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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

YOSTIN SLEIKER GUTIERREZ-CONTRERAS,

Petitioner,

v.

WARDEN, DESERT VIEW ANNEX, ANDRE QUINOES, ICE FIELD OFFICE DIRECTOR; TODD M. LYONS, ACTING DIRECTOR OF ICE; KRISTI NOEM, SECRETARY OF HOMELAND SECURITY; PAM BONDI, ATTORNEY GENERAL; DONALD J. TRUMP, PRESIDENT OF THE UNITED STATES, in their official capacities.

Respondent(s).

Case No. 25-cv-965-SSS

PETITION FOR A PRELIMINARY INJUCTION REQURING 14-DAY NOTICE PRIOR TO ANY REMOVAL UNDER THE ALIEN ENEMIES ACT.

HEARING TIME AND DATE: 1:00 p.m., May 9, 2025.

Petitioner Yostin Sleiker Gutierrez-Contreras, through counsel of record Deputy Federal Public Defenders Chad Pennington and David Menninger, submits this application, requesting the Court issue a temporary restraining order as set forth below pursuant to Federal Rule of Civil Procedure 65(a). Petitioner submits this request consistent with the Court's briefing schedule. *See* ECF No. 11. The hearing on the instant request is scheduled for May 9, 2025, at 1:00 p.m.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: May 7, 2025

/s/ Chad Pennington

Chad Pennington
Deputy Federal Public Defender
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I. INTRODUCTION

Petitioner Yostin Sleiker Gutierrez-Contreras requests that the Court issue a limited preliminary injunction providing the same relief it has already provided in the form of a temporary restraining order: an order prohibiting Respondents from expelling him from the United States under the Alien Enemies Act (AEA) without providing 14 days' notice of its intent to do so and preventing Respondents from transferring him from the Adelanto facility or outside the Central District of California without the approval of the Court. *See* ECF No. 8. While there are ample reasons to doubt that Respondents can summarily remove individuals under the AEA based on an alleged and disputed membership in Tren de Aragua—indeed, courts across the country have unanimously rejected this claim[1]—the Court need not reach those issues at this stage. For now, Mr. Gutierrez-Contreras requests only what the Supreme Court has made clear is required and to which he is entitled: "[N]otice . . . afforded within a reasonable time and in such a manner as will allow [him] to *actually* seek habeas relief in the proper venue before . . . [expulsion] occurs." *Trump v. J.G.G.*, 145 S. Ct. 1003, 1006 (2025) (emphasis added).

This measured relief will ensure that further litigation over the applicability of the AEA can proceed in an orderly fashion. The 14-day notice

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[1] *See G.F.F. v. Trump*, No. 1:25-cv-2886, ECF No. 84, p. 2 (S.D.N.Y. May 6, 2025) (ruling that "the Presidential Proclamation, in mandating removal without due process, contradicts the AEA," and that Respondents "have not demonstrated the existence of a 'war,' 'invasion,' or 'predatory incursion'" sufficient to invoke the AEA); *D.B.U. v. Trump*, No. 1:25-1163, ECF 52, p. 21 (D. Colo. May 6, 2025) (ruling that "the Proclamation exceeds the scope of the [AEA]"); *J.A.V. v. Trump*, 1:25-CV-072, ECF No. 58, p. 36 (S.D. Tex. May 1, 2025) (ruling that the Petitioners "are each entitled to the granting of their Petition for a Writ of Habeas Corpus, and a permanent injunction prohibiting Respondents from employing the Proclamation and the AEA against them.")

period that Mr. Gutierrez-Contreras requests is shorter than what has been ordered elsewhere. *See D.B.U. v. Trump, et al.*, --- F. Supp. 3d --- 2025 WL 1163530, *1, 14 (D. Colo. April 22, 2025) (requiring the government to provide 21 days' notice). And the government's claim that only 12 to 24 hours' notice is necessary to prepare and litigate a habeas petition raising novel and complex issues cannot possibly be squared with *J.G.G.* A notice period of mere hours would act only to frustrate the ability of Mr. Gutierrez-Contreras to obtain meaningful judicial review of the government's unprecedented actions.

The Court should, therefore, enter a preliminary injunction that grants Mr. Gutierrez-Contreras the same relief currently provided by the temporary restraining order.

II.BACKGROUND

A. Procedural Background.

On March 14, 2025, President Donald J. Trump proclaimed "that all Venezuelan citizens 14 years of age or older who are members of TdA [Tren de Aragua], [and] within the United States, and are not actually naturalized or lawful permanent residents of the United States are liable to be apprehended, restrained, secured, and removed as Alien Enemies." *See* the White House, Presidential Proclamation, March 14, 2025, https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-aragua/ (last accessed April 14, 2025). The proclamation states that the President's removal authority is vested pursuant to the AEA. In *United States v. Guiterrez-Contreras*, 5:25-CR-121-KK (C.D. Cal. 2025), a now-dismissed criminal case against Petitioner, the government claimed that Petitioner is a member of TdA. *See generally*, Complaint, ECF No. 1. Petitioner is 14 years-of age-or-older.

On April 14, 2025, Respondents transported Petitioner from this District to the Bluebonnet Detention Facility in the Northern District of Texas—a facility that was used as a staging area for potential removals under the AEA. *E.g.*, *G.F.F.*, 1:25-cv-2886, ECF No. 84, p. 3 (S.D.N.Y.). After the Supreme Court issued an order prohibiting the government from removing individuals detained in the Northern District of Texas under the AEA, *see A.A.R.P. v. Trump*, 145 S. Ct. 1034, 1034 (2025), Respondents transported Petitioner back to this District, where he remains.

This came after Respondents had already removed similarly situated persons from the United States to El Salvador, and indefinite incarceration in the notorious CECOT prison. *See id.*; *see also* April 18, 2025, Supreme Court Application 24A1007, p. 7 n.4. (reporting that on March 15, 2025, "at least 137 Venezuelans were removed under the AEA to the CECOT prison in El Salvador"). Indeed, Mr. Guiterrez-Contreras' case is similar to the numerous cases pending before federal courts, challenging the President's TdA proclamation. This comes after a first wave of removals where more than 130 persons were removed to CECOT in El Salvador, where those persons remained imprisoned with no release date.

Mr. Gutierrez-Contreras, through counsel, filed the instant petition on April 20, 2025. (Dkt. 1.) This Court issued a temporary restraining order requiring Respondents to provide 14 days' notice to Mr. Gutierrez-Contreras and counsel prior to attempting to remove him under the AEA. The order explicitly stated that it does not limit Respondents' ability to remove him pursuant to an order lawfully issued under the INA. The order also prohibits Respondents from transferring Mr. Gutierrez-Contreras outside of the District.

B. The government's proposed notice procedures.

Since this Court issued its TRO, Respondents claim to have developed notice procedures for AEA removals. (Lara Decl. ¶ 3, ECF No. 16.2). Those procedures are strikingly limited and primarily involve serving an individual with a one-page notice. The form is written in English, though Respondents claim that it will be read aloud in a language the person understands. The notice states—without any supporting details—that the person is subject to removal under the AEA and the President's Proclamation.

The notice does not say that the person can seek judicial review of the AEA by filing a habeas petition in the district of his confinement, even though the Supreme Court has squarely held that such review must be provided if requested. *J.G.G.*, 145 S. Ct. at 1006. Indeed, it does not even say that the person has *any* right to challenge his removal. Instead, the notice contains only the following vague statement: "If you desire to make a phone call, you will be permitted to do so." ECF No. 18, p.3. Nowhere does the notice say that the person has the right to consult with an attorney. And even when Respondents know that an individual is represented by counsel, they have not committed to providing notice directly to the person's attorney.

Respondents do not dispute that their procedures allow individuals to be removed under the AEA within *hours* of receiving the notice—indeed, they embrace that possibility. They concede that if an individual "has not expressed any intent to file a habeas petition"—again, a form of relief that is nowhere mentioned in the notice—"removal can proceed" within as little as 12 hours. If the individual manages to "expresses an intent to file a habeas petition," Respondents promise to wait 24 hours, which they claim is enough time for the individual not only to successfully communicate with counsel, but for counsel to prepare and file the habeas petition addressing a novel theory of expulsion under the AEA.

Once a habeas petition is filed, Respondents claim—at least in this case—that they will not pursue an AEA removal for as long as the habeas petition is pending. Lara Decl. ¶ 12, ECF No. 16.2. But in other AEA cases, the government's commitment has been less categorical. For example, in a declaration filed in litigation in Texas, another ICE AFOD, Carlos Cisneros, said only that Respondents would not remove individuals during habeas proceedings "in a general case," and that they reserved the right to proceed with removal in "fact-specific exceptional cases," if a TRO is denied or if, the habeas proceedings take longer than the government deems "reasonable."

> 12. In nearly every case in which an alien files a habeas petition based on detention related to the AEA, the alien also seeks a Temporary Restraining Order (TRO). The TRO request is typically adjudicated quickly, sometimes within hours of being filed. Although there may be fact-specific exceptional cases, in a general case, ICE will not remove under the AEA an alien who has filed a habeas petition while that petition is pending. However, ICE may reconsider that position in cases where a TRO has been denied and the habeas proceedings have not concluded within a reasonable time.

Declaration of Carlos Cisneros, ¶ 12., Dkt. 49, *J.A.V. v. Trump*, 1:25-cv-72 (S.D. Tex. April 24, 2025).

In an attempt to gain clarity, Petitioner's counsel has inquired whether Respondents will stipulate to foregoing any attempt to remove Mr. Gutierrez-Contreras during the pendency of this habeas petition. As of this writing, Respondents' counsel has not agreed to so stipulate. *See attached* Counsel Declaration of Chad Pennington, DFPD.

III. LEGAL AUTHORITY

Similar to a temporary restraining order, to obtain a preliminary injunction, a party must show: (1) a likelihood of success on the merits; (2) a likelihood of irreparable harm to him in the absence of preliminary, equitable relief; (3) that the balance of equities tips in his favor as the movant; and (4) that an injunction is in the public interest. *See Winter v. Natural Res. Def.*

Council, Inc., 555 U.S. 7, 20 (2008). The court may also apply a sliding scale test, in which the elements of the *Winter* test are balanced "so that a stronger showing of one element may offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). The moving party has the burden of persuasion. *Hill v. McDonough*, 547 U.S. 573, 584 (2006). Though an extraordinary remedy, a preliminary injunction is necessary where the plaintiff has demonstrated a clear showing of an entitlement to such relief. *See Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1127 (9th Cir. 2009) (citing *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997)).

IV. ARGUMENT[2]

This Court should convert the TRO to a preliminary injunction. Mr. Gutierrez-Contreras satisfies all four prongs of the preliminary injunction standard with respect to his request for an order requiring two weeks' notice prior to any attempted removal in the absence of a removal order issued under the INA. Moreover, this Court has the authority to enter an order prohibiting Respondents from moving him outside this District during the pendency of this action.

Although Respondents devote much of their opposition to defending the substance of their claimed authority to summarily remove members of TdA under the AEA, the arguments are premature and wrong in any event. Mr. Gutierrez-Contreras vigorously disputes that Respondents have legal authority to invoke the AEA against TdA members and notes that they have not submitted any evidence that he is even a member of TdA. *See J.G.G.*, 145 S. Ct. at 1006 ("[A]n individual subject to detention and removal under that statute is entitled to judicial review as to questions of interpretation and

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[2] Respondents do not contest that jurisdiction and venue are proper in the Central District of California.

constitutionality of the Act as well as whether he or she is in fact an alien enemy.") (cleaned up). But the Court need not decide those issues now. All Mr. Gutierrez-Contreras is seeking at this preliminary stage is notice prior to any attempted AEA removal and an order keeping him in the district so that he can litigate the merits of his claims in an orderly fashion.[3]

A. This Court should convert the TRO to a preliminary injunction requiring 14 days notice prior to any AEA removal.

At this stage, Mr. Guiterrez-Contreras is not asking for anything beyond what the Supreme Court has stated he is entitled: reasonable notice to contest expulsion under a rarely invoked statute that Respondents have already used to condemn other Venezuelans to indefinite custody in a brutal foreign prison. *See J.G.G.*, 2025 WL 1024097, at *5 (Sotomayor, J., dissenting) ("[I]nmates in Salvadoran prisons are 'highly likely to face immediate and intentional life-threatening harm at the hands of state actors.'").

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[3] Respondents argue that Mr. Gutierrez-Contreras lacks "standing" to seek a preliminary injunction because he has not yet been "designated" as an "alien enemy." (Dkt. 15 at 15.) The argument is puzzling. The very purpose of the preliminary relief Mr. Gutierrez-Contreras seeks is to ensure that Respondents actually provide him with sufficient notice if they intend to attempt to remove him under AEA—notice they failed to provide to the more than 200 other Venezuelans that have already been summarily removed to El Salvador. That Respondents have not provided that notice even though it appears clear they already took steps toward removing him under the AEA—by transferring him to the Bluebonnet detention center in Texas before the process was stopped by this Court's TRO and the later order of the Supreme Court—is precisely the problem he seeks to address. Petitioner discusses this issue further in demonstrating that, contrary to Respondents' assertions, he risks irreparable harm absent the injunction.

1. Mr. Guiterrez-Contreras is likely to succeed on the merits of his claim to notice.

There can be no dispute that Mr. Gutierrez-Contreras is entitled to reasonable notice prior to any attempt by the government to remove him under the AEA. As the Supreme Court made clear in *J.G.G.*:

> "It is well established that the Fifth Amendment entitles aliens to due process of law" in the context of removal proceedings. *Reno v. Flores*, 507 U. S. 292, 306 (1993). So, the detainees are entitled to notice and opportunity to be heard "appropriate to the nature of the case." *Mullane v. Central Hanover Bank & Trust Co.*, 339 U. S. 306, 313 (1950). More specifically, in this context, AEA detainees must receive notice after the date of this order that they are subject to removal under the Act. The notice must be afforded within a reasonable time and in such a manner as will allow them to actually seek habeas relief in the proper venue before such removal occurs.

145 S. Ct. at 1006. Respondents claim that the procedures they have adopted, which allow for *at most* 24 hours notice, constitute the "reasonable" notice required by *J.G.G.* But these procedures, *see* ECF No. 16-2, plainly fail the *J.G.G.* standard.

As an initial matter, the notice Respondents intend to provide says nothing about a person's right to seek review of their AEA determination, let alone that, within 12 to 24 hours, he must file a habeas petition in the federal district court with jurisdiction over his confinement or risk immediate summary removal. Every court to address these procedures has found them woefully insufficient. *E.g.*, *G.F.F.*, 1:25-cv-2886, ECF No. 84, p. 11 (S.D.N.Y.)

("Respondents' proposal for notice is insufficient under the AEA, the Supreme Court's ruling in *J.G.G.*, and Constitutional due process."); *D.B.U.*, No. 1:25-cv-1163-CNS, ECF No. 52, p. 20 (D. Colo. 2025) ("Respondents fail to persuade their proposed notice procedures under the Act are proper.").

This also follows as a matter of common sense. It is unreasonable, to put it mildly, to think that a detainee--who likely does not speak English--could, within no more than 24 hours, draft a habeas petition addressing the complex legal issues posed by the AEA and rebutting the factual assertion about the designee's alleged TdA membership and then file that petition in the correct district court.

That Mr. Gutierrez-Contreras has previously filed a habeas petition and is represented by counsel does not make a one-day timeline any more reasonable. What if Mr. Gutierrez-Contreras was unable to immediately reach counsel to inform them that he had received an AEA notice? Or what if counsel was unable to draft and file the petition within whatever time remained of Respondents' 24-hour period? Would Respondents then be justified in unilaterally condemning Mr. Gutierrez-Contreras to indefinite imprisonment in CECOT? The question answers itself. Petitioner's requested 14-day timeline is the minimum period in which the parties could reasonably litigate the complicated facts and legal issues underlying his substantive claim, particularly given the immensely high stakes.

Indeed, a federal court in Colorado recently ordered that individuals detained under the Proclamation receive at least 21 days' notice of the government's intent to expel them under the AEA. *D.B.U. v. Trump*, No. 25-cv-1163, 2025 WL 1163530, at *1 (D. Colo. Apr. 22, 2025). That order further required that the notice be provided in a language the individual understand, inform the individual of their right to seek judicial review and to consult with counsel, and explain that the government seeks to remove them under the

Proclamation. *Id.* Mr. Gutierrez-Contreras' request for an even shorter 14-day period ensures that he will receive appropriate notice without unnecessarily intruding on the Executive Branch.

Respondents' proposed notice also suffers from other flaws. Among other things, it fails to provide any individualized information explaining why the government has concluded that the subject of the notice is a member of TdA. Respondents do not explain how someone could conceivably prepare a habeas petition within 24 hours when they have not even been informed of the basis of the charges against them.

The court in *G.F.F.* concluded that Respondents' proposed notice was flawed in exactly this respect. It explained that the requirement of adequate notice cannot be satisfied by a pro forma or "bare bones" document or process but must instead "advise the alien of the acts he committed that justify his removal." *G.F.F.,* 1:25-cv-2886, ECF No. 84, p. 11 (S.D.N.Y.). After providing this information, Respondents "also must give the alien a reasonable amount of time to prepare and file, or to find counsel to prepare and file, a habeas petition." *Id.* (internal citation omitted). When Respondents fail to give individuals notice of what "they allegedly did to join TdA, when they joined, and what they did in the United States, or anywhere else, to share or further the illicit objectives of the TdA," they are "subject to removal by the Executive's dictate alone, in contravention of the AEA and the Constitutional requirements of due process." *Id.*

Respondents claim that 24 hours notice to seek judicial review has been found sufficient in the purportedly "analogous context" of expedited removals at the border. But Respondents mischaracterize the law regarding expedited removal. Expedited removal proceedings apply only to those who have not been admitted or paroled into the country or present for two years and cannot show a credible fear of return to their home country. *See generally* 8 U.S.C.

§ 1225(b). While the due process rights of individuals who satisfy those conditions may be limited in some respects, *see DHS v. Thuraissigiam*, 591 U.S. 103, 138 (2020), the Supreme Court made clear in *J.G.G.* that individuals like Mr. Gutierrez-Contreras have the right to notice sufficient to allow them to "actually seek habeas relief in the proper venue"—something that would be difficult to impossible within 12 to 24 hours. *See J.G.G.*, 145 S. Ct. at 1006. The analogy to expedited removal is inapt when the Supreme Court has already held specifically with respect to the AEA that notice must be provided in a reasonable time and manner.

It is also worth noting that the expedited removal statute, by its express terms, does not apply to Mr. Gutierrez-Contreras. He was paroled into the country—that is, DHS allowed him to enter the country on a temporary, revocable basis. (Lara Decl. ¶ 15.) The expedited removal statute explicitly limits its application to noncitizens who "ha[ve] not been admitted or paroled into the United States"). 8 U.S.C. § 1225(b)(1)(A)(iii)(II). Thus, whether the expedited removal procedures are constitutionally adequate for individuals who have not been paroled says little to nothing about whether they could be constitutionally applied to Mr. Gutierrez-Contreras, who was given permission to enter the country.

Even so, expedited removal involves far more substantial procedures than Respondents have offered with respect to the AEA. If a noncitizen asserts a fear of returning to their home country, the government must provide: (1) "information concerning" the asylum screening process and a meaningful opportunity to "consult" with an attorney or other individual in advance, 8 U.S.C. § 1225(b)(1)(B)(iv); (2) a non-adversarial interview with a trained asylum officer and a "written record," 8 U.S.C. § 1225(b)(1)(B)(iii)(II), 8 C.F.R. § 208.9(b), where the individual's claim for asylum is subject to a statutorily mandated "low screening standard," *Grace v. Barr*, 965 F.3d 883,

902 (D.C. Cir. 2020); and (3) review by an immigration judge. 8 C.F.R. § 1208.30(g)(2). There is no requirement that this entire process must be completed in just 12 to 24 hours. The government focuses only on the *last* step in that process, review by an immigration judge. § 1225(b)(1)(B)(iii)(III). But even that statute allows an immigration judge for up to seven days to review an asylum officer's determination that the noncitizen did not meet the threshold showing of credible fear of return. Simply put, nothing about expedited removal has any bearing on how this Court should interpret *J.G.G.*'s command of reasonable notice.

B. Mr. Guiterrez-Contreras will suffer irreparable harm.

In the absence of preliminary relief, Mr. Guiterrez-Contreras will continue to face expulsion under the AEA, including to the CECOT prison in El Salvador, without adequate notice. *J.G.G.*, 145 S. Ct. at 1010–11 (Sotomayor, J., dissenting) ("[I]nmates in Salvadoran prisons are 'highly likely to face immediate and intentional life-threatening harm at the hands of state actors.'"). As the court in *G.F.F.* recognized "absent a preliminary injunction, [individuals] would be removed from the United States to CECOT, where they would endure abuse and inhumane treatment with no recourse to bring them back. If that is not irreparable harm, what is?" *G.F.F.*, 1:25-cv-2886, ECF No. 84 at p. 20 (S.D.N.Y.).

The consequences of immediate removal to El Salvador are particularly irreparable because the government has claimed that it is powerless to return someone from El Salvador, even if they were erroneously removed. *See Abrego-Garcia v. Noem*, No. 8:25-cv-951-Px (D. Md. Apr. 15, 2025), ECF No. 77 ¶ 7 ("DHS does not have authority to forcibly extract an alien from the domestic custody of a foreign nation."). The prospect of lifetime imprisonment in a prison system rife with "egregious human rights abuses," is textbook irreparable harm. *See J.G.G.*, 145 S. Ct. at 1015 (Sotomayor, J., dissenting).

Nothing about this harm is speculative. Respondents have already moved more than 200 other Venezuelans to CECOT without notice or a validly issued removal order.

Respondents do not appear to dispute that removal under the AEA constitutes irreparable harm. Nonetheless, they claim that there is no such harm here because Mr. Gutierrez-Contreras has not yet been "designated" as an "alien enemy." But Respondents clearly believe that Mr. Gutierrez-Contreras is a member of TdA; an ICE officer filed an affidavit in the criminal case making just that claim.[4] More pointedly, Respondents have never disclaimed an intention to remove him under the Proclamation. And only weeks ago, they moved him to the Bluebonnet Detention Facility in Texas in an apparent effort to remove him under the AEA, before this Court and the Supreme Court intervened.

Nor does AFOD Lara's statement that Respondents' current policy is not to remove individuals during the pendency of the habeas proceedings eliminate the risk of irreparable harm. As noted above, another ERO official of similar rank recently swore, under penalty of perjury, that any such forbearance was subject to change. And regardless of what Respondents' policy is today, without a court order there is nothing prohibiting that policy from changing tomorrow—at which point, Mr. Gutierrez-Contreras would have to scramble within 12 to 24 hours to seek judicial relief or face immediate removal. The preliminary injunction standard does not require Mr. Gutierrez-Contreras to leave himself at the mercy of Respondents' grace.

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[4] As counsel noted at the TRO hearing, Magistrate Judge Bristow found that Mr. Gutierrez-Contreras did not pose a danger to the community, casting doubt on the government's efforts to cast him as a fearsome gang member.

Cf. Dubin v. United States, 599 U.S. 110, 131 (2023) (refusing to construe a statute "on the assumption that the Government will use it responsibly.").

C. The balance of equities and public interest weigh in favor of the Court issuing a preliminary injunction.

The balance of equities and the public interest factors merge in cases against the government. *Nken v. Holder*, 556 U.S. 418, 435 (2009). The public has a critical interest in preventing wrongful removals to places where individuals will face persecution and torture. *League of Women Voters v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) (describing the "substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations" (citation omitted)); *Minney v. U.S. Off. of Pers. Mgmt.*, 130 F. Supp. 3d 225, 236 (D.D.C. 2015) ("The public interest is, of course, best served when government agencies act lawfully," and "the inverse is also true", explaining that the public interest is harmed when the government acts unlawfully).

To that end, Mr. Guiterrez-Contreras is currently detained in federal immigration custody, and thus does not pose a risk to the public's safety. *See e.g.*, *G.F.F.*, 1:25-cv-2886, p. 20. (the district court balancing the equities and finding that "Petitioners are currently detained in federal immigration custody and thus do not pose a risk to the public's safety. But the public has a strong interest in ensuring that the branches of our government do not exceed their powers and violate the rights of others in the process."). Respondents point to the executive's prerogatives over foreign affairs. But Respondents cannot persuasively explain how an injunction that merely requires notice prior to any AEA removal—and does not affect Respondents' ability to obtain a lawful removal order under the INA—impinges on the foreign-affairs power. Similarly, public interest is best served if Mr.

Gutierrez-Contreras is afforded the adequate notice the Supreme Court has held is required. *J.G.G.*, 145 S. Ct. at 1006.

D. This Court can and should order Respondents to keep Mr. Gutierrez-Contreras in the Central District of California for the pendency of the habeas petition.

Finally, Respondents claim that this Court should withdraw its order preventing them from removing Mr. Gutierrez-Contreras from the Central District during the pendency of this proceeding. Their arguments are solely jurisdictional—that is, they do not argue such an order would be improper if the Court *has* jurisdiction. And Respondents are wrong about jurisdiction. Their arguments are grounded in the INA, which does not apply in these habeas proceedings under the separate AEA. In any event, the arguments are also substantively flawed. This Court, therefore, may, and should, enter an order prohibiting Respondents from transferring Mr. Gutierrez-Contreras out of the Central District of California while this case remains pending.

Federal law requires that Respondents bring a habeas petitioner to hearings before the habeas court. 28 U.S.C. § 2243 ("Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the hearing the body of the detained."); *Penn. Bureau of Corr. v. U.S. Marshals Service*, 474 U.S. 34, 39 (1985) ("The language of the statute thus expressly commands the custodian to bring his prisoner to court [.]"). Doing so is necessary to ensure that the petitioner can participate in the proceedings. *See Ozturk v. Hyde*, __ F.4th __, No. 25-1019, ECF No. 71, p. 24 (2d Cir. May 7, 2025) ("At stake . . . is Ozturk's ability to participate meaningfully in her habeas proceedings. Inherent in the term 'habeas corpus' is the notion that the government is required to produce the detainee in order to allow the court to examine the legality of her

detention."). There can, therefore, be no dispute that this Court has the authority to order Mr. Gutierrez-Contreras to be brought to any hearing.[5]

Moreover, the All Writs Act, codified at 28 U.S.C. § 1651, "is a residual source of authority to issue writs that are not otherwise covered by statute." *Penn. Bureau of Corr.*, 474 U.S. at 39. Under that statute, a court can issue orders that are "necessary or appropriate" to its jurisdiction. 28 U.S.C. § 1651. An order requiring that Mr. Gutierrez-Contreras remain in the Central District to allow him to easily communicate with counsel, appear for hearings, and otherwise actively participate in the proceedings fits comfortably within this Court's authority under the All Writs Act. Other courts considering issues related to the AEA have issued similar orders. *See G.F.F.*, 1:25-CV-2886, ECF No. 84, pp. 12–13, 21 (S.D.N.Y.) (holding that individuals rights to challenge their designation under the AEA "cannot be defeated by moving a petitioner from one place of confinement to another" and that it was therefore appropriate to enjoin Respondents from transferring the petitioners from the Southern District of New York); *D.B.U.*, 1:25-CV-1163, ECF No. 10 (D. Colo.) ("Defendants SHALL NOT REMOVE Petitioners from the District of Colorado or the United States unless this Court . . . vacates this order."); *see also J.A.V. v. Trump*, 2025 WL 1257450, at *18, *20 (permanently enjoining Respondents from "transferring" the petitioners within the United States).

Contrary to the Respondents' argument, the INA does not prohibit a habeas court presiding over a petition that has nothing to do with the INA from ordering that the petitioner remain in the district. As other courts have held in exactly this context, the INA does not "reach so far as to prohibit

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[5] To their credit, Respondents have not disputed this authority and have brought Mr. Gutierrez-Contreras to Court when ordered.

judicial review" in AEA cases "simply because" a petitioner "may implicate or also be involved in Title 8 immigration proceedings." *D.B.U.*, 2025 WL 1163530, at *8; *see also J.A.V.*, 2025 WL 125740, at *20 (issuing permanent injunction that, *inter alia*, prohibits respondents from "transferring" petitioners within the United States). This Court's TRO expressly allows for Respondents to remove Mr. Gutierrez-Contreras if they obtain a lawful removal order under INA. Should Respondents disclaim any intention to remove him under the AEA, there would be need for the prohibition on his transfer within the United States. This petition, and the corollary no-transfer order that Mr. Guiterrez-Contreras seeks, is based solely on Respondents' intent to remove him under the AEA.

The INA statutes cited by Respondents—8 U.S.C. § 1252(a)(2)(B)(ii), § 1231(g), and § 1252(g)—do not help their argument. Section 1252(a)(2)(B)(ii) bars judicial review of decisions that are "specified under this subchapter to be in the discretion of the Attorney General or Secretary of Homeland Security." As an initial matter, this statute only applies to decisions "under this subsection"—*i.e.*, under the INA. But the Respondents' decision to transfer Mr. Gutierrez-Conteras to the Bluebonnet facility in Texas was plainly made pursuant to their claimed authority under the AEA, and not the INA.

Regardless, the Ninth Circuit has held that § 1252(a)(2)(B)(ii) does not cover all decisions that could be said to be discretionary, but only situations in which "the language of the statute in question . . . provide[s] the discretionary authority." *Spencer Enters. v. United States*, 345 F.3d 683, 692 (9th Cir. 2003); *see also Perez-Perez v. Wolf*, 943 F.3d 853, 865-68 (9th Cir. 2019). But Section 1231(g) does not speak of any "discretionary" decisions, it merely provides that "the Attorney General shall arrange for appropriate places for aliens detained pending removal or a decision on removal." Nothing

in § 1231(g) "specifies" that the detention location is a purely discretionary decision by the Attorney General or Secretary; indeed, the language of § 1231(g) doesn't say anything about the discretion to choose the place of detention for a particular individual. It merely directs those authorities to arrange for detention facilities in the abstract. *See Reyna ex rel. J.F.G. v. Hott*, 921 F.3d 204, 209 (4th Cir. 2019) ("[T]he language of § 1231(g) does not . . . explicitly grant the Attorney General or the Secretary of Homeland Security discretion with respect to transfers . . . . [I]t appears to relate more centrally to the government's brick and mortar obligations for obtaining facilities in which to detain aliens.").

Indeed, just today, the Second Circuit issued a thoroughly reasoned opinion rejecting the same argument the government presses here. *See Ozturk*, __ F.4th __ No. 25-1019, ECF No. 71, pp. 19–23 (2d Cir. May 7, 2025) ("[W]e do not believe that § 1252(a)(2)(B)(ii), by operation of § 1231(g), forecloses judicial review."). This Court should reach the same conclusion.

In any event, the government's argument also fails for a separate reason. Section 1252(a)(B)(ii) precludes courts only from "review[ing]" a discretionary decision by the Attorney General or Secretary. But Mr. Gutierrez-Contreras is not seeking "review" of any such decision. He requests an affirmative order under this Court's All Writs Act authority requiring Respondents to detain him only within the Central District, consistent with the decision they have already made to do so. Because such an order would be an exercise of this Court's own power, and particularly since there is no contrary decision of the Executive being "review[ed]," § 1252(a)(B)(ii) facially does not apply.

Section 1252(g) similarly does not prevent the Court from keeping Mr. Gutierrez-Conteras in the Central District. That provision bars claims "arising from the decision or action by the [AG] to commence proceedings,

adjudicate cases, or execute removal orders . . . **under this chapter.**" (emphasis added). But again, Mr. Gutierrez-Contreras is not challenging anything with respect to his INA proceedings; only any attempt to detain or expel him under the AEA. Accordingly, § 1252(g) facially does not apply. And § 1252(g) also does not apply for the separate reason that Petitioner is not challenging a decision to commence proceedings, adjudicate cases, or execute removal orders; only where he is detained during the pendency of proceedings. *See Ozturk*, __ F.4th __, No. 25-1019, ECF No. 71, p. 24 (2d Cir. May 7, 2025) ("The government dramatically overstates the reach of § 1252(g)," which is "cabined to three discrete actions: a decision to *commence* proceedings, *adjudicate* cases, or *execute* removal orders." (cleaned up)).

Finally, Respondents provide no persuasive reason why Mr. Gutierrez-Contreras cannot continue to be held at one of the Central District of California facilities. The Los Angeles Immigration Court has jurisdiction over his removal proceedings, and he has local representation in that matter. Moreover, the Lara declaration makes clear that there are well over two hundred available beds across the two District facilities. Lara Decl. ¶ 25-26, ECF No. 16.2. Indeed, AFOD Lara does not claim that the no-transfer order imposes any significant burden on the agency.

V. CONCLUSION

Mr. Guiterrez-Contreras seeks a preliminary injunction requiring notice of 14 days prior to any AEA removal. He further seeks an order from this Court preventing Respondents from moving him outside the Central District of California during the pendency of the proceedings. He finally requests that the Court order the parties to meet and confer to propose a briefing schedule for the adjudication of the merits of the petition.

Respectfully submitted,

CUAUHTEMOC ORTEGA
Federal Public Defender

DATED: May 7, 2025.

/s/ Chad Pennington

Chad Pennington
Deputy Federal Public Defender
Proposed Attorney for Yostin Guiterrez-Contreras

Certificate of Compliance under L.R. 11-6.2

The undersigned counsel of record for Petitioner certifies that this brief contains 6,344 words, which complies with the word limit of L.R. 11-6.1.

DECLARATION OF CHAD PENNINGTON

The undersigned is a member in good standing of the Minnesota, New York, and California bars. He is currently a Deputy Federal Public Defender in the Central District of California, Riverside. He currently represents Petitioner in this matter, along with co-counsel, David Menninger, DFPD. He submits this declaration under the penalty of perjury and as an officer of the Court.

On May 6, 2025, and May 7, 2025, the undersigned, and his colleague, David Menninger, communicated with Respondents' counsel, Assistant United States Attorney, Christina Marquez, by email, discussing a potential stipulation in which Respondents would agree to be prohibited from removing Petitioner under the AEA during the pendency of the current habeas petition, and in exchange, Petitioner would agree that there would be no need for a provision in an issued preliminary injunction order stating Respondents are required to provide 14-days' notice prior to any attempted AEA removal. At the time of this filing, the parties had not reached an agreement on the issue or entered such a stipulation.

S/ Chad Pennington, DFPD
May 7, 2025