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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ELADIO CORTEZ MORALES,

Petitioner

v.

SERGIO ALBARRAN, et al.,

Respondents

) No. 25-cv-09241-HSG

)

) **RESPONDENTS' RESPONSE TO MOTION**
) **FOR TEMPORARY RESTRAINING**
) **ORDER**

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I. INTRODUCTION

Petitioner is an individual with a serious criminal history and a final order of removal who is subject to an Order of Supervision under Respondent's Intensive Supervision Appearance Program ("ISAP"). He is subject to regularly scheduled check-in appointments with Immigration and Customs Enforcement ("ICE") every six months, and his next appointment, which has been on the calendar for months, is scheduled for 3 p.m. today. Petitioner was not told that ICE intends to arrest him at this appointment. Yet he now asks this Court essentially to provide him with an "escort service" to this appointment, seeking the extraordinary relief of a temporary restraining order to prevent his hypothetical future custody. This relief exceeds the permissible scope of habeas relief and should be denied. If Petitioner is in fact detained at his check-in and he claims that the arrest was improper, he can file a

petition at that time, and the Court can then evaluate the basis for any detention.

II. ARGUMENT

A. Legal Standard

A temporary restraining order is “an extraordinary and drastic remedy, one that should not be granted unless the movant, by a clear showing, carries the burden of persuasion.” *Lopez v. Brewer*, 680 F.3d 1068, 1072 (9th Cir. 2012). To obtain relief, the moving party must show that “he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest.” *Winter v. NRDC*, 555 U.S. 7, 20 (2008).

B. Habeas Relief Is Both Inappropriate and Premature Because Petitioner Is Challenging His Hypothetical Future Detention.

Habeas relief is an appropriate request when an individual is detained and requesting release from that detention. U.S. CONST. Art. 1, § 9, Cl. 2; 28 U.S.C. § 2241(c) (“The writ of habeas corpus shall not extend to a prisoner unless [h]e is in custody ”); *Dep’t of Homeland Sec. v. Thuraissigiam*, 591 U.S. 103, 117–18 (2020) (“[T]he essence of habeas corpus is an attack by a person in custody upon the legality of that custody, and [] the traditional function of the writ is to secure release from illegal custody.”). An individual does not need to be in actual physical custody to seek habeas relief; the “in custody” requirement may be satisfied where an individual’s release from detention is subject to specific conditions or restraints. *See Dow v. Cir. Ct. of the First Circuit*, 995 F.2d 922, 923 (9th Cir. 1993) (holding that release subject to mandatory attendance at alcohol rehabilitation classes constituted “custody” for habeas purposes).

Here, Petitioner alleges that he meets the “in custody” requirement because he was released on bond and is subject to certain conditions of release. Dkt. No. 1 ¶ 7. But this habeas petition does not purport to challenge that custodial arrangement or secure his release from any present “custody.” Petitioner is not in physical custody and is not challenging his bond or whatever restraints ICE has currently imposed. Rather, Petitioner seeks an injunction to prevent his hypothetical future arrest and the possibility of future detention. The habeas relief that he seeks is not connected to the immigration custody on which he bases his petition. Thus, Petitioner does not seek a remedy that sounds in habeas.

1 *See J.P. v. Santacruz, et al.*, No. 25-cv-1640 (C.D. Cal. Aug. 27, 2020), Dkt. No. 20. In *J.P.*, the court
 2 held that even assuming that ICE’s order of supervision (“OSUP”) satisfied the “in custody”
 3 requirement, “Petitioner fails to adequately demonstrate he is challenging his confinement.” The court
 4 specifically noted that challenges to *future* detention did not fall within habeas jurisdiction:

5 Here, Petitioner does not challenge the lawfulness of his alleged custody. . . . Rather, Petitioner
 6 challenges his *potential* confinement absent a pre-deprivation hearing before a neutral
 7 adjudicator. . . . Petitioner’s concern about re-detention stems from Respondents indication that
 8 they *may possibly* re-detain Petitioner at a future in-person appointment that the ISAP scheduled.
 . . . Based on the record in this case, the court would not find that Petitioner adequately
 demonstrates a challenge to his custody.

9 Petitioner’s claim here similarly challenges his hypothetical future confinement, not his present
 10 “custody,” and therefore habeas jurisdiction is inappropriate.

11 Petitioner was released on a bond issued pursuant to *Aleman Gonzalez*. Dkt. No. 1 ¶ 32; *see*
 12 *Aleman Gonzalez v. Sessions*, 325 F.R.D. 616 (N.D. Cal. 2018), *aff’d*, 955 F.3d 762 (9th Cir. 2020),
 13 *rev’d*, 596 U.S. 543 (2022).¹ For any individual released by an immigration judge on a bond,
 14 Respondents must establish changed circumstances under *In re Sugay*, 17 I. & N. Dec. 637 (B.I.A.
 15 1981), to justify re-detention. Petitioner here does not know whether he will be detained at his
 16 appointment this afternoon—an appointment that has been on the books for months. He was not
 17 specially “called in” for an appointment, is unaware of any precipitating event that would cause ICE to
 18 revoke his bond, and has not been told that he will be detained. *Cf. Guillermo M. R. v. Kaiser*, No. 25-
 19 cv-05436-RFL, 2025 WL 1983677, at *3 (N.D. Cal. July 17, 2025) (habeas petition filed after petitioner
 20 was instructed to go in for a “case review” with ICE, where he was advised that he would be detained).
 21 He has filed this petition not because he knows that he will be detained but because he has heard about
 22 other individuals who have been detained. Dkt. No. 1 ¶ 42. He has not identified any other similarly
 23 situated individuals—those released on an *Aleman Gonzalez* bond, without any changed
 24 circumstances—who have been detained at routine, regularly scheduled check-in appointments.

26 ¹ *Aleman Gonzalez* required individualized bond hearings before an immigration judge at which
 27 the government bears the burden of establishing that the noncitizen is a flight risk or will be a danger to
 28 the community for all noncitizens facing prolonged detention under Section 1231(a)(6). The Supreme
 Court has since clarified that such periodic bond hearings are not statutorily required, *Johnson v.*
Arteaga-Martinez, 596 U.S. 573, 581 (2022), but the injunction in *Aleman Gonzalez* remains in place.

1 While he has known about this appointment for months, Petitioner's counsel only reached out to
2 Respondents' counsel yesterday, barely 24 hours before the appointment seeking an assurance that
3 ICE's Enforcement and Removal Operations ("ERO") did not intend to detain his client at the ISAP
4 check-in. Due to this abbreviated timeframe, the undersigned was unable to provide the requested
5 information, one way or the other, about what might happen at this appointment.²

6 But this does not provide the basis for the extraordinary remedy of a temporary restraining order.
7 Without any knowledge that his arrest is likely or imminent, Petitioner is seeking an insurance policy
8 from the Court to guarantee that he will not be detained. That is not the purpose of a habeas petition,
9 and it is not the purpose of a TRO. Thousands of individuals are subject to orders of supervision and are
10 required to report to ICE on a periodic basis as part of those orders. If each such individual were
11 entitled to bring a habeas petition in advance of every such appointment and secure a temporary
12 restraining order to prevent ERO from undertaking hypothetical future actions, this would expand the
13 Court's habeas jurisdiction into virtually unlimited territory, and impose unreasonable burdens on both
14 the Court and Respondents. The implicit requirement that ERO must in all instances inform individuals
15 in advance of their check-in appointments what will transpire at those appointments, on penalty of being
16 enjoined from undertaking hypothetical enforcement actions, is unwarranted, and would unduly interfere
17 with ERO's enforcement mission. The sheer volume of check-ins every day, combined with the
18 potential risk to officer safety, risk of flight of certain individuals, and need to maintain enforcement
19 discretion and secrecy in some instances, makes any advance disclosure requirement both unreasonable
20 and potentially dangerous.

21 In sum, this petition is premature. If Petitioner is in fact detained at his appointment this
22 afternoon and he believes that the detention is unwarranted, he can file a petition and TRO motion at
23 that time. If the Court agrees that the standard for a TRO has been met, based on the actual facts
24 presented by the arrest, it can issue an appropriate TRO. But the Court should not be in the business of
25 providing an escort service for every individual who is subject to an order of supervision and is required

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27 ² The undersigned made clear to Petitioner's counsel that she had not received any information,
28 one way or the other, from ICE, and indicated that she would continue to try to get information. She did
not communicate that she was specifically unable to get an assurance that Petitioner would not be
arrested.

1 to appear at periodic check-in appointments with ICE.

2 DATED: October 28, 2025

Respectfully submitted,

3 CRAIG H. MISSAKIAN
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5 /s/ Pamela T. Johann

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8 Attorneys for Respondents
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