

CUAUHTEMOC ORTEGA (Bar No. 257443)

Federal Public Defender

Chad Pennington (Bar No. 354831)

Chad_Pennington@fd.org

David Menninger (Bar No. 281460)

David_Menninger@fd.org

Deputy Federal Public Defenders

3801 University Ave., Ste. 700

Riverside, California 92501

Telephone: (951) 276.6346

Attorneys for Petitioner

YOSTIN SLEIKER GUTIERREZ-CONTRERAS

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

YOSTIN SLEIKER GUTIERREZ-
CONTRERAS,

Petitioner,

v.

WARDEN, DESERT VIEW ANNEX,
ANDRE QUINONES, 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. ____

**PETITION FOR WRIT OF
HABEAS CORPUS BY
INDIVIDUAL IN FEDERAL
CUSTODY UNDER 28 U.S.C.
§ 2241**

Petitioner Yostin Sleiker Gutierrez-Contreras, through counsel of

1 record Deputy Federal Public Defenders Chad Pennington and David
2 Menninger, petitions this Court for a writ of habeas corpus under 28 U.S.C.
3 § 2241.
4

5 Respectfully submitted,

6 CUAUHTEMOC ORTEGA
7 Federal Public Defender
8

9 DATED: April 20, 2025

/s/ Chad Pennington

10 Chad Pennington
11 David Menninger
12 Deputy Federal Public Defenders
13 Attorneys for YOSTIN SLEIKER
14 GUTIERREZ-CONTRERAS
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I. INTRODUCTION

Petitioner Yostin Sleiker Gutierrez-Contreras files the instant petition as a safeguard. He already filed a nearly-identical petition last week. *See Gutierrez-Contreras v. Warden*, CV 5:25-911-SSS (KES). That petition, and the instant one, seek to prevent his expulsion from the United States under the supposed authority of the Alien Enemies Act (“AEA”) and in the absence of lawful removal order issued under the Immigration and Nationality Act (“INA”).

The reason he is filing the instant petition is that Respondents claim that the prior petition suffers a jurisdiction flaw because Respondents removed Petitioner from this district hours before that petition was filed. But Respondents have since returned Petitioner to Central District of California, and undersigned counsel has taken reasonable measures to confirm that he is present in this district now—at the time of this filing. Although Petitioner contends that his return to California moots any jurisdictional problem with the prior petition, he nonetheless files this petition as a safeguard to ensure that this Court retains jurisdiction. With Petitioner undisputedly present in immigration custody in the Central District of California, there can now be no dispute that venue is proper and that the Court can properly exercise jurisdiction over Petitioner’s case.

Petitioner does not take this belt-and-suspenders approach lightly, but finds it necessary given the immense issues at stake and the fact that the government has moved to dismiss the prior petition on jurisdictional grounds. Petitioner is willing to proceed however the Court deems most efficient, including by consolidating this petition with the prior petition. If the government agrees to waive its jurisdictional objection to the prior petition (since Petitioner is now physically present in this District) Petitioner is willing to dismiss this petition. *See Khalil v. Joyce*, __ F. Supp. 3d __, WL

1 972959, at *24 (D.N.J. Apr. 1, 2025) (“A respondent-custodian can choose to
2 waive objections to personal jurisdiction.”).

3 Petitioner is a national of Venezuela who is currently in immigration
4 proceedings. He is released pretrial in a pending criminal matter in this
5 district, *see U.S. v. Gutierrez-Contreras*, 5:25-CR-121-KK (C.D. Cal. 2025),
6 but currently detained by immigration authorities at Desert View Annex
7 immigration detention facility in Adelanto, California. Presently, there is no
8 order authorizing his removal from the United States; rather, his removal
9 proceedings under the INA remain ongoing. He seeks habeas corpus relief
10 preventing his removal under the purported authority of the AEA. Petitioner
11 respectfully requests that this Court grant him a writ of habeas corpus under
12 28 U.S.C. § 2241 and order respondents to refrain from removing him unless
13 and until such time as he receives a valid removal order under the INA.

14 II. JURISDICTION

15 This Court exercises jurisdiction under 28 U.S.C. §1331; § 2241; the
16 Due Process Clause of the Fifth Amendment, U.S. Const. amend. V; and the
17 Suspension Clause, U.S. Const. art. I.

18 III.VENUE

19 Venue is proper in the Central District of California pursuant to 28
20 U.S.C. §§ 1391 and 2242 because at least one respondent is in this district,
21 petitioner is detained in this district, petitioner’s immediate physical
22 custodian is in this district, and a substantial part of the events giving rise
23 to the claims took place in this district. *See generally Rumsfeld v. Padilla*,
24 542 U.S. 426, 434 (2004) (“the proper respondent to a habeas petition is ‘the
25 person who has custody over the petitioner’”) (citing § 2242) (cleaned up).

IV. PARTIES

1. Petitioner is currently detained by respondents in an immigration detention facility in Adelanto, California. He has been in ICE custody since about March 26, 2025, when ICE officials detained him after he was ordered released in the separate criminal proceeding.
2. Respondent Warden is the acting Warden at the Desert Annex immigration facility in Adelanto, California.
3. Respondent Andre Quinones is the field officer director in the Enforcement and Removal Operations (“ERO”) division of Immigration and Customs Enforcement (“ICE”). He is responsible for administrative jurisdiction over petitioner’s immigration case. He is named in his official capacity.
4. Respondent Todd M. Lyons is the Acting Director of ICE. He is a legal custodian of petitioner and is named in his official capacity.
5. Respondent Kristi Noem is the Secretary of the United States Department of Homeland Security (“DHS”). She is a legal custodian of petitioner and is named in her official capacity.
6. Respondent Pamela Jo Bondi is the Attorney General of the United States Department of Justice. She is a legal custodian of petitioner and is named in her official capacity.
7. Respondent Donald J. Trump is the President of the United States. He is the head of the executive branch of the United States government. He is a legal custodian of petitioner and is named in his official capacity.

V. FACTUAL STATEMENT

Petitioner came to the United States in November of 2023, from Venezuela.¹ After a brief period of ICE detention, Petitioner was released from ICE custody and directed to appear at the nearest ICE ERO office.

¹ Much of the factual background was obtained from the criminal complaint lodged against petitioner in 5:25-CR-121-KK, ECF No. 1.

1 On May 13, 2024, petitioner was enrolled in biometric ICE reporting
2 and directed to enroll in intensive ICE supervision in San Bernadino,
3 California. On September 6, 2024, petitioner reported to the ERO in San
4 Bernadino, California. ERO took photos of petitioner's tattoos and,
5 apparently on the basis of those tattoos alone, concluded petitioner had a
6 possible affiliation with Tren de Aragua ("TdA"), a purported criminal
7 organization or "gang." Nonetheless, ERO allowed Mr. Gutierrez-Contreras to
8 remain on supervision. Petitioner vigorously disputes any TdA affiliation.

9 On March 14, 2025, respondent Donald Trump proclaimed that the
10 government would remove members of TdA under the supposed authority of
11 the AEA. *See* the White House, Presidential Proclamation, March 14, 2025,
12 [https://www.whitehouse.gov/presidential-actions/2025/03/invocation-of-the-](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/)
13 [alien-enemies-act-regarding-the-invasion-of-the-united-states-by-tren-de-](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/)
14 [aragua/](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.)

15 Although Mr. Gutierrez-Contreras had maintained perfect compliance
16 on supervision, on March 19, 2025, ERO officials abruptly reversed course
17 and took him into custody. Upon information and belief, during that arrest
18 the arresting officers indicated to him that he would be sent to El Salvador
19 from immigration custody. On March 19, 2025, ICE officials conducted an
20 administrative search of petitioner's residence and allegedly discovered a
21 false work permission document.

22 On March 21, 2025, a complaint was filed in the criminal case alleging
23 violations of 18 U.S.C. § 1546(a). On March 26, 2025, petitioner had his initial
24 appearance and detention hearing in the criminal case. At that time, the
25 presiding magistrate judge ordered him released pretrial on conditions. But
26 rather than allowing his release as ordered, ICE officials took petitioner back
27 into immigration custody. Petitioner has remained in immigration custody
28 since that time. Respondents first held Petitioner at the Otay Mesa Detention

1 Facility, in San Diego County, before moving him to the Desert View Annex
2 in Adelanto, California, which is in San Bernardino County and the Central
3 District of California.

4 Undersigned counsel conducted a video visit with Petitioner while he
5 was held at Desert View Annex on April 12, 2025, and discussed plans to file
6 a habeas petition under 28 U.S.C. § 2241 to challenge any attempted AEA
7 removal.

8 On April 14, 2025, undersigned counsel was notified by the petitioner's
9 family that the petitioner had told them that ICE was planning on moving
10 him from Desert View Annex to an unknown location. At that time, ICE's
11 online detainee locator indicated that Mr. Gutierrez-Contreras was still at
12 Desert View Annex. Undersigned counsel filed a petition under 28 U.S.C.
13 2241 just after 4:00 p.m. on April 14, 2025. *Gutierrez-Contreras v. Warden*,
14 CV 5:25-911-SSS (KES) ("the 911 Petition") (Dkt. 1). Soon thereafter, counsel
15 filed a request for a temporary restraining order requiring Respondents to
16 provide two weeks notice before attempting to remove Petitioner in the
17 absence of a lawful removal order. (*Id.* at Dkt. 4.)

18 According to a declaration subsequently filed by the Respondents, Mr.
19 Gutierrez-Contreras was taken out of the Central District in the morning on
20 April 14, 2025. (CV 5:25-911-SSS, Dkt. 12-2, Decl. of Yousuf Khan ¶ 6.) He
21 was taken on "a series of flights" before he landed in the Northern District of
22 Texas just after 7:00 p.m. Central Time (or just after 5:00 p.m. Pacific Time),
23 where he was held at the Blue Bonnet Detention Facility. (*Id.*) If
24 Respondents' declaration is accurate, therefore, the 911 Petition was filed
25 after Petitioner was taken out of the Central District of California but before
26 he arrived in the Northern District of Texas.

27 Media reports and other litigation confirm that Respondents were
28 holding many Venezuelan nationals who they accused of TdA membership at

1 the Blue Bonnet Detention Facility in Texas, with the intention of sending
2 them to El Salvador under the supposed authority of the AEA. *See* Order,
3 *A.A.R.P. v. Trump*, 604 U.S. ___, No. 24A1007 (April 19, 2025); CNN, “What
4 we know about the Supreme Court’s midnight Alien Enemies Act order,”
5 April 19, 2025, [https://www.cnn.com/2025/04/19/politics/supreme-court-](https://www.cnn.com/2025/04/19/politics/supreme-court-alien-enemies-act-order/index.html)
6 [alien-enemies-act-order/index.html](https://www.cnn.com/2025/04/19/politics/supreme-court-alien-enemies-act-order/index.html).

7 On April 16, 2025, this Court (Hon. Sunshine S. Sykes) granted
8 petitioner’s requested TRO. CV 5:25-911-SSS (KES) (Dkt. 7.) The following
9 day, the Court issued a further order confirming the requested two-weeks-
10 notice requirement. (Dkt. 10.)

11 On April 18, 2025, Respondents filed a motion to dissolve the TRO,
12 arguing that the Court lacked authority to issue the TRO because
13 Respondents removed Petitioner from the district before the petition was
14 filed. (Dkt. 12.) The Court ordered Petitioner to file his opposition to that
15 motion by noon on Monday, April 21, 2025. (Dkt. 13.)

16 On April 19, 2025, Respondent’s counsel notified Petitioner’s counsel
17 that Respondents were moving Petitioner back to the Central District of
18 California. (Declaration of David Menninger, attached at XX.) It is the
19 understanding of Petitioner’s counsel that, despite Petitioner’s return to the
20 Central District, Respondents maintain their jurisdictional objections and
21 continue to seek dissolution of the TRO issue in the 911 Petition. (*Id.*)

22 On April 20, 2025, ICE’s online detainee locator shows that he is at
23 Desert View Annex in Adelanto, California. Undersigned counsel also spoke
24 a family member of Petitioner who spoke with Petitioner and confirmed that
25 Petitioner was at Desert View Annex.

26 According to the online case status information for the Executive Office
27 for Immigration Review, Petitioner is scheduled for a video hearing with the
28 Adelanto Immigration Court on April 21, 2025 at 1:00 p.m.

VI. LEGAL FRAMEWORK

Section 1229a of Title 8 of the U.S. Code provides that, “[u]nless otherwise specified in this chapter, a proceeding under this section shall be the sole and exclusive procedure for determining whether an alien may be admitted to the United States or, if the alien has been so admitted, removed from the United States.” Petitioner is in Section 1229a removal proceedings and such proceedings are ongoing. No determination has yet been made whether he is to be removed from the United States in such proceedings. Certain noncitizens may be ordered removed by an immigration officer under the expedited removal procedures described in 8 U.S.C. § 1225(b), but no determination has been made that petitioner is amenable to expedited removal. A noncitizen who has illegally reentered the United States after having been removed may have that prior order of removal reinstated and may be removed pursuant to that prior order, as described in 8 U.S.C. § 1231(a)(5). Petitioner, however, has never been ordered removed previously and consequently has no prior order of removal that may be reinstated. And, an immigration judge currently has authority to adjudicate petitioner’s removal case, unless the immigration judge grants a motion to dismiss or terminate removal proceedings. *See* 8 C.F.R. § 1239.2. Although petitioner could not depart voluntarily unless and until such a dismissal were to occur, petitioner has not requested voluntary departure.

To resolve this case, the Court need only rule that in the absence of an order of removal, petitioner cannot be removed from the country. Should the Court nonetheless choose to address constitutional questions, it should also find that petitioner’s removal in the absence of a removal order violates the Due Process Clause of the Fifth Amendment. “Freedom from imprisonment—from government custody, detention, or other forms of physical restraint—lies at the heart of the liberty that [the Due Process] Clause [of the Fifth

1 Amendment] protects.” *Zadvydas v. Davis*, 533 U.S. 678, 690 (2001). At a
2 bare minimum, “the Due Process Clause includes protection against unlawful
3 or arbitrary personal restraint or detention.” *Id.* at 718 (2001) (Kennedy, J.,
4 dissenting) (emphasis added). Where federal law precludes an individual’s
5 removal, removing them under an inapposite statute, such as the AEA,
6 additionally violates the Due Process Clause.

7 VII. ARGUMENT

8 Petitioner contests removal in the absence of a valid removal order
9 issued under the INA. Petitioner is in Section 1229a removal proceedings and
10 such proceedings are ongoing. No determination has yet been made whether
11 he is to be removed from the United States in such proceedings. Thus, the
12 removal of petitioner under the AEA, in the absence of a final order of
13 removal violates the INA, and he is entitled to an order prohibiting
14 respondents from removing him unless and until such time as he receives a
15 properly issued final removal order. Moreover, the Due Process Clause of the
16 Fifth Amendment forbids the government from depriving any person of
17 liberty without due process of law. U.S. Const. amend. V; *see also generally*
18 *Reno v. Flores*, 507 U.S. 292 (1993); *Demore v. Kim*, 538 U.S. 510 (2003). The
19 Due Process Clause forbids Petitioner’s removal in the absence of a lawful
20 removal order issued after notice and the ability to respond. Petitioner
21 further contends that the AEA does not authorize his removal or expulsion
22 from the United States in the absence of a valid removal order issued under
23 the INA. Petitioner vigorously contests the legality of respondent President
24 Trump’s March 14, 2025 proclamation. But even by the terms of that
25 proclamation, it does not apply to petitioner because he is not a “member” of
26 TdA.

27 Petitioner asks that this Court assume jurisdiction over the instant
28 petition; enjoin his imminent removal unless and until a removal order is

1 properly entered against him; set a hearing on this petition within five days
2 of the return, as required by 28 U.S.C. § 2243; grant a writ of habeas corpus
3 ordering respondents to immediately release petitioner from custody unless
4 they refrain from seeking to remove him without a removal order; and grant
5 such further relief as this Court deems just and proper.

6
7 Respectfully submitted,

8 CUAUHTEMOC ORTEGA
9 Federal Public Defender

10 DATED: April 20, 2025

/s/ Chad Pennington

11
12 Chad Pennington
13 David Menninger
14 Deputy Federal Public Defender
15 Attorneys for Yostin Guterrez-Contreras
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF DAVID MENNINGER

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

2. On April 19, 2025, Assistant United States Attorney Christina Marquez informed me that ICE was returning Mr. Gutierrez-Contreras to California to appear for a hearing in the parallel criminal matter.

3. Respondents have filed a motion to dissolve the TRO filed in CV 5:25-911-SSS (KES) on the grounds that Respondents had removed Mr. Gutierrez-Contreras out of the Central District just before that petition was filed. It is my understanding, based on my conversation with AUSA Marquez, that Respondents' position is that Mr. Gutierrez-Contreras's return to the Central District does not moot Respondents' time-of-filing objection to the prior petition.

4. At around 6:45 a.m. this morning, April 20, 2025, I checked ICE's online detainee locator website, and it showed that Mr. Gutierrez-Contreras was being held at Desert View Annex. Shortly thereafter, I spoke to a family member of Mr. Gutierrez-Contreras, who told me that Mr. Gutierrez-Contreras had called her from Desert View Annex yesterday evening.

The declaration is true and accurate and submitted under penalty of perjury.

Dated: April 20, 2025

s/ David Menninger
DAVID MENNINGER
Deputy Federal Public Defender