Wabash College Moot Court Competition
Fall 2025 Participant's Guide

Preliminary rounds of the Competition will be on Saturday, October 25. Participants should report to Baxter Hall at 8:30 A.M.; room assignments will be available outside of Baxter 101. The First Round will begin at 9:00 A.M., and the Second Round will begin at 11:00 A.M. Each two-member team will argue in two rounds, once for Petitioners and once for Respondents. **To participate in this competition, you must sign up on the Microsoft form at this QR code:**

If you have problems signing up, please contact Jane Ann Himsel (jane.ann.himsel@gmail.com).

I. THE PARTIES:

Party	*Name before Trial Court*	***Result in Trial Court***	*Name in the Court of Appeals*	***Result in the Court of Appeals***	*Name in the Supreme Court*
A. ZEBRA., on their own behalf and on behalf of others similarly situated **B. GAZELLE,** on their own behalf and on behalf of others similarly situated	Petitioners	**Lost**	Appellants	**Won**	Respondents
DONALD J. TRUMP, in his official capacity as President of the United States, **PAMELA BONDI**, Attorney General of the United States, in her official capacity, et. al. ("the Government")	Respondents	**Won**	Appellees	**Lost**	Petitioners

II. THE PROBLEM:

A. This is a case about the power a federal statute, the Alien Enemies Act ("AEA"), grants to the President of the United States and the role of the federal courts – if any – in reviewing the President's exercise of such power to remove foreign nationals from the United States.

The Petitioners in the U.S. Supreme Court are members of the executive branch of the U.S. Government, including President Donald J. Trump ("Petitioners" or the "Government'). Respondents in the Supreme Court are A. Zebra and B. Gazelle, two Venezuelan nationals presently residing in the United States who are threatened with removal pursuant to the AEA ("Respondents").

The Alien Enemies Act ("AEA"), adopted in 1798, authorizes removal of "natives, citizens, denizens, or subjects of the hostile nation" if there is a "declared war" with a foreign nation or government, or a nation or government is engaged in an "invasion or predatory incursion" of territory of the United States. 50 U.S.C. § 21. President Trump invoked the AEA to remove Venezuelan nationals who are members of Tren de Aragua ("TdA"), a designated foreign terrorist organization ("FTO").

The President's March 2025 Proclamation ("the Proclamation") explained that

> TdA is 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.

Proclamation No. 10903 (Proclamation), 90 Fed. Reg. 13033, 13034 (March 14, 2025).

This litigation began after ICE detained Respondents on the basis that they were TdA members and held them in the Preserve Detention Center in Big Cat, Red State. Acting pursuant to 28 U.S.C. § 2241, the Respondents filed a writ of habeas corpus in the United States District Court for the Northern District of Red State, alleging they were about to be removed to El Salvador under the terms of the Proclamation. They disputed they belonged to TdA and argued the Proclamation was unlawful. They sued on behalf of themselves and all other noncitizens in custody in the Northern District of Red State who are or will be subject to the Proclamation. No class certification has occurred.

The Government contended "the AEA grants the President a near 'unlimited' authority to identify and countermand foreign invasions or predatory incursions." In its view, it is not for the courts to question the President's assertion that the actions of TdA members constitute an invasion or predatory incursion by a foreign government. Simply put, the President had the unlimited power to issue the proclamation and remove the Respondents pursuant to it. Respondents argued the AEA does not authorize President Trump's Proclamation.

The district court denied Respondents' motion for preliminary injunction against summary removal under the AEA. Respondents appealed to the United States Court of Appeals for the Fourteenth Circuit. The Fourteenth Circuit determined that Respondents had met all four factors necessary for obtaining a preliminary injunction. The Court issued two opinions contemporaneously. One opinion addressed three of the injunction factors – irreparable harm, balance of equities, and public interest. The other was limited to the first injunction factor: whether Respondents were likely to succeed on the merits of their habeas claim. Only that first injunction factor is at issue here. Specifically, the Supreme Court is asked to determine whether, and to what extent a court can review the President's invocation of the AEA. And if such review is possible, has President Trump provided a sufficient basis to invoke the AEA as authorization to remove Respondents from the United States.

B. The case is to be decided on the merits. The issue as stated in the petition for certiorari is:

(A) Whether, and, if so, to what extent, a court can review the President's invocation of the Alien Enemies Act ("AEA"), 50 U.S.C. § 21? (B) If a court can conduct such a review, whether the President provided a sufficient basis to invoke the AEA to authorize Respondents' removal from the United States?

III. DIVISION OF THE ARGUMENT:

A. Petitioners (the Government, including President Trump): The Court of Appeals is wrong and should be reversed.

1. First Petitioner's counsel: The Court of Appeals wrongly overturned the President's assessment that the TdA is perpetrating a predatory incursion against the United States. Determining whether the AEA preconditions are satisfied—whether there is a declared war, or "any invasion or predatory incursion" being "perpetrated, attempted, or threatened," 50 U.S.C. § 21—depends upon "matters of political judgment for which judges have neither technical competence nor official responsibility." *Ludecke v. Watkins*, 335 U.S. 160, 170 (1948). *Ludecke* instructs that a President's declaration of an invasion, insurrection, or incursion is conclusive and completely beyond the second-guessing powers of unelected federal judges. *See Id.* This reading of *Ludecke* is the only reading that accords with Supreme Court precedent. Indeed, the Executive always has conclusive power to find that an invasion, or similar hostility, is being perpetrated or threatened. *See, e.g., Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827) (1795 Militia Act); *Prize Cases*, 67 U.S. (2 Black) 635, 666 (1862) (inherent Article II powers). Courts have reached the same conclusion when *state* Executives have made that judgment call. *See, e.g., Sterling v. Constantin*, 287 U.S. 378, 387 (1932). The Court of Appeals misunderstood these cases. The other cases it cites do not support its conclusions.

2. Second Petitioner's counsel: The President has *zero* obligation to produce "findings of fact" to defend his conclusion that an actual or threatened war or invasion exists. Treating the President as an ordinary civil plaintiff is the opposite of what the AEA demands. Moreover, by treating the President's exercise of emergency powers under the AEA like any other dispute, the majority wrongly overrides him. The President is not subservient to the federal courts. Regardless of what courts say or do, the President must follow the law. *See* U.S. Const. art. II, § 3. But that obligation on the part of the President in no way implies any "authority" on the part of courts "to enforce" that obligation. *Trump v. CASA, Inc.*, 145 S. Ct. 2540, 2561 (2025). On the contrary, "the law" – like the AEA in this case – often "prohibits courts from doing so." *Ibid.* Third, It is not possible to conclude that the President's determination of predatory incursion is "manifestly" unreasonable in this case for at least three additional reasons: the President may have kept secret other facts to protect national security; under our constitutional order, judges must leave the responsibility for predictive judgments involving sensitive issues of national security "where the Congress has constitutionally placed it—on the President of the United States;" and there are significant facts in evidence suggesting what the TdA is doing actually is an invasion or predatory incursion.

B. Respondents (A. Zebra and B. Gazelle, et. al.): The Court of Appeals opinion is right and should be affirmed.

1. First Respondent's counsel: *Ludecke v. Watkins, 335 U.S. 160 (1948)* requires courts to interpret the AEA after the President has invoked it. Interpretation cannot be just an academic exercise, *i.e.*, a court makes the effort to define a term like "invasion" but then cannot evaluate the facts to determine if one has occurred. Rather, interpretation of the AEA allows a court to determine whether a Congressional declaration of war remains in effect, or whether an invasion or a predatory incursion has occurred. In other words, courts can decide those questions (i.e., they are "justiciable"). And the executive's determination that certain facts constitute one or more of those events is not conclusive. Additional cases interpreting the AEA, as well as cases interpreting other statutes like *Martin v. Mott*, 25 U.S. (12 Wheat.) 19 (1827) (1795 Militia Act), and *Sterling v. Constantin*, 287 U.S. 378, 387 (1932) (interpreting a Texas law while citing *Mott*) all support our findings regarding the appropriate scope of statutory interpretation under the AEA.

2. Second Respondent's counsel: Courts are obligated to engage in normal practices of statutory interpretation. Here, sources of contemporary meaning identified from dictionaries, the writings of those from the time period of the AEA's enactment, and the different requirements of the AEA and the Alien Friends Act, demonstrate that a "predatory incursion" described armed forces of some size and cohesion, engaged in something less than an invasion, whose objectives could vary widely, and are directed by a foreign government or nation. The success of an incursion could transform it into an invasion. In fact, it would be hard to distinguish some attempted invasions from a predatory incursion. In light of this understanding, the facts articulated in the President's Proclamation – the only facts properly under consideration here – do not support a finding that the TdA has engaged in a predatory incursion in the United States. Accordingly, Respondents are likely to prove that the President improperly invoked the AEA.

IV. OUTSIDE RESEARCH:

A. ***Outside research is NOT required.*** **Time is much better spent on understanding and refining the arguments presented than on doing outside research**. Suppress, if you can, the desire to find the "gotcha" or killer authority, statistic, or quotation. There's plenty of "ammunition" for the arguments in the two opinions you have.

B. The problem is based on *W.W.M, et. al. v. Trump, et. al.,* No. 25-10534 (5th Circuit Sept. 2, 2025). The case is currently pending rehearing en banc in the United States Court of Appeals for the Fifth Circuit. The actual case is differs procedurally and includes issues beyond the scope of this problem.

V. ORAL ARGUMENT PROCEDURE:

- You will argue before a panel of three judges, usually made up of a mixture of practicing attorneys, professors, and judges who have had moot court, trial, and appellate experience.

- Put your argument in a manila folder or a nice folder/padfolio. It is NOT a crutch. DO NOT READ FROM IT VERBATIM. Use it for reference and to keep your place in your argument. Your folder should contain relevant facts, summaries of legal authorities or concepts, and other pertinent information.

- When you enter the room, put your name and the side you will be arguing on the blackboard. If you are in a "courtroom" without a blackboard, the judges will ask your name and the respective side you are arguing and will write it on their evaluation sheets.

- The Petitioners (here President Trump and Attorney General Bondi) always argue first. When the judges ask if you are ready to proceed, respond "Yes, Your Honor."

- The introduction both sides should use is "May it please the Court. My name is _____, and I represent _____, the [Petitioners or Respondents] in this appeal." The Petitioners are allowed rebuttal and MUST reserve rebuttal time. Unless a judge asks you prior to the start of the round, you ask for rebuttal immediately after your introduction: "At this time, I would like to reserve (1 to 3) minutes of my time for rebuttal." That time will be deducted from the ten minutes of your first speech.

- You will be timed by one of the three (3) judges. The timekeeper will remind you how much time you have left. EACH person gets ten minutes. This may sound like an eternity, but it will go by quickly once you get into your argument. You will get a "5 minutes" left signal card, a "2 minutes" left signal card, "1 minute" left signal card, and finally a STOP card.

- When the STOP card is flashed, it means STOP regardless of where you are in your argument, but don't stop mid-sentence. The best way to handle this is to say, "I see my time has expired. May I have a moment to conclude?" The judge will then grant you additional time quickly to finish your thought and cut to your prayer. More about the prayer later.

- Pay respect to the Court. Be deferential, but assert your client's position. Never interrupt a judge – let him/her get the question out before you answer. Listen carefully to the question to ensure you are really answering it. Never get mad at a judge or be argumentative – be respectful and assertive. Converse with the judges – don't run over them with a truck and call it advocacy!

- Refer to each of the judges – regardless of gender, profession in the non-moot-court world, or age – as "your Honor" or "Justice (fill in the individual's last name)."

- DON'T talk too fast. Speak clearly and in a moderate tone of voice. Don't dance behind the lectern. It is distracting, unprofessional and makes you appear nervous and tentative. Appear confident and collected (even if you don't feel it). Be calm and alert – you'll be amazed with how much it will enhance your argument.

- Dress in a suit and tie. If you don't own a suit, please borrow a jacket and tie from a friend or from Career Services. Don't let lack of attire keep you from participating.

VI. PREPARING A SUCCESSFUL ARGUMENT:

- An oral argument has three parts – the introduction, the body of the argument, and the prayer.

- The Petitioners may briefly state the RELEVANT facts of the case which should only last about one to two minutes. They must be fair, but they can be slanted toward your theory of the case. Don't give facts not contained in the record. Do not be surprised if a judge asks a question before you get through your facts. If it happens, answer and move on with the argument. Your focus should, however, be on the APPLICATION OF THE LAW TO THE FACTS.

- The Respondents should do one of the following: (1) accept the Petitioners' statement of the facts; (2) make corrections in the Petitioners' statement of facts; (3) clarify or point out any ambiguity in the Petitioners' statement of the facts; or (4) make any necessary additions to the Petitioners' statement of the facts. Take issue with the facts to suit your theory of the case. Be brief! DON'T ARGUE THE FACTS: ARGUE THE LAW! That said, this case demands that all litigants have an excellent command of the relevant facts to make the most effective arguments. DO NOT MAKE UP FACTS. YOU MUST STAY WITHIN THE PROBLEM ITSELF.

- After introducing yourself, road map your argument for the judges. State the issues for the court to consider in clear, concise terms. For example: "There are three reasons our client should prevail. First, . . ." BE PERSUASIVE. That is the whole object of an appellate argument. Tell the Court why you should win. "The Court of Appeals erred in finding for the Respondents because…" or "the ruling of the Court of Appeals should be upheld because…" (The word "erred" is pronounced so that it rhymes with "bird").

- After you have "road mapped" your issues for argument, go back to point one and begin your analysis of each point/reason why you should win.

- When you end, offer a Prayer/Request: Tell the Court in one sentence what you want them to do for your client. "We respectfully request that this Court reverse/affirm the Court of Appeal's decision." After your prayer, close your folder and sit down.

- For rebuttal, do not be verbose. Only one of Petitioners' attorneys gives a rebuttal. Your rebuttal should include one or two strong points. Listen to the Respondents' argument closely to pick up on what the judges are questioning him about. If it favors your side, hit it hard in your rebuttal. An example might be the correction of a case that the Respondents did not analyze or apply correctly. Rebuttal is very important because it is a great way to win points.

- EYE CONTACT IS VERY IMPORTANT! Look directly at the judges as much as possible, especially when answering questions. This will also help you appear confident in your argument and enhance your overall advocacy style.

- The most important thing to keep in mind is that you are very familiar with your case, and you know what you are talking about. The best way to avoid feeling nervous is to prepare your argument well, think clearly, and HAVE FUN!

- The judges will give you feedback after the entire argument, including rebuttal, is complete. These helpful hints and comments will be invaluable in the next round.

VII. WHY SO MANY QUESTIONS?

- The judges will ask EVERYONE questions about the case. The purpose is not to humiliate or confuse you. To the contrary, the judges need your help in figuring out how to decide this case. That is why they ask questions. Also, in a moot court competition, they want to determine how well you know your material, how well you can think on your feet, and how well you respond and return to the flow of your argument.

- Anticipate what questions might be and prepare to respond to them. BUT don't try to write out answers and read them back. Answer the question briefly, and then get back into your argument. Remember, YOU control the flow of your argument as much as possible, so don't open yourself up to distractions and interruptions by silently fumbling around trying to figure out what to say next.

- Remember to listen to EACH question before you answer it. It may not be as difficult as you think. If you do not hear or do not understand what a judge is asking, it is acceptable to ask him/her to repeat the question so long as you do so politely and on a limited basis.