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8 IN THE UNITED STATES DISTRICT COURT
9 EASTERN DISTRICT OF CALIFORNIA

10 MICHELLE MONTERO-ALVAREZ,
11
Petitioner,
12
v.
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SERGIO ALBERRAN, ET AL.,
14
Respondents.
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16

CASE NO. 1:25-CV-01695-AC

RESPONDENTS' OPPOSITION TO MOTION FOR
TEMPORARY RESTRAINING ORDER

17
18 I. INTRODUCTION

19 Petitioner Michelle Montero-Alvarez ("Montero") moves the Court for a writ of habeas corpus
20 and a temporary restraining order. In sum, Montero asks that the Court issue the writ and restraining
21 order so that she will be released from custody pending her removal from the United States. Because
22 Montero had violated the terms of her parole into the United States, DHS terminated that parole. Upon
23 termination of parole, an alien reverts to the status they had at the time parole was granted, which in
24 Montero's case is an alien seeking admission. Because she is properly categorized as an "alien seeking
25 admission" and is mandatorily detained during removal proceedings under 8 U.S.C. § 1225(b)(2)(A),
26 Montero cannot show a likelihood of success on the merits. Therefore, Montero's motion should be
27 denied.

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1 **II. BACKGROUND**

2 **A. Montero entered the United States unlawfully, was granted parole, and after**
3 **violating the terms of her parole, her parole was terminated.**

4 The parties are largely in agreement concerning the procedural posture of this case. Montero is a
5 native citizen of Peru. She entered the United States without inspection on July 8, 2022, and she sought
6 asylum. After initially detaining her, agents released Montero on her own recognizance, paroled into the
7 United States pursuant to 8 U.S.C. § 1182(d)(5)(A).

8 On November 19, 2025, Montero failed to attend a meeting with ICE, and ICE rescheduled the
9 meeting for November 21, 2025. The Respondents contest that she was told that she would not be in
10 violation of her parole if she attended the November 21 meeting. ICE officials terminated her parole
11 due to her violation, and on November 21, 2025, they took Montero into custody pending her removal.
12 Pursuant to 8 U.S.C. § 1182(d)(5)(A) and 8 C.F.R. § 212.5(e)(2)(i) when an individual's parole is
13 terminated "he or she shall be restored to the status that he or she had at the time of parole." Therefore,
14 Montero's status reverted to that of an alien seeking admission. Consequently, 8 U.S.C. § 1225(b)
15 mandates that Montero remain detained pending removal.

16 **III. ARGUMENT**

17 **A. The Standard for Temporary Restraining Orders.**

18 Temporary restraining orders are governed by the same standard applicable to preliminary
19 injunctions. *See Cal. Indep. Sys. Operator Corp. v. Reliant Energy Servs., Inc.*, 181 F. Supp. 2d 1111,
20 1126 (E.D. Cal. 2001). Preliminary injunctions are "never awarded as of right." *Winter v. Nat. Res. Def.*
21 *Council, Inc.*, 555 U.S. 7, 24 (2008) (citation omitted). A party seeking a preliminary injunction faces a
22 "difficult task" in showing that they are entitled to such an "extraordinary remedy." *Earth Island Inst.*
23 *v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation omitted).

24 "A plaintiff seeking a preliminary injunction must show that: (1) she is likely to succeed on the
25 merits, (2) she is likely to suffer irreparable harm in the absence of preliminary relief, (3) the balance of
26 equities tips in her favor, and (4) an injunction is in the public interest." *Garcia v. Google, Inc.*, 786
27 F.3d 733, 740 (9th Cir. 2015) (internal quotation omitted). Alternatively, a plaintiff can show "serious
28 questions going to the merits and the balance of hardships tips sharply towards [plaintiffs], as long as the

1 second and third ... factors are satisfied.” *Disney Enters., Inc. v. VidAngel, Inc.*, 869 F.3d 848, 856 (9th
2 Cir. 2017).

3 **B. Montero Is Not Likely to Succeed on the Merits.**

4 When Montero arrived in the United States, she was an alien seeking admission, and her
5 proceedings were governed by 8 U.S.C. § 1225(b). Thereafter, she was paroled into the United States,
6 but she violated the terms of that parole. Thereafter, Montero’s parole was terminated.

7 By law, aliens, like Montero, who are detained under 8 U.S.C. § 1225(b)(1) or (b)(2) are
8 ineligible for release on bond because both provisions “mandate detention of applicants for admission
9 until certain proceedings have concluded.” *Jennings v. Rodriguez*, 583 U.S. 281, 298 (2018). The
10 question is: What occurs when an alien is initially detained as an alien seeking admission, is granted
11 parole, and later parole is terminated?

12 Parole is permissible and governed pursuant to 8 U.S.C. § 1182(d)(5)(A). The same provision
13 controls what happens upon termination of parole:

14 The Secretary of Homeland Security may, [...] temporarily under such conditions as he
15 may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant
16 public benefit any alien applying for admission to the United States, but such parole of
17 such alien shall not be regarded as an admission of the alien and when the purposes of
18 such parole shall, in the opinion of the Secretary of Homeland Security, have been served
the alien shall forthwith return or be returned to the custody from which he was paroled
and thereafter his case shall continue to be dealt with in the same manner as that of any
other applicant for admission to the United States.

19 8 U.S.C. § 1182(d)(5)(A) (emphasis added). Thus, when parole granted by DHS is terminated, the alien
20 “shall be restored to the status that he or she had at the time of parole.” 8 C.F.R. § 212.5(e)(2)(i) (2025).
21 Thus, when DHS terminated Montero’s parole, she returned to her prior status, that of an alien seeking
22 admission.

23 Because Montero is an alien seeking admission due to termination of her parole, she is properly
24 detained pending removal pursuant to 8 U.S.C. § 1225(b). Because her detention is lawful and
25 mandatory by statute, she cannot show a likelihood of success on the merits. Her motion should be
26 denied.

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IV. CONCLUSION

Respondents respectfully request that the Court deny Petitioner’s TRO motion and habeas petition. Because the Petitioner cannot show a likelihood of success on the merits, the petition should be denied.

Dated: December 12, 2025

ERIC GRANT
United States Attorney

By: /s/ ROBERT ABENDROTH
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