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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

YOSTIN SLEIKER GUTIERREZ-CONTRERAS,

Petitioner,

v.

WARDEN, DESERT VIEW ANNEX, *et al.*

Respondents.

No. 5:25-cv-00911-SSS-KES

RESPONDENTS' NOTICE OF MOTION AND MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER PURSUANT TO FRCP 65

Hearing Date: Not later than April 22, 2025, per Fed. R. Civ. P. 65(b)(4)
Ctrm: Riverside Courthouse, Ctrm. 2
Hon. Sunshine S. Sykes

NOTICE OF MOTION AND MOTION TO DISSOLVE TEMPORARY RESTRAINING ORDER

PLEASE TAKE NOTICE that, on April 22, 2025, or as soon thereafter as this motion may be heard, Respondents will, and hereby do, move this Court for an order dissolving the temporary restraining order issued on April 16, 2025 (Dkt. 7, 10). This motion will be made in the George E. Brown, Jr. Federal Building and Courthouse before the Honorable Sunshine S. Sykes, United States District Judge, located at 3470 Twelfth Street, Riverside, CA 92501.

Respondents bring the motion on the ground that the Court did not have jurisdiction to grant the Petition for TRO because Petitioner was already transferred to Texas at the time of the filing of the habeas petition and petition for TRO.

This motion is made upon this Notice, the attached Memorandum of Points and Authorities, and all pleadings, records, and other documents on file with the Court in this action, and upon such oral argument as may be presented at the hearing of this motion.

This motion is made following notice to the Petitioner on April 17, 205, pursuant to Federal Rule of Civil Procedure 65(b)(4)'s notice requirement for motions to dissolve, and, in an abundance of caution, notice appropriate for ex parte applications under Local Rule 7-19. Petitioner advised that he would oppose this motion and also opposes the Respondent's assertion that Rule 65(b)(4)'s 2 day timeline for dissolution of no-notice TRO's applies.

Dated: April 18, 2025

Respectfully submitted,

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Court should dissolve the temporary restraining order (TRO) issued on April 16, 2025 (Dk. 7) because the Court did not have jurisdiction to grant said order. At the time Petitioner filed the habeas petition and petition for TRO (collectively referred to as "the petitions"), Petitioner had already been transferred to Texas. Accordingly, the only appropriate forum to consider the petitions is in the Northern District of Texas.

Dissolution of the TRO pursuant to Fed. R. Civ. Proc. 65(b)(4) is proper considering that the petitions were not properly served, and the Court did not afford Respondents an opportunity to be heard on the subject. Instead, the Court characterized the petition for TRO as unopposed, which is not the case. Rather, had Respondents had an opportunity to respond, Respondents could have apprised the Court of the pertinent facts stripping this Court of jurisdiction to grant the TRO. Therefore, Respondents respectfully request that this Court dissolve the TRO and dismiss the petitions.

II. STATEMENT OF FACTS

A. Notice of the Habeas Petition and Petition for TRO

On April 14, 2025 at 11:30 a.m., Chad Pennington, Petitioner's counsel sent an e-mail asking the government's position regarding appointment of counsel to file a habeas corpus petition pursuant to 28 U.S.C. § 2241 for an order enjoining removal under the Aliens Enemy Act. *See* Declaration of Christina Marquez, "Marquez Decl." at ¶ 2. A few minutes later, at 11:41 a.m., Mr. Pennington sent a second e-mail adding that Petitioner planned to file a TRO and asked whether the government would oppose. *See id.* at 3. At 7:30 p.m. that same day, Complex and Defensive Litigation Section Chief, Joanne Osinoff responded that the government takes no position on the appointment of counsel, but stated that the government ***would oppose*** a TRO to enjoin/prevent removal. *See id.* at 4. Neither e-mail included a copy of the anticipated habeas petition or the petition for TRO. *See id.* at ¶¶ 2-3. Regardless, by this time, Petitioner had already filed the habeas petition and petition for TRO, but counsel did not bother to respond to Ms. Osinoff's e-

mail to inform her that they had already filed the subject petitions. *See id.* at ¶ 4.

On April 15, 2025 at 7:30 a.m., Mr. Pennington, in a separate matter involving Petitioner, *United States v. Gutierrez-Contreras*, Case No. 5:25-cr-00121-KK, sent an e-mail to Judge Kenly Kiya Kato's clerk asking for an emergency status conference because he learned that Petitioner had been transferred to Texas and also noted that he filed the subject petitions. *See id.* at ¶ 5.

On April 16, 2025, the Court granted Petitioner's petition for TRO without entering an order consistent with Appendix C of the Local Rules, which would have perfected service and/or affording Respondents an opportunity to be heard on the issue. *See* Dkt. 7.

B. Petitioner's Immigration Detention

On or about March 31, 2025, Petitioner was in U.S. Immigration and Customs Enforcement (ICE) custody at the Otay Mesa Detention Center in San Diego, California. *See* Declaration of Yousuf Khan, "Khan Decl." at ¶ 5. On or about April 2, 2025, Petitioner was transferred to the Desert View Annex in Adelanto, California. *See id.* at ¶ 5. On April 14, 2025, Petitioner was transferred from the Desert View Annex to the Bluebonnet Detention Center in Anson, Texas. *See id.* at ¶ 6. More specifically, Petitioner departed the Southern California Logistics Airport in Victorville, California at 9:10 a.m. PST on April 14, 2025. *See id.* Petitioner arrived at the Abilene Regional Airport in Abilene, Texas at 7:10 p.m. CST on April 14, 2025. *See id.* Petitioner is currently detained at the Bluebonnet Detention Center and is not scheduled for removal from the United States. *See id.* at ¶ 7.

III. LEGAL STANDARD

When a district court issues an ex parte temporary restraining order, the party against whom it was issued may move to dissolve it on two days' notice—or less, if the district court agrees. Fed. R. Civ. P. 65(b)(4).

Additionally, the Local Rules pertaining to the filing of habeas corpus petitions under 28 U.S.C. § 2241 states in pertinent part:

> To facilitate and assure timely service of process and to provide adequate time to answer habeas corpus petitions under 28 U.S.C. § 2241 and 28 U.S.C. § 2255, the Clerk of Court of the United States District Court for the Central District of California and the United States Attorney's Office of the Central District of California agree to the following procedures. This agreement addresses cases in which the United States District Judge or Magistrate Judge determines that service documents are to issue in all cases where petitioners have filed habeas corpus petitions under 28 U.S.C. § 2241 and motions under 28 U.S.C. § 2255.
> Pursuant to the Rules 4 and 5 Governing § 2254 Cases and 28 U.S.C. § 2243, following preliminary review by the Court, ***the respondent is only required to answer or otherwise respond to the petition if ordered to do so by the court. In its order the Court will fix the time by which response must be made. The Attorney General agrees that entry of the order to respond on the docket by the clerk complies with the requirement of service of the petition on the respondent, the Attorney General, or other appropriate officer and will accept service of the same.***

See Appendix C of the Local Rules for the Central District of California.

Notice doesn't serve "its full purpose" if it doesn't precede a hearing at which a party can oppose the deprivation of which the notice warns. *See Fuentes v. Shevin*, 407 U.S. 67, 81(1972).

IV. ARGUMENT

A. A request for dissolution under FRCP 65(b)(4) is appropriate because Respondents were not served and not afforded an opportunity to respond

Petitioner has completely circumvented the notice and service requirements outlined in the Local Rules and appears to take an untenable position that Respondents were properly served and on notice of the TRO based on e-mails, neither of which attached the actual petitions, and one e-mail in a separate criminal matter, which cited to this case. Allowing this to constitute proper notice or service obliterates the purpose of these requirements and is hardly adequate. *See Mannarino v. Fay Servicing, LLC.*, 2015 WL 13917670, at *3 (C.D. Cal. April 15, 2015) (noting that precedent authorizes a denial of a TRO on notice grounds alone and citing to cases where TROs were denied because Defendants were not provided with a copy of the TRO and/or the notice rules were not complied with).

Further, Respondents did not comply with L.R. 7-19, which requires a memorandum setting forth the reasons for the ex parte application. In fact, the Court noted this in the order granting the TRO. *See* Dkt. 7, at fn. 1 ("The Court reminds Petitioner of the importance of articulating the ex parte standard in any future application at the risk of denial").

Additionally, the Court did not enter an order in accordance with Appendix C, which would have perfected service of the petitions on Respondents and/or afford Respondents' an opportunity to be heard prior to granting the TRO. *See Grande v. Baca*, 2014 WL 4627241, at *1 (C.D. Cal. Sept. 16, 2014) (entering a TRO after noting that Defendants had full notice of the Order and an opportunity to respond); *see also Black Lives Matter Los Angeles v. City of Los Angeles*, 2021 WL 3163306, at *1 (C.D. Cal. April 28, 2021)(entering a TRO after noting that Defendants had an opportunity to be heard during a hearing).

B. The Court did not have jurisdiction to grant the TRO

A habeas petition brought under 28 U.S.C. § 2241 challenging detention must be brought against the immediate custodian and filed in the district in which the petitioner is detained. The Supreme Court has made clear that in "core" habeas petitions—that is, petitions like the instant one that challenges the petitioner's present physical confinement—the petitioner must file the petition in the district in which he is confined (that is, the district of confinement) and name his warden as the respondent. *See Rumsfeld v. Padilla*, 542 U.S. 426, 437 (2004).

In *Padilla*, the Supreme Court described habeas petitions challenging a petitioner's present physical confinement (i.e., detention) as "core" habeas petitions. *Id.* at 445. For review of such "core" petitions, "jurisdiction lies in only one district: the district of confinement." *Id.* at 443. Accordingly, "[w]henever a § 2241 habeas petitioner seeks to challenge his present physical custody within the United States, he should name his warden as respondent and file the petition in the district of

confinement."[1] *Id.* at 447; see id. at 443 (explaining that "[t]he plain language of the habeas statute thus confirms the general rule that for core habeas petitions challenging present physical confinement, jurisdiction lies in only one district: the district of confinement").

The Ninth Circuit has applied *Padilla* in the immigration context, with respect to habeas petitions just like this one. *See, e.g., Doe v. Garland, et al.*, 2024 WL 1251170, at *1 (9th Cir. July 29, 2024)(holding that Warden of private detention facility at which immigrant was being held was proper respondent).

Further, the Supreme Court has recognized a "limited" exception to the district-of-confinement rule, namely, only "when the Government moves a habeas petitioner *after* she properly files a petition naming her immediate custodian." *Id.* at 441 (emphasis added) (discussing *Ex Parte Endo*, 323 U.S. 283 (1944)); *see Argueta Anariba v. Dir. Hudson Cty. Corr. Ctr.*, 17 F.4th 434, 446 (3d Cir. 2021) ("Our precedent likewise reflects an adherence to the general rule articulated in Endo, that the government's post-filing transfer of a § 2241 petitioner out of the court's territorial jurisdiction does not strip the court of jurisdiction over the petition."). Under those circumstances, the court where jurisdiction originally vested may retain the case. *See Argueta Anariba*, 14 F.4th at 446 (collecting cases).

This limited exception does not apply here because Petitioner was already released from Desert View Annex and transferred to Texas at the time the Petitioner filed the instant petitions. Petitioner filed the petitions sometime in the afternoon of April 14, 2025, however, Petitioner was transferred from Desert View Annex in Adelanto, California at approximately 9:00 in the morning.

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[1] In adopting the "immediate custodian" rule, the Supreme Court rejected the "legal reality of control" standard and held that legal control does not determine the proper respondent in a habeas petition that challenges present physical confinement. *See Padilla*, 542 U.S. at 437-39; *see also id.* at 439 ("In challenges to present physical confinement, we reaffirm that the immediate custodian, not a supervisory official who exercises legal control, is the proper respondent.").

Accordingly, the "default rule" articulated in *Padilla* controls here. 542 U.S. at 435. Because the petitions filed here are improper, no court has yet had proper habeas jurisdiction over this matter. And the only place where habeas jurisdiction would be proper today is the Northern District of Texas. This is because "jurisdiction lies in only one district: the district of confinement," *Padilla*, 542 U.S. at 443, and in this case, it is the Northern District of Texas. *See, e.g.*, *Burkey v. Marberry*, 556 F.3d 142, 146 (3d Cir. 2009) (noting that the petitioner, who challenged the BOP's determination that he was ineligible for early release, had "appropriately filed his habeas corpus petition in the district of confinement"); *Furnari v. U.S. Parole Comm'n*, 531 F.3d 241, 255 (3d Cir. 2008) ("28 U.S.C. § 2241 allows habeas corpus petitions to be brought . . . in the district in which the petitioner is confined."); *Yi v. Maugans*, 24 F.3d 500, 503 (3d Cir. 1994) ("A district court's habeas corpus jurisdiction is territorially limited and extends only to persons detained and custodial officials acting within the boundaries of that district.") (citations omitted); *see also United States v. Means*, 572 F. App'x. 793, 794 (11th Cir. 2014) (refiled petition should be filed in district where petitioner "currently incarcerated"); *Magee v. Clinton*, 2005 WL 613248, at *1 (D.C. Cir. 2005) (similar); *United States v. Little*, 392 F.3d 671, 680 (4th Cir. 2004) (similar).

V. CONCLUSION

The well-settled "jurisdictional rules" that govern habeas proceedings compel that this case must be heard in one forum, and one forum only: The Northern District of Texas, where Petitioner is now being held. For the foregoing reasons, the Court should dissolve the temporary restraining order and dismiss the petitions for lack of jurisdiction.

Dated: April 18, 2025

Respectfully submitted,

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