, the Executive would be powerless to carry out internment or deportation which was not exercised during active war and might be obliged to leave the country unprotected from aliens dangerous either because of secrets which they possessed or because of potential inimical activities. It seems quite necessary to suppose that the President could not carry out prior to the official termination of the declared state of war, deportations which the Executive regarded as necessary for the safety of the country but which could not be carried out during active warfare because of the danger to the aliens themselves or the interference with the effective conduct of military operations." (*United States ex rel. Kessler* v. *Watkins*, 163 F. 2d at 142–43.)

[12] It is suggested that a joint letter to the Chairman of a congressional committee by Attorney General Gregory and the Secretary of