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**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION**

YOSTIN SLEIKER GUTIERREZ-  
CONTRERAS,

Petitioner,

v.

WARDEN, Desert View Annex, *et al.*

Respondents.

No. CV 5:25-911-SSS (KES)

**PETITIONER'S OPPOSITION TO  
RESPONDENTS' MOTION TO  
DISSOLVE TEMPORARY  
RESTRAINING ORDER:  
DECLARATION OF COUNSEL;  
EXHIBIT A**

## I.INTRODUCTION

Respondents moved to dissolve the TRO on the ground that this Court lacked power over Mr. Gutierrez-Contreras because Respondents moved him out of this district hours before the petition was filed. But after Respondents filed their motion to dissolve, **Respondents returned Mr. Gutierrez-Contreras to the Central District.** Because Petitioner is now within the Central District, the basis of Respondents' motion is now moot.

But even if Respondents' movements of Mr. Gutierrez-Contreras presented a jurisdictional problem for this petition, it would be of no moment. Because Respondents have not agreed to drop their jurisdictional objections to this petition, counsel filed a new petition yesterday--after Mr. Gutierrez-Contreras's return to the Central District--that raises identical claims. *See* CV No. 5:25-965 (the "-965 Petition"). Because Mr. Gutierrez-Contreras was within the Central District when this second petition was filed, there can be no dispute that the new petition suffers no defect of jurisdiction or venue.

In sum, whether through this petition or the -965 Petition filed yesterday, this Court has jurisdiction over Mr. Gutierrez-Contreras's claims. If the government will agree to waive its jurisdictional objection in light of Mr. Gutierrez-Contreras's presence in the district, he will dismiss the new petition. But if the government will not waive its objection and the Court believes that a jurisdictional flaw undermines the current TRO, it should simply enter the same TRO in the new case and conduct further proceedings there.

Because substance of Respondents' motion is mooted by Mr. Gutierrez-Contreras's return, Respondents' procedural objections regarding the issuance of the TRO are beside the point. Nonetheless, Petitioner objects to Respondents' suggestion that the Court or Petitioner acted improperly: to the contrary, **Respondents plainly had notice of the TRO.** In advance of filing, Petitioner's counsel notified government counsel of the planned petition and TRO; upon filing, the U.S. Attorney's Office was

1 automatically sent a copy of each; and the morning after filing, petitioner's counsel  
2 emailed Respondents' counsel--the very attorney who filed the instant motion to  
3 dissolve--the assigned case number.

4 For all of these reasons, this Court should deny the government's motion to  
5 dissolve. If this Court is nonetheless inclined to grant the motion, it should enter the  
6 same TRO in CV 5:25-965.

## 7 II. FACTUAL BACKGROUND

8 Around 11:30 a.m. April 14, 2025, Deputy Federal Public Defender Chad  
9 Pennington notified Assistant United States Attorneys Christina Marquez and Joanne  
10 Osinoff via email that he intended to file a petition under 28 U.S.C. § 2241 challenging  
11 petitioner's removal under the AEA, and that he would also be seeking a temporary  
12 restraining order. (Declaration of David Menninger, attached, ¶ 2.) Although he asked  
13 for a position on the temporary restraining order, neither government attorney  
14 responded by the time he filed the TRO request around 5 p.m. (Menninger Decl. ¶ 3.)  
15 According to the Court's electronic case filing system, copies of all filings in that  
16 matter are automatically sent to an email address associated with the Central District's  
17 U.S. Attorneys' Office.

18 At approximately 7:30 a.m. on April 15, 2025, DFPD Pennington sent an email  
19 to the chambers of Hon. District Judge Kenly Kiya Kato, who is presiding over the  
20 parallel criminal case involving Mr. Gutierrez-Contreras. (Menninger Dec. ¶ 4; Exhibit  
21 A.) DFPD Pennington copied AUSA Marquez on that email. (*Id.*) In the body of that  
22 email, DFPD Pennington stated that Mr. Gutierrez-Contreras had apparently been  
23 moved to Texas. (*Id.*) That email--which, again, was also sent to AUSA Marquez--  
24 explained that the instant petition and application for TRO had been filed, and provided  
25 the case number. (*Id.*) AUSA Marquez represents the government in the criminal matter  
26 and the Respondents in the instant matter.

27 Despite having notice of the TRO application and the civil case number,  
28 Respondents did not file a response. On April 16, 2025, well over 24 hours after DFPD

1 Pennington provided the civil case number to AUSA Marquez, this Court issued a  
2 TRO. (Menninger Decl. ¶ 5.) Petitioner's counsel immediately sent the TRO to  
3 Respondents' counsel. (*Id.*) Because Respondents' counsel disputed the meaning of the  
4 TRO, Petitioner's counsel--after notifying Respondents' counsel--sought clarification  
5 of that order. (Dkt. 9.) On April 17, 2025, the Court granted the request to clarify the  
6 TRO. (Dkt. 10.)

7 On April 18, 2025, Respondents filed a motion to dissolve the TRO. (Dkt. 12.) In  
8 that motion, Respondents asserted that they had moved Mr. Gutierrez-Contreras out of  
9 the Central District hours before the petition was filed. (*Id.*) This fact, Respondents  
10 argued, deprived this Court of jurisdiction over the petition. (*Id.*)

11 On April 19, 2025, Petitioner's counsel learned that Mr. Gutierrez-Contreras was  
12 being returned to the Central District. (Menninger Decl. ¶ 6.) Yesterday, April 20, 2025,  
13 Petitioner's counsel confirmed that Mr. Gutierrez-Contreras had in fact been returned to  
14 the District and was being held at Desert View Annex in Adelanto, California. (*Id.* ¶ 7.)  
15 As of this writing, however, Respondents have not agreed to drop their jurisdictional  
16 objections to the instant petition. Accordingly, out of an abundance of caution,  
17 Petitioner's counsel filed a new petition yesterday, when Petitioner was unquestionably  
18 detained in the Central District ("the -965 Petition"). *Gutierrez-Contreras v. Warden*, CV  
19 5:25-965, Dkt. 1.<sup>1</sup> As Petitioner's counsel explained in the -965 Petition, if Respondents  
20 drop their jurisdiction and venue objections to the instant petition and TRO, Petitioner  
21 will dismiss the -965 Petition and proceed in this case. *See Khalil v. Joyce*, \_\_ F. Supp.  
22 3d \_\_, 2025 WL 972959, at \*24 (D.N.J. Apr. 1, 2025) ("A respondent-custodian can  
23 choose to waive objections to personal jurisdiction.").

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<sup>1</sup> Petitioner also filed a Notice of Related Cases. CV 5:25-965, Dkt. 3.

### III. ARGUMENT

#### A. Mr. Gutierrez-Contreras's return to the Central District moots the government's motion to dissolve

Respondents' motion to dissolve is premised on the fact that, at the time that motion was filed, Mr. Gutierrez-Contreras was no longer in the Central District. But there is no dispute that he is back in the Central District now. And the very authorities that Respondents rely on make clear that "jurisdiction lies in only one district: the district of confinement." *Rumsfeld v. Padilla*, 542 U.S. 426, 443 (2004). As the Central District is now the district of confinement, jurisdiction lies here.

Despite Mr. Gutierrez-Contreras's return, Respondents have not dropped their jurisdictional objections. But Respondents have cited no case holding that a Court lacks jurisdiction over a petition whisked out of the district just before filing but then returned.

Regardless, the jurisdictional dispute is largely academic because Mr. Gutierrez-Contreras already filed a new petition in this District after Respondents returned him here: the -965 Petition. There is no dispute that jurisdiction is proper as to the -965 Petition because Mr. Gutierrez-Contreras was detained in this district, at Desert View Annex in Adelanto, at the time it was filed. Indeed, Respondents' position is now that this Court should dismiss the instant petition and proceed in the -965 Petition. Thus, if the Court has any doubts about its jurisdiction to proceed with this petition, it should simply enter the same TRO with respect to the -965 Petition and conduct all further proceedings in that case.<sup>2</sup>

#### B. Respondents had notice of the TRO

Because the Respondents' substantive objection to the TRO is moot, this Court need not delve into Respondents' procedural objections. But the record must be

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<sup>2</sup> Should the Court choose this route, Petitioner asks that this Court issue the TRO in the -965 Petition before, or at the same time, that it dismisses the instant petition, so that Mr. Gutierrez-Contreras is never without the TRO's protection.



corrected: Respondents' unquestionably had notice of the TRO request before, when, and after it was filed. Specifically, the same government attorney that filed the motion to dissolve was personally contacted by email before the application was filed and informed that the application would be forthcoming. Respondents note that petitioner's counsel did not send a copy of the TRO application to respondents' counsel. That is technically correct. But petitioner's counsel did send an email to respondents' counsel--over 24 hours before this Court issued the TRO--stating that the TRO request had been filed and providing the case number. In other words, Petitioner's counsel unquestionably notified Respondents' counsel that the TRO application had been filed and provided all the information that Respondents' counsel needed to access it. Further, the TRO application was automatically sent to a U.S. Attorneys' Office email address. Any suggestion that Respondents did not have notice or a chance to respond to the TRO application is, therefore, simply false.

#### IV. CONCLUSION

This Court should deny the government's motion to dissolve the TRO because Respondents' jurisdictional objections have been mooted by Petitioner's return to the Central District. But if the Court has any doubt over its jurisdiction over the instant petition, it should issue the same TRO in the -965 Petition and conduct further proceedings in that case.

Respectfully submitted,

CUAUHTEMOC ORTEGA  
Federal Public Defender

DATED: April 21, 2025

By /s/ David Menninger

DAVID MENNINGER  
Deputy Federal Public Defender  
Attorney for Mr. GUTIERREZ-CONTRERAS

**DECLARATION OF DAVID MENNINGER**

I, David Menninger, hereby state and declare as follows:

1. I am a Deputy Federal Public Defender in the Central District of California. I represent Petitioner Yostin Sleiker Gutierrez-Conteras along with my colleague DFPD Chad Pennington.

2. On April 14, 2025, around 11:30 a.m., DFPD Pennington sent an email to AUSAs Christina Marquez and Joanne Osinoff stating his intention to file a petition under 28 U.S.C. § 2241 challenging Petitioner's removal under the Alien Enemies Act. In follow-up email sent a few minutes later, DFPD Pennington stated that he would also be filing an application for a TRO and asked for the government's position.

3. The petition and application for a TRO were filed shortly after 4 p.m. on April 14, 2025. At the time of filing, neither AUSA Marquez nor AUSA Osinoff had responded to DFPD Pennington's email. A few hours after TRO application was filed, AUSA Osinoff replied to DFPD Pennington indicating that she opposed the TRO.

4. Around 7:30 a.m. the next morning, April 15, 2025, DFPD Pennington emailed the chambers of Hon. Kenly Kiya Kato and copied AUSA Marquez on the email. In that email, DFPD Pennington stated that he had filed the instant habeas petition and request for TRO and provided the case number. Specifically, he stated that Mr. Gutierrez Contreras "has filed a request for a temporary restraining order and Sec. 2241 relief in 5:25-cv-911, *Gutierrez-Conteras v. Warden, et. al.*" Citing to the ICE detainee locator, DFPD Pennington further stated that Mr. Gutierrez-Conteras had been moved to an immigration facility in Anson, Texas. A copy of that email is attached to this declaration as Exhibit A.

5. This Court issued a TRO at about 2:29 p.m. the next day, April 16, 2025. That same day, I sent a copy of the TRO to AUSA Osinoff.

6. In the morning of April 19, 2025, I received a phone call from a family member of Mr. Gutierrez-Conteras saying that he was being moved out of the Texas

1 immigration facility. I asked AUSA Marquez for more information, and she informed  
2 me that Respondents were returning Mr. Gutierrez-Contreras to California.

3 7. In the morning of April 20, 2025, ICE's online detainee locator indicated  
4 that Mr. Gutierrez-Contreras was in fact back at the Desert View Annex in the Central  
5 District. I also confirmed with Mr. Gutierrez-Contreras family member who informed  
6 me that she had spoken with him at Desert View Annex.

7 8. I conferred with AUSA Marquez regarding whether Respondents would  
8 maintain their jurisdictional objections to the instant petition in light of Mr. Gutierrez-  
9 Contreras's return to the Central District. I understood that Respondents would be  
10 maintaining their objections.

11 9. Out of an abundance of caution, on April 20, 2025, DFPD Pennington and  
12 I filed a new petition raising essentially identical claims to the instant petition. We also  
13 filed a notice of related cases stating that the new case is identical and related to the  
14 instant case. Shortly after filing, I emailed a filed copy of the new petition to AUSA  
15 Marquez.

16 10. On April 21, 2025, AUSA Marquez sent me an email in which she  
17 reiterated that she maintained her jurisdictional objections to the instant petition and  
18 that, in her view, the better course would be to dismiss the instant petition and proceed  
19 under the new case.

20 11. In response, I asked AUSA Marquez if we could agree to a stipulation that  
21 the Court should issue the TRO in the -965 Petition and dismiss the instant petition. As  
22 of this writing, respondents have not said if they will agree to such a stipulation.

23  
24 I declare that the foregoing is true and correct to the best of my knowledge.

25  
26 DATED: April 21, 2025

s/ David Menninger  
DAVID MENNINGER  
Deputy Federal Public Defender